Form 49
[Rule 13.19]

Clerk's Stamp:
CLERK OF THE COURT
FILED
AUG 16 2018
JUDICIAL CENTRE
OF CALGARY

COURT FILE NUMBER	1701-03460
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANT	ALBERTA ENERGY REGULATOR
RESPONDENTS	LEXIN RESOURCES LTD. 1051393 B.C. LTD. 0989 RESOURCE PARTNERSHIP LR PROCESSING LTD. and LR PROCESSING PARTNERSHIP
APPLICANT FOR APPLICATION	MFC ENERGY FINANCE INC. (now named Marian Energy Inc.)
RESPONDENT TO APPLICATION	GRANT THORNTON LIMITED in its capacity as the Receiver of the Respondents
DOCUMENT	**AFFIDAVIT OF PRADEEP KUMAR**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Burnet, Duckworth & Palmer LLP 2400, 525 – 8 Avenue SW Calgary, Alberta T2P 1G1 Douglas A. McGillivray/David LeGeyt/David A. de Groot Phone Number: (403) 260-0349/0210/0167 Fax Number: (403) 260-0332 dam@bdplaw.com/dlegyt@bdplaw.com/ddegroot@bdplaw.com File No. 55825-3/MJD

AFFIDAVIT OF PRADEEP KUMAR

Sworn on August 15, 2018.

I, **Pradeep Kumar** of the City of Calgary, in the Province of Alberta, businessman, **SWEAR AND SAY THAT:**

Introduction

1. I am a director of MFC Energy Finance Inc. (now named Marian Energy Inc.), the Applicant herein ("**MFC Finance**") and I am authorized by MFC Finance to make this Affidavit. I therefore have personal knowledge of the matters set out in this Affidavit. In some cases, I rely on information from others, in which case I believe that information to be true.

2. MFC Finance is a secured creditor of the Respondents in these proceedings pursuant to a promissory note and loan agreement dated June 30, 2015, copies of which are attached and marked as **Exhibit 1**, and pursuant to a general security agreement attached and marked as **Exhibit 2**. MFC Finance is owed $15,058,116.08 pursuant to these documents (the **"Finance Loan**").

3. MFC Finance has participated in the Sales Process as defined in and prescribed by the Order of this honourable Court dated July 14, 2017, a copy of which is attached as **Exhibit 3**. Further, as first ranking secured creditor pursuant to the Finance Loan, MFC Finance has made a credit bid pursuant to the Sales Process for certain of the Respondents' assets.

Litigation over the validity of the Finance Loan

4. In late 2017, litigation occurred between MFC Finance and Grant Thornton Limited in its capacity as the court appointed receiver in these proceedings ("**Receiver**") concerning the validity of the Finance Loan. On August 8, 2018, the Honourable Madame Justice Romaine disallowed the secured claim of MFC Finance (the "**Decision**") by characterizing the Finance Loan as equity and postponing the Finance Loan to the claims of other creditors pursuant to Section 137 of the Bankruptcy and Insolvency Act 1985 c B-3 (the "**BIA**"). A copy of the Decision is attached as **Exhibit 4**.

5. MFC Finance has appealed the Decision to the Court of Appeal of Alberta. The Notice of Appeal is attached as **Exhibit 5**.

6. I am advised by legal counsel to MFC Finance and do verily believe that the appeal of the Order results in an automatic stay of the Decision pursuant to the BIA.

7. Attached and marked as **Exhibit 6** is the Application filed by the Receiver on October 12, 2017 which gave rise to the litigation described above. This Application indicates in part that the validity of the Finance Loan must be determined in order for the Receiver to implement the Sales Process for some of the assets.

8. Attached and marked as **Exhibit 7** are some pages from the Receiver's Fifth Report filed in these proceedings on October 12, 2017 indicating some of the reasons that the Sales Process cannot be finalized until the entitlement of MFC Finance to the Finance Loan is finally determined.

9. The entitlement of MFC Finance to the Finance Loan will not be finally determined until the appeal of the Decision is finally determined.

MFC Finance's right to credit bid for the assets

10. MFC Finance remains interested in acquiring certain assets of the Respondents pursuant to its credit bid pursuant to the Sales Process. If the Sales Process is allowed to continue prior to the final determination of the Appeal, MFC Finance will be deprived of its right to credit bid for the assets, the assets may be sold to a different party, and the Applicant will be irreparably harmed as a result.

11. The Appeal will be rendered nugatory if the Sales Process is concluded prior to the final determination of the Appeal.

12. I make this Affidavit in support of the application of MFC Finance to vary and amend the Sales Process order to suspend the Sales Process until the final determination of the Appeal.

SWORN BEFORE ME at the City of Los Angeles, in the State of California, this 15th day of August, 2018.	)))	
A Notary Public in and for the State of California	)	PRADEEP KUMAR

9207158.1

CALIFORNIA JURAT **CIVIL CODE § 8202**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this 15th day of August 2018, by **Pradeep Kumar**, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

MUTHIAH NACHIAPPAN
COMM. # 2175823
NOTARY PUBLIC - CALIFORNIA
COUNTY OF LOS ANGELES
MY COMM. EXP. JAN. 13, 2021

Signature

Muthiah Nachiappan
Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Affidavit of Pradeep Kumar

Document Date: 8-15-18 Number of Pages: 3

Signer(s) Other Than Named Above: None

Capacity(ies) Claimed by Signer

Signer's Name: **Pradeep Kumar**

- ☒ Individual
- ☐ Corporate Officer – Title(s):
- ☐ Partner – Limited General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other:

Signer Is Representing: Self

RIGHT THUMBPRINT OF

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15 AUGUST 2018

PRADEEP KUMAR

THIS IS EXHIBIT "1" REFERRED TO IN THE AFFIDAVIT OF PRADEEP KUMAR

SWORN BEFORE ME THIS 15TH DAY OF AUGUST, 2018.

A Notary Public in and for the State of California

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this 15th day

of August, 20 18, by PRADEEP KUMAR

, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature (Seal)

MUTHIAH NACHIAPPAN
COMM. # 2175823
NOTARY PUBLIC - CALIFORNIA
COUNTY OF LOS ANGELES
MY COMM. EXP. JAN. 13, 2021

THIS DEMAND LOAN AGREEMENT dated as of the 30th day of June, 2015.

BETWEEN:

1041189 B.C. LTD., a British Columbia company, having an office at 400 Burrard Street, Suite 1860, Vancouver, British Columbia V6C 3A6

AND:

MFC RESOURCE PARTNERSHIP, a British Columbia general partnership, having an office at 400 Burrard Street, Suite 1860, Vancouver, British Columbia V6C 3A6

WHEREAS:

A. The Borrower has requested that the Lender provide the Loan; and

B. The Lender has agreed to provide the Loan to the Borrower, upon the terms and conditions set out herein.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the respective agreements hereinafter set forth and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto acknowledge, covenant and agree as follows:

ARTICLE 1
INTERPRETATION

1.1 Definitions

When used in this Agreement (including the recitals), the following terms shall, unless otherwise expressly provided, have the following meanings, respectively:

"**Advance Date**" means June 30, 2015;

"**Affiliate**" means an entity (whether or not incorporated), controlling, controlled by, or under common control with the Lender;

"**Agreement**" means this loan agreement, as supplemented, amended or otherwise modified, extended, renewed or replaced from time to time by any written agreement supplemental or ancillary hereto; and the expressions "**Article**" and "**Section**" followed by a number mean, and refer to, the specified Article or Section of this Agreement;

"**Borrower**" means MFC Resource Partnership and its successors and assigns;

"**Business**" means the business of the Borrower as conducted on the Advance Date;

"**Business Day**" means any day other than a day which is a Saturday, Sunday or statutory holiday in British Columbia;

"Debt" of any Person means: (i) all indebtedness of such Person for and in respect of borrowed money, including obligations with respect to bankers' acceptances, letters of credit and letters of guarantee; (ii) all indebtedness of such Person for the deferred purchase price of property or services represented by a note or other evidence of indebtedness or other security; (iii) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights or remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property); (iv) all obligations under leases which, in accordance with IFRS (or accounting principles generally accepted in the jurisdiction of incorporation or organization of such Person), are recorded as capital leases in respect of which such Person is liable as lessee; (v) the aggregate amount at which any shares in the capital of such Person which are redeemable or retractable at the option of the holder thereof may be retracted or redeemed; and (vi) all Debt Guaranteed;

"Debt Guaranteed" by any Person means the maximum amount which may be outstanding at any time of all Debt of the kind referred to in (i) through (v) of the definition of Debt which is directly or indirectly guaranteed by such Person or such Person agreed (contingently or otherwise) to purchase or otherwise acquire, or in respect of which such Person is otherwise assured a creditor against loss by means of an indemnity, security or bond;

"Default" means an event which, with the giving of notice or passage of time or both, would constitute an Event of Default;

"Event of Bankruptcy" means, in respect of any Person, that such Person shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally as they become due, or shall make a general assignment for the benefit of creditors; or any proceeding shall be instituted by or against any such Person seeking to adjudicate it a bankrupt or insolvent or seeking liquidation, winding-up, a reorganization, arrangement, adjustment, protection, relief or a composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, including, without limitation, the *Companies' Creditors Arrangement Act* (Canada), or seeking the entry of an order for relief or for the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property and, in the case of any such proceeding instituted against such Person (but not instituted by such Person), either such proceeding shall remain undismissed or unstayed for a period of 5 days or any of the actions sought in such proceeding (including, without limitation, the entry of an order for relief against such Person or for the appointment of a receiver, trustee, custodian or other similar official for such Person or for any substantial part of its property) shall occur; or such Person shall take any action to authorize any of the actions set forth above;

"Event of Default" means any of the events of default described in Section 5.1 hereof;

"Law" means any law (including common law and equity), constitution, statute, order, treaty, regulation, rule, ordinance, order, injunction, writ, judgment, determination, decree or award of any Official Body;

"Lender" means 1041189 B.C. Ltd. and its successors and assigns;

"**Lien**" means any mortgage, pledge, lien, hypothecation, security interest or other encumbrance or charge (whether fixed, floating or otherwise) or title retention, any right of set-off (arising otherwise than by operation of Law) and any deposit of monies under any agreement or arrangement whereby such monies may be withdrawn only upon the fulfilment of any condition as to the discharge of any other indebtedness or other obligation to any creditor, or any right of or arrangement of any kind with any creditor to have its claim satisfied prior to other creditors with or from the proceeds of any properties, assets or revenues of any kind now owned or later acquired;

"**Loan**" means the loan of the Principal Sum (and any interest thereon) by the Lender to the Borrower upon the terms and conditions set out in this Agreement;

"**Material Adverse Effect**" means: (i) a material adverse effect on the property or assets of the Business or the Borrower; (ii) a material adverse effect on the capital structure or condition or prospects, financial or otherwise, of the Business or the Borrower; or (iii) a material adverse effect on the ability of the Borrower to perform and comply with the Agreement or to pay or perform any of its obligations hereunder, including with respect to the repayment of principal and interest;

"**Note**" means the promissory note dated the date hereof and delivered by the Borrower to the Lender, evidencing the indebtedness of the Borrower to the Lender hereunder, a form of which is attached hereto as Schedule "A";

"**Official Body**" means any government or political subdivision or any agency (including, without limitation, any licensing or regulatory agency), body, office, authority, bureau, central bank, monetary authority, commission, department or instrumentality thereof, or any court, board, tribunal, grand jury or arbitrator, commission or instrumentality thereof, whether foreign or domestic and, when used in the context of a particular Person, having jurisdiction over such Person;

"**Permitted Encumbrances**" means (i) Liens of property of the Borrower in favour of the Lender; (ii) Liens pursuant to the royalty arrangement between the Borrower and Caledonian Royalty Corporation; (iii) survey exceptions, encumbrances, easements, reservations of rights for rights of way, zoning or other restrictions as to the use of properties which were not incurred or created to secure Debt and which do not materially adversely affect the value of such properties or materially impair their use in the Business; (iv) Liens for taxes, assessments and governmental charges which are not yet delinquent or which are being contested in good faith; (v) Liens arising from precautionary PPSA filings regarding operating leases or consignments; (vi) carriers', warehousemen's, mechanics', materialmen's, repairmen's, construction and other similar Liens arising by operation of Law arising in the ordinary course of the Business which are not overdue by more than 30 days or which are being contested in good faith and which have been appropriately reserved for on the Borrower's books and records; (vii) statutory Liens incurred or pledges or deposits made under workers' compensation, unemployment insurance and other social security legislation; (viii) Liens or deposits to secure the performance of bids, tenders, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature (other than for borrowed money) incurred in the ordinary course of the Business; (ix) undetermined or inchoate Liens and charges arising or potentially arising under statutory provisions which have not at the time been filed or registered in accordance with applicable Law or of which written notice has not been duly given in accordance with applicable Law or which, although filed or registered, relate to obligations not due or delinquent; (x) rights reserved to or vested in Official Bodies by statute or by the terms of leases, licenses, franchises, grants or permits, which affect any land, to terminate the leases, licenses, franchises, grants or permits or to require annual or other periodic payments as a condition of the continuance thereof; (xi) securities to public utilities or any municipalities or Official Bodies when required in connection with the supply of services or utilities; (xii) statutory Liens incurred or pledges or deposits made in favour of an Official Body to secure the performance of obligations under environmental Laws to which any assets of the Borrower are subject; (xiii) any Lien existing on any property or asset prior to the acquisition thereof by the Borrower provided that such was Lien (A) was not created in contemplation of or in connection with such acquisition, (B) does not apply to any other assets or property of the Borrower and (C) such Lien shall secure only those obligations which it secures on the date of such acquisition; (xiv) Liens on Petroleum Substances or the proceeds of the sale of Petroleum Substances granted or assumed by the Borrower in the ordinary course of its Business pursuant to a processing or transmission arrangement entered into or assumed by the Borrower in the ordinary course of its Business, securing the repayment of its obligations in respect of the fees, costs and expenses attributable to the processing or transmission (as the case may be) of any such Petroleum Substances, provided that the obligations secured thereby are not overdue or delinquent (or if overdue or delinquent are being contested diligently and in good faith by appropriate proceedings); and (xv) any other Liens which the Lender may time to time consent to.

"Person" means an individual, a partnership, a corporation (including a business trust), joint stock company, trust, unincorporated association, joint venture or other entity, or a foreign state or a political subdivision thereof or any agency of such state or subdivision;

"Petroleum Substances" means petroleum, crude oil, crude bitumen, synthetic crude oil, oil sands, bituminous sands, natural gas, natural gas liquids, condensate, related hydrocarbons and any and all other substances, whether liquid, solid or gaseous, whether hydrocarbons or not, produced or producible in association with or derived from any of the foregoing, including hydrogen sulphide, sulphur and coke.

"Principal Sum" means thirty seven million five hundred seventy thousand five hundred dollars ($37,570,500);

"Security Agreement" means the Security Agreement dated the date hereof between the Borrower and the Lender, a form of which is attached hereto as Schedule "B".

"Security Documents" means the Security Agreement, along with any mortgages, registration, security filings and other documents evidencing or granting a security interest in favour of the Lender as security for the Loan and the other amounts payable hereunder;

1.2 Headings, etc.

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement

1.3 Gender and Number

Words imparting the singular number include the plural and vice-versa and words imparting gender include the masculine, feminine and gender neutral as the context requires.

1.4 Amendment

No amendment or waiver of any provision of this Agreement, nor any consent to any departure by the parties therefrom, shall in any event be effective unless the same shall be in writing and signed by each party hereto, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

1.5 Severability

If one or more provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions hereof shall not be affected or impaired thereby.

1.6 Currency

Unless otherwise specified herein all references to "dollars" or "$" shall be references to the currency of Canada.

1.7 Schedule(s)

The schedule(s) and any other documents attached or referred to in this Agreement are an integral part of this Agreement.

ARTICLE 2
LOAN AND NOTE

2.1 Loan

The Lender, relying on each of the representations and warranties set out herein and subject to the terms and conditions of this Agreement, shall lend to the Borrower on the Advance Date the Principal Sum.

2.2 Note

The indebtedness made pursuant to Section 2.1 hereof is evidenced by the Note.

2.3 Interest

Upon the occurrence of an Event of Default, any amounts unpaid and outstanding under this Agreement shall, to the extent permissible under applicable law, accrue interest at 5% per annum, calculated daily and payable on demand.

2.4 Security

As general and continuing security for the performance of all obligations of the Borrower hereunder, and prompt payment when due by the Borrower of the Principal Sum and all interest and other monies from time to time owing by the Borrower hereunder, the Borrower shall execute and deliver or cause to be executed and delivered the Security Agreement and the other Security Documents.

ARTICLE 3
REPAYMENT OF PRINCIPAL AND INTEREST

3.1 Repayment on Demand

The Borrower shall immediately repay to the Lender the balance of the Principal Sum outstanding under this Agreement, all accrued and unpaid interest if any and all other monies owing to the Lender hereunder ON DEMAND (whether or not a Default or Event of Default has occurred and is continuing).

3.2 Acknowledgment of Demand Nature

The Borrower acknowledges that the Loan is made available by the Lender on a demand basis and the Lender is entitled to demand payment by the Borrower of the Loan or any other amounts payable hereunder at any time notwithstanding that the Borrower is in compliance with all its covenants herein.

3.3 Borrower's Right to Prepay the Loan

The Borrower may prepay all or part of the Loan from time to time, without penalty or premium, at any time and any such payment shall be applied all follows: (a) first, against fees and expenses payable or reimbursable to the Lender hereunder or under any Security Document, (b) second, against all accrued and unpaid interest, if any, outstanding hereunder; and (c) third, against the outstanding principal amount of the Loan.

3.4 Method and Place of Payment of Principal and Interest

All payments to be made hereunder shall be made by the Borrower to the Lender on the day that such payment is due at the Lender's address provided for in this Agreement. Whenever any payment to be made hereunder shall be stated to be done on a day which is not a Business Day, such payment may be made on the next succeeding Business Day and such extension of time shall in such case be included in the computation of the payment of interest hereunder, but shall not in any event operate as a waiver by the Lender of any of its rights. The Borrower shall make and deliver to the Lender all payments hereunder by certified cheque or bank draft, or as otherwise directed by the Lender.

3.5 Set-Off

Without limitation to any other rights or remedies of Lender provided hereunder, the Lender shall have the right at all times, without prior notice to the Borrower (which notice is hereby waived to the maximum extent permitted by law), to set-off or recoup any repayment or prepayment made hereunder against any financial obligation now and hereafter owing by the Borrower to or for the credit or account of the Lender or any of its Affiliates.

ARTICLE 4
NOTE

4.1 Conflicts

If a conflict or inconsistency exists between a provision of this Agreement and the terms of the Note, the terms of this Agreement shall prevail.

4.2 Discharge of Note

Upon payment in full of the Principal Sum outstanding under this Agreement, all accrued and unpaid interest if any and all other monies owing to the Lender hereunder, the Lender shall forthwith, upon receipt of written notice by the Borrower requesting a release of all claims under the Note, cancel and/or deliver the Note to the Borrower at the Borrower's address provided for in this Agreement.

ARTICLE 5
EVENTS OF DEFAULT

5.1 Events of Default

It shall be an Event of Default hereunder if:

(a) Representations and Warranties. Any representation or warranty made by the Borrower herein or any representation, warranty or certification made by the Borrower (or any of their officers) in any certificate or other writing delivered in connection with this Agreement, including the Security Documents, or any representation or warranty deemed to be made by the Borrower herein or therein, shall prove to have been incorrect in any material respect when made or deemed to be made.

(b) Failure to Observe Covenants. The Borrower shall fail to observe any of the covenants or agreements contained in this Agreement (including without limitation those set forth in Section 6.2 and 6.3 hereof) or in the Security Documents.

(c) Cross-Default. The Borrower shall fail to pay the principal of or premium or interest on any Debt which is outstanding in an aggregate principal amount in excess of $100,000 (or the equivalent amount in any other currency) in respect of the Borrower when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Debt; or any other event shall occur or condition shall exist, and shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to any such Debt, if the effect of such event or condition is to accelerate, or to permit the acceleration of, the maturity of Debt of the Borrower which is outstanding in an aggregate principal amount exceeding $100,000 (or the equivalent amount in any other currency).

(d) Event of Bankruptcy. The Borrower shall commit or permit to exist any Event of Bankruptcy.

(e) Judgments. Any judgment or order for the payment of money in excess of $100,000 in respect of the Borrower shall be rendered against the Borrower.

(f) Unenforceability. This Agreement or any Security Document shall for any reason (other than in accordance with the respective terms hereof or thereof or with the consent of the Lender) cease to be in full force and effect or shall be declared null and void, or the validity or enforceability hereof or thereof shall be contested by the Borrower, or the Borrower shall deny that it has any further liability or obligation hereunder or thereunder.

(g) Cessation of Business. The Borrower shall cease to carry on the Business or any material part of the Business conducted by it.

(h) Material Adverse Effect. There occurs any change, condition, event or occurrence which when considered individually or together with all other changes, conditions, events or occurrences could reasonably be expected to have a Material Adverse Effect.

(i) Security Documents. Any of the following shall have occurred (i) a default or event of default shall have occurred under any Security Document; (ii) the repudiation or disaffirmation by the Borrower of the Liens granted under the Security Documents or of any of its obligations granted thereunder; or (iii) for any reason, the Borrower shall cease to have a valid, perfected and first priority security interest in the collateral granted under the Security Documents.

5.2 Remedies

Upon the occurrence of an Event of Default, and at any time thereafter, provided the Event of Default has not been waived by the Lender or the Borrower has not remedied all outstanding Events of Default, or upon a demand in accordance with Article 3, the Lender may, by notice to the Borrower:

(a) declare the Loan and all monies owing or accruing to the Lender under this Agreement to be immediately due and payable with interest accruing thereafter at the rate of interest provided for in Section 2.3 herein to the date of actual payment thereof, without presentment, demand, protest or other notice of any kind to the Borrower, all of which is hereby expressly waived; *provided*, that, in the case of an Event of Default under Section 5.1(d), the Loan and all monies owing or accruing to the Lender under this Agreement shall become immediately due and payable without the giving of notice by or any other action of the Borrower; and

(b) enforce all rights and remedies granted hereunder.

ARTICLE 6
REPRESENTATIONS, WARRANTIES AND COVENANTS

6.1 Representations and Warranties of the Borrower

The Borrower represents and warrants to the Lender as follows:

(a) Organization. The Borrower is a general partnership, duly organized and validly subsisting under the laws of British Columbia.

(b) Power. The Borrower has full partnership right, power and authority to enter into and perform its obligations under this Agreement and the Security Documents and has full right, power and authority to own and operate its properties and to carry on the Business.

(c) No Conflict. The execution and delivery by the Borrower of this Agreement and the Security Documents and the performance of the Borrower of its obligations hereunder and thereunder, do not and will not: (i) conflict with or result in a breach of any of the terms, conditions or provisions of (A) its partnership agreement and any other constating documents; (B) any Law applicable to or binding on the Borrower; or (C) any contractual restriction binding on or affecting the Borrower or its properties the breach of which would have a Material Adverse Effect; or (ii) result in, or require or permit: (A) the imposition of any Lien on or with respect to the properties now owned or hereafter acquired by the Borrower; or (B) the acceleration of the maturity of any Debt of the Borrower under any contractual provision binding on or affecting the Borrower.

(d) Authorization and Approvals. The execution and delivery by the Borrower of this Agreement and the Security Documents and the performance of the Borrower of its obligations hereunder and thereunder, has been duly authorized by all necessary action on the part of the Borrower and no authorization under any applicable Law and no registration, qualification, designation, declaration or filing with any Official Body having jurisdiction over the Borrower, is or was necessary therefor (other than with respect to the routine filing of the Security Documents with appropriate Official Bodies).

(e) Execution and Binding Obligation. This Agreement, the Note and the Security Documents have been duly authorized and executed by the Borrower and, when delivered, will constitute legal, valid and binding obligations of the Borrower, enforceable in accordance with their respective terms, subject only to (i) any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally; and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(f) Consents. The Borrower possesses all consents and authorizations under any applicable Law which are necessary in connection with the operation of the

Business, the non-possession of which could reasonably be expected to have a Material Adverse Effect. All such consents and authorizations are in full force and effect and the Borrower is not in default in any respect thereunder, which default would have a Material Adverse Effect. No action exists, is pending or threatened which has as its object the revocation, amendment or qualification of any consent or authorization.

(g) No Violation of Agreements. The Borrower is not in default under any material indenture, mortgage, deed of trust, agreement or other instrument to which it is a party or by which it or any of its property may be bound, which default could have a Material Adverse Effect

6.2 Affirmative Covenants by Borrower

Until all amounts owed by the Borrower hereunder are paid and satisfied in full and this Agreement has been terminated, the Borrower shall, unless the Lender otherwise consents in accordance with the provisions of this Agreement:

(a) Reporting. Deliver to the Lender: (i) promptly upon the Borrower obtaining knowledge of any Default or Event of Default, written notice specifying the nature thereof and the action the Borrower proposes to take or has taken with respect thereto; (ii) promptly upon the Borrower obtaining knowledge of the commencement thereof, written notice of any litigation, including arbitration, and of any proceedings before any Official Body against the Borrower, where the amount involved exceeds $10,000; and (iii) promptly upon the Borrower obtaining knowledge of any default, or event, condition or occurrence which with notice or lapse of time, or both, would constitute a default, under any agreement for borrowed money to which the Borrower is a party and under which the Borrower owes at least $10,000 or the equivalent amount in another currency.

(b) Corporate Existence. Preserve and maintain in full force and effect: (i) its corporate existence and all qualifications to carry on the Business, including without limitation, all rights (statutory and other); and (ii) obtain and maintain all consents and authorizations relating thereto non-compliance with which would have a Material Adverse Effect.

(c) Compliance with Laws, etc.. Comply with all applicable Laws, the non-compliance with which would have a Material Adverse Effect.

(d) Maintenance of Property. Maintain all of its property necessary and useful in the conduct of its business in good operating condition and repair, ordinary wear and tear and casualty events accepted.

(e) Security Documents. Duly observe and perform or cause to be observed and performed each and all of the covenants and agreements required by it to be performed and observed as set forth in the Security Documents.

(f) Preservation of Security Interests. Maintain in full force and effect at all times all security interests granted to the Lender pursuant to the Security Documents, which shall at all times be perfected first priority security interests, and shall not take any steps in furtherance of releasing or challenging the validity of such security interests prior to the repayment in full of all amounts owing hereunder and under the Note without the prior written consent of the Lender.

(g) Further Assurances. At its cost and expense, upon request by the Lender, duly execute and deliver, or cause to be duly executed and delivered, to the Lender, such further instruments and do and cause to be done such other acts as may be necessary or proper in the reasonable opinion of the Lender to carry out more effectually the provisions and purposes of this Agreement and the Security Documents.

6.3 Negative Covenants by Borrower

Until all amounts owed by the Borrower hereunder are paid and satisfied in full and this Agreement has been terminated, the Borrower shall not, unless the Lender otherwise consents in accordance with the provisions of this Agreement:

(a) Liens. Create, incur, assume or suffer to exist any Lien on any of its property or assets now owned or hereafter acquired other than the Liens created by the Permitted Encumbrances.

(b) Disposal of Assets. Sell, exchange, lease, release or abandon or otherwise dispose of any of its property or assets having an aggregate book value, or aggregate book value of net proceeds on such disposal, of more than $100,000 in any 12 month period, other than sales of inventory in the ordinary course of business, casualty events and sales of obsolete assets.

(c) Mergers, etc.. Enter into or agree to enter into any transaction (whether by way of reconstruction, reorganization, consolidation, combination, amalgamation, merger, transfer, sale, lease, modification or otherwise), with the exception of any business combinations to be entered into between the Lender and the Borrower, whereby: (i) all or substantially all of the Borrower's undertaking, property or assets will become the property of any other Person or the continuing Borrower resulting therefrom; (ii) there would be permitted any change in the direct or indirect control of the Borrower; or (iii) the corporate structure of the Borrower would be modified, changed, altered or amended in any manner.

(d) Distributions. Make or allow any payment on account of a redemption or a distribution or return of capital (including, without limitation, cash dividends or any repayment of shareholder loans or distributions) to any shareholder or holder of securities.

ARTICLE 7
GENERAL PROVISIONS

7.1 Notices

Any demand, notice or communication to be made or given hereunder shall be in writing and may be made or given by personal delivery, mail or courier or by transmittal by facsimile transmission addressed to the respective parties as follows:

To the Borrower:	MFC Resource Partnership Attention: Management Committee 400 Burrard Street, Suite 1860 Vancouver, British Columbia V6C 3A6
To the Lender:	1041189 B.C. Ltd. 400 Burrard Street, Suite 1860 Vancouver, British Columbia V6C 3A6
with a copy to, which shall not constitute service:	Sangra Moller LLP 1000 – 925 West Georgia Street Vancouver, British Columbia V6C 3L2 Fax: (604) 669-8803

or to such other address or facsimile number as any party may from time to time notify the others in accordance with this Section. Any demand, notice or communication, (i) if made or given by personal delivery, mail or courier, shall be conclusively deemed to have been given on the day of actual delivery thereof if it was a Business Day and the delivery was made prior to 4:00 p.m. (local time in place of receipt) and otherwise on the next Business Day, or (ii) if made or given by facsimile, shall be conclusively deemed to have been given on the first Business Day following the transmittal thereof.

7.2 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein. The parties hereto irrevocably attorn to the exclusive jurisdiction of the Courts of British Columbia located in Vancouver, British Columbia with respect to any matters arising out of this Agreement.

7.3 Assignment

The Borrower may not assign any rights, or delegate or subcontract any obligations, under this Agreement without the Lender's prior written consent. Any assignment in violation of the foregoing shall be deemed null and void. The Lender may freely assign its rights and obligations under this Agreement at any time, upon written notice to the Borrower. Subject to the limits on assignment stated above, this Agreement will inure to the benefit of, be binding on, and be enforceable against each of the parties hereto and their respective successors and assigns.

7.4 Time of the Essence

Time shall be of the essence hereof.

7.5 Expense Reimbursement

The Borrower shall pay or cause to be paid and shall indemnify and save the Lender harmless against liability for the payment of all reasonable out-of-pocket expenses, including without limitation:

(a) counsel, assessment or compliance review fees and disbursements (including legal fees and disbursements on a solicitor and a solicitor's own client basis) incurred by the Lender in respect of the negotiation of the Loan and the registration and filing of any Security Documents;

(b) counsel, assessment or compliance review fees and disbursements (including legal fees and disbursements on a solicitor and a solicitor's own client basis) incurred by the Lender in connection with: (i) the development, preparation, execution and interpretation of this Agreement, Security Documents or any other agreement or instrument contemplated hereby; (ii) advice of counsel to the Lender with respect to the administration of the Loan or any transaction contemplated hereunder; (iii) the enforcement or preservation of rights under the refinancing, renegotiation or restructuring of this Agreement, Security Documents or any other agreement or instrument contemplated hereby; (iv) any requested amendments, waivers or consents pursuant to the provisions hereof, including such expenses as may be incurred by the Lender in the collection of the amounts outstanding hereunder or any litigation, proceeding, dispute or so-called "work-out" in any way relating to this Agreement or the Security Documents; and

(c) all such expenses in connection with: (i) the Borrower's failure to make any payment, repayment or prepayment on the date required hereunder or specified by it in any notice given hereunder; and (ii) the Borrower's failure to give any notice required to be given by it to the Lender hereunder or under the Security Documents;

7.6 Counterparts

This Agreement may be executed in several parts in the same form and by facsimile and such parts as so executed shall together constitute one original document and such parts, if more than one, shall be read together and construed as if all the signing parties had executed one copy of the said Agreement.

7.7 Entire Agreement

Save as provided herein and in the instruments and documents contemplated and provided for hereunder, this Agreement contains the whole agreement between the parties with respect to the Loan and there are no other terms, conditions representations or warranties with respect thereto, except as contained herein.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed effective as of the date first above written.

1041189 B.C. LTD.	MFC RESOURCE PARTNERSHIP
Name:	Name:
Title:	Title: Authorized Signatory
	Name:
	Title: Authorized Signatory

Schedule "A" – Form of Promissory Note

PROMISSORY NOTE

PRINCIPAL AMOUNT: $37,570,500 DUE ON DEMAND

The undersigned (the "**Payor**") hereby promises to pay, ON DEMAND, to 1041189 B.C. LTD., a British Columbia company having an office at 400 Burrard Street, Suite 1860, Vancouver, British Columbia V6C 3A6 (the "**Payee**"), the principal sum of THIRTY SEVEN MILLION FIVE HUNDRED SEVENTY THOUSAND FIVE HUNDRED DOLLARS in lawful money of the Canada, at the above location or such other location as the Payee shall designate in writing. This promissory note shall bear interest in accordance with the terms of the Loan Agreement (as defined below).

This promissory note is a "Note" referred to in the Loan Agreement, dated as of the 30th day of June, 2015 (the "**Loan Agreement**"), between the Payee and the Payor, and is subject to the terms and conditions thereof. In the event of any conflict between this promissory note and the Loan Agreement, the Loan Agreement shall govern.

The Payor hereby waives diligence, presentment, demand, protest or notice of any kind in connection with this promissory note. ALL PAYMENTS UNDER THIS PROMISSORY NOTE SHALL BE MADE BY THE PAYOR WITHOUT ANY RIGHT OR DEFENCE OF SET-OFF, COUNTERCLAIM OR DEDUCTION OF ANY KIND, IN LAW OR IN EQUITY, whatsoever, howsoever existing or arising between the Payor or Payee or otherwise, including pursuant to the Loan Agreement. This promissory note shall be binding upon the Payor and its successors and assigns, and the terms and provisions of this promissory note shall inure to the benefit of the Payee and its successors and assigns, including subsequent holders hereof. The Payor's obligations under this promissory note may not be assigned without the prior written consent of the Payee. This promissory note is fully assignable by the Payee, in whole or in part, to any person at any time without notice to, or the consent of, the Payor.

This promissory note shall be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein. The Payor and the Payee irrevocably attorn to the exclusive jurisdiction of the Courts of British Columbia located in Vancouver, British Columbia with respect to any matters arising out of this promissory note.

DATED this 30th day of June, 2015.

MFC RESOURCE PARTNERSHIP

By: ______________________________
Name:
Title: Authorized Signatory

By: ______________________________
Name:
Title: Authorized Signatory

Schedule "B" – Form of Security Agreement

GENERAL SECURITY AGREEMENT

This **GENERAL SECURITY AGREEMENT** (this "**Security Agreement**") dated as of the 30th day of June, 2015 is made by **MFC RESOURCE PARTNERSHIP**, with an office at 400 Burrard Street, Suite 1860, Vancouver, British Columbia V6C 3A6, a general partnership existing under the laws of the Province of British Columbia, and **MFC ENERGY CORPORATION** with an office at 400 Burrard Street, Suite 1860, Vancouver, British Columbia V6C 3A6, solely in its capacity as a partner of MFC Resource Partnership and to the extent that it holds title to property for and on behalf of MFC Resource Partnership, a corporation existing under the laws of the Province of British Columbia (individually and together the "**Debtor**") to and in favour of **1041189 B.C. LTD.** (the "**Secured Party**") with an office at 400 Burrard Street, Suite 1860, Vancouver, British Columbia V6C 3A6 , in conjunction with:

(a) a Loan Agreement between MFC Resource Partnership, as borrower, and the Secured Party, as lender, dated on or about the date hereof, as it may be amended, supplemented, restated or otherwise modified from time to time, (the "**Loan Agreement**"); and

(b) a Promissory Note issued by the MFC Resource Partnership in favour of the Secured Party dated on or about the date hereof as it may be amended, supplemented, restated or otherwise modified from time to time (together with the Loan Agreement, the "**Loan Documents**").

For valuable consideration, the receipt and sufficiency of which is conclusively acknowledged by the Debtor, the Debtor hereby grants to the Secured Party a security interest over the Collateral in accordance with the terms of this Security Agreement, as follows:

1. Definitions

All words and phrases which are defined in the PPSA and not otherwise defined in this Security Agreement shall have the meaning ascribed by the PPSA. The following definitions shall apply herein:

1.1 "**Collateral**" shall mean all present and after-acquired personal property and real property of the Debtor of whatever kind and wherever situate, together with all documents, writings, papers, books of account and records relating to the foregoing and all rights and interests therein, including without limitation, all right, title and interest that the Debtor now has, may be possessed of, entitled to, or acquire, by way of amalgamation or otherwise, now or hereafter or may hereafter have in all property of the following kinds:

(a) **Accounts Receivable**: all debts, accounts, accounts receivables, claims and choses in action which are now or which may hereafter become due, owing or accruing due to the Debtor;

(b) **Inventory**: all inventory of whatever kind and wherever situated including, without limiting the generality of the foregoing, all goods held for sale or lease, or furnished or to be furnished under contracts for service, or that are work in progress, or that are raw materials used or consumed in the business of the Debtor (collectively the "**Inventory**");

(c) **Equipment**: all goods, machinery, equipment, fixtures, furniture, plant, vehicles and other tangible personal property which are not Inventory, including, without limiting the generality of the foregoing, the tangible personal property described in any schedule hereto executed by both the Debtor and the Secured Party;

(d) **Chattel Paper**: all chattel paper;

(e) **Documents of Title**: all warehouse receipts, bills of lading and other documents of title, whether negotiable or not;

(f) **Investment Property and Instruments**: all shares, stock, warrants, bonds, debentures, debenture stock and other investment property and all instruments;

(g) **Intangibles**: all intangibles not described in paragraph 1.1(a) including, without limiting the generality of the foregoing, all goodwill, patents, trademarks, copyrights and other industrial and intellectual property;

(h) **Money**: all coins or bills or other medium of exchange adopted for use as part of the currency of Canada or of any foreign government;

(i) **Books, Records, Etc.**: all books, papers, accounts, invoices, documents and other records in any form evidencing or relating to any of the property described in paragraphs 1.1(a) to (h) inclusive, and all contracts, securities, instruments and other rights and benefits in respect thereof;

(j) **Transferable Rights**: all statutory licences, quotas and other transferable rights, including an equitable right in the Collateral assigned or charged under this Security Agreement which might otherwise at law be incapable of being Collateral subject to a security interest;

(k) **Substitutions, Etc.**: all replacements of, substitutions for and increases, additions and accessions to any of the property described in paragraphs 1.1(a) to (i) inclusive;

(l) **Proceeds**: all proceeds of the property described in paragraphs 1.1(a) to (k) inclusive including, without limiting the generality of the foregoing, all personal property in any form or fixtures derived directly or indirectly from any dealing with such property or that indemnifies or compensates for the loss of or damage to such property;

(m) **Leases and Licenses**: all petroleum and natural gas rights, leases, licences, permits, reservations, agreements, authorizations and other instruments under which the Debtor derives, holds, or maintains an interest in land, and all servitudes, privileges, easements, rights-of-way, right of entry orders, rights of ingress and egress and other surface rights, which in each case constitute an interest in land, including without limitation, those listed in Schedule "A";

but shall not include:

(n) the last day of any term reserved by any lease, verbal or written, or any agreement therefor now or hereafter held by the Debtor, it being the intention that the Debtor shall stand possessed of the reversion remaining in respect of any leasehold interest forming part of the Collateral upon trust to assign and dispose thereof as the Secured Party may after default direct, or

(o) Consumer Goods.

1.2 "**Indebtedness**" shall mean all debts, liabilities and obligations of every kind and description of the Debtor to the Secured Party, whether now or hereafter owed or any future advance, whether direct, indirect, contingent, and whether the Debtor be bound alone or with others and whether as principal or surety, including without limitation, those in connection with the Loan Documents.

1.3 "**Permitted Encumbrances**" means:

(a) liens for taxes, assessments and governmental charges which are not due or the validity of which is being diligently contested in good faith by or on behalf of the Debtor;

(b) mechanics', builders' and material men's liens arising by operation of law and in respect of services rendered or goods supplied for which payment is not due or if due, is being contested in good faith;

(c) the lien or any right of distress reserved in or exercisable under any real property lease for rent or otherwise to effect compliance with the terms of such lease, in respect of which the Debtor is not in default;

(d) security interests given by the Debtor in favour of a public utility or any municipality or other public authority which is required by such utility or municipality or governmental or other public authority in connection with operations of the Debtor;

(e) the right reserved to or vested in any municipality or government or other public authority by the terms of any lease, license, franchise, grant or permit or by any statutory provision, to terminate any such lease, license, franchise, grant or permit or to require annual or other periodic payments as a condition of the continuance thereof;

(f) any capital lease or purchase money security interest upon property created or assumed to secure all or any part of the funds required for the lease or purchase of such property, and shall include any extension, renewal or replacement thereof upon the same property if the principal amount of the indebtedness secured thereby is not increased;

(g) any security interest created by or pursuant to this Security Agreement and any security interest now or at any time hereafter made or granted by the Debtor to the Secured Party;

(h) any other liens or encumbrances permitted under the definition of "Permitted Encumbrances" in the Loan Agreement; and

(i) those registrations agreed to in writing between the Secured Party and the Debtor.

1.4 **"PPSA"** means the *Personal Property Security Act* (Alberta);

1.5 **"Related Documents"** shall mean the promissory notes, loan agreements, account agreements, guaranties, trust deeds, mortgages, other security agreements or any other documents executed in connection with this Security Agreement or the Indebtedness or related to its operation or administration, whether already existing or executed now or later, including without limitation, the Loan Documents.

2. Creation of Security Interest

2.1 Security

As general and continuing security for the payment and performance of the Indebtedness, the Debtor hereby:

(a) grants, assigns, conveys, mortgages, pledges and charges to the Secured Party, as and by way of a specific mortgage, pledge and charge, a security interest in the Collateral (excepting real property); and

(b) with respect to real property, charges such in favour of the Secured Party as and by way of a floating charge.

2.2 Attachment of Security Interest

The Debtor acknowledges that value has been given and agrees that the security interest granted hereby (the "**Security Interest**") shall attach when the Debtor signs this Security Agreement and the Debtor has any rights in the Collateral.

2.3 Grant resulting in Termination

If the grant of the Security Interest in respect of any contract, lease, agreement to lease, license, permit, approval or intellectual property right would result in the termination or breach of such contract, lease, agreement to lease, license, permit, approval or intellectual property right, then the applicable contract, lease, agreement to lease, license, permit, approval or intellectual property right will not be subject to the Security Interest but will be held in trust by the Debtor for the benefit of the Secured Party and, on exercise by the Secured Party of any of its rights under this Security Agreement following default, assigned by the Debtor as directed by the Secured Party.

3. Rights, Obligations, Covenants, Representations and Warranties of Debtor

3.1 **Representations and Warranties.** The Debtor hereby represents and warrants:

(a) that it has the right, power and authority to enter into this Security Agreement and to grant the security interest described herein;

(b) the execution, delivery and performance of this Security Agreement has been duly authorized by all necessary action and is not in contravention of any instrument by which the Debtor has been formed or continued, any instrument amending any such instrument, any internal regulation of the Debtor, any law, or any indenture, agreement or undertaking to which the Debtor is a party or by which it is bound;

(c) the Debtor has not previously carried on business, does not currently carry on business, and shall not, without the prior written consent of the Secured Party, in the future carry on business under any name other than the name set forth in the preamble hereof;

(d) the Collateral is genuine and is legally and beneficially owned by the Debtor free of all security interests except for the Security Interest and Permitted Encumbrances;

(e) each chattel paper, intangible and instrument constituting Collateral is enforceable in accordance with its terms against the party obligated to pay the same ("**Account Debtor**"), the amount represented by the Debtor to the Secured Party from time to time as owing by each Account Debtor shall be the correct amount owing unconditionally by such Account Debtor, and no Account Debtor shall have any defence, set-off, claim or counterclaim against the Debtor which can be asserted against the Secured Party, whether in any proceedings to enforce the Collateral or otherwise; and

(f) there are no actions, suits or proceedings pending or, to the knowledge of the Debtor, threatened against the Debtor except as have been disclosed in writing to and approved by the Secured Party.

3.2 **Possession and use of Collateral.** Subject to paragraph 6.2, until default or unless otherwise agreed with the Secured Party, the Debtor may deal with Collateral in the ordinary course of the Debtor's business in any manner consistent with the provisions of this Security Agreement. Except for Inventory sold or accounts collected in the ordinary course of the Debtor's business the Debtor shall not sell or otherwise transfer the Collateral without the express consent of the Secured Party. Where the Secured Party provides such consent and the Collateral gives rise to proceeds that are serial numbered goods or serial numbered equipment the Debtor shall provide the Secured Party with such information as is required to maintain a perfected security interest in the proceeds. All proceeds from dealing with the Collateral, whether or not in the ordinary course of the Debtor's business, will be received by the Debtor as trustee for the Secured Party and will be immediately paid to the Secured Party pursuant to the fiduciary obligation as trustee.

3.3 **No Encumbrances.** Except pursuant to the terms of any Permitted Encumbrances, the Debtor shall not encumber or permit the Collateral to be encumbered without the prior written consent of the Secured Party, other than by this Security Agreement.

3.4 **Change in use.** Where goods that are Inventory to the Debtor cease to be Inventory other than in the ordinary course of business and do not become proceeds of Inventory, the Debtor shall notify the Secured Party forthwith of the change.

3.5 **Removal of Collateral.** The Collateral (or to the extent the Collateral consists of intangible property such as accounts, the records concerning the Collateral) is located at the address of the Debtor set forth in the recitals herein, or at such other locations as the Secured Party may agree. Except in the ordinary course of the Debtor's business, the Debtor shall not remove the Collateral from its location without the prior written consent of the Secured Party, which shall not be unreasonably withheld.

3.6 **Securities as Collateral.** Where Collateral includes securities, the Secured Party may require the Debtor to transfer such securities into the Secured Party's name so that the Secured Party may appear of record as the owner of the securities. Until default, the Debtor may retain the voting and dividend rights attached to any such securities and the Secured Party will facilitate exercise of those dividend and voting rights.

3.7 **Insure Collateral.** The Debtor covenants to insure the Collateral for such periods, in such amounts, on such terms, with such insurers and against such loss or damage by fire and other such risks as the Secured Party reasonably directs, with loss payable to the Secured Party and the Debtor as insureds, as their respective interests may appear, to pay all premiums therefor, to deliver evidence of the same on request, and to do all acts necessary to obtain payment to the Secured Party of any insurance proceeds.

3.8 **Preservation of rights and Collateral.** The Debtor shall defend its own and the Secured Party's rights in the Collateral against the claims and demands of all persons. The Debtor shall maintain the Collateral in a condition and state of repair that preserves the value of the Collateral, reasonable wear and tear excluded. The Debtor will not commit or permit damage to or destruction of the Collateral and will effect repair if it occurs. The Debtor shall prevent the Collateral from being or becoming an accession or fixture to other property not covered by this Security Agreement or other security granted by the Debtor in favour of the Secured Party. The Debtor shall procure and maintain policies of fire and other casualty insurance covering the Collateral on a full-replacement basis on terms satisfactory to the Secured Party and with loss payable to the Secured Party and Debtor jointly.

3.9 **Material changes in information.** The Debtor shall notify the Secured Party promptly of:

(a) any material change in the information contained in this Security Agreement (including any schedules hereto) relating to the Debtor, the Debtor's business or Collateral, including any address change or establishment of an additional place of business;

(b) the details of any change in name of the Debtor;

(c) the details of any significant acquisition of Collateral;

(d) the details of any claims or litigation affecting the Debtor or Collateral;

(e) any loss of or damage to Collateral; and

(f) any default by any Account Debtor in its obligations with respect to any Collateral.

3.10 **Debtor's existence.** The Debtor shall maintain its existence, and diligently preserve all its rights, licences, powers, privileges, franchises and goodwill.

3.11 **Debtor's conduct.** The Debtor will conduct its business and affairs in a proper and efficient manner, in accordance with applicable law and keep records in accordance with generally accepted accounting procedures. The Debtor shall pay all charges, such as taxes, assessments, claims, liens and encumbrances relating to the Collateral or the Debtor's business and affairs when the same become due. The Debtor will deliver to the Secured Party promptly such information concerning Collateral, the Debtor and the Debtor's business and affairs as the Secured Party may reasonably request. The Debtor shall maintain all of the Collateral in accordance with all applicable laws, including without limitation, all environmental laws.

3.12 **Protest and notice.** The Debtor waives protest and notice of same of any instrument constituting Collateral at any time held by the Secured Party on which the Debtor is in any way liable and, subject to the notice requirements of the PPSA, notice of any other action taken by the Secured Party.

3.13 **Joint and several liability.** If more than one Debtor executes this Security Agreement the obligations of such Debtors hereunder shall be joint and several.

4. Ranking and Subordination

No action by the Secured Party shall constitute a subordination of its Security Interest to any other interest in the Collateral unless such subordination is express and is effected by an agreement in writing signed by the Secured Party.

5. Events of Default

5.1 The Debtor shall be in default under this Security Agreement or Related Documents upon occurrence of any of the following:

(a) The occurrence of an Event of Default under any Loan Document.

(b) Non-payment when due, whether by acceleration or otherwise, of any Indebtedness.

(c) Failure to comply within seven (7) days after written notice from the Secured Party demanding compliance with any provision contained in this Security Agreement or Related Documents and if compliance is not practically possible, failure to take steps that will produce compliance as soon as is reasonably practical.

(d) Any warranty, representation or statement made or furnished to the Secured Party by or on behalf of the Debtor proves in any material respect to have been false when made or furnished.

(e) Bankruptcy or insolvency of the Debtor; the filing against the Debtor of a petition in bankruptcy; the making of an authorized assignment for the benefit of creditors by the Debtor; the appointment of a receiver, trustee, monitor, or liquidator for the Debtor or for any assets of the Debtor; or the institution by or against the Debtor of any type of insolvency proceeding or creditor rearrangement.

(f) Cessation of the Debtor's viability as a going business concern, which includes the cessation or threat by the Debtor to cease to carry on in the normal course of the Debtor's business or any material part thereof.

(g) On the occurrence of such other events where the Secured Party considers in good faith and on commercially reasonable grounds that the Collateral is in jeopardy or that the Secured Party's position is insecure or jeopardized.

6. Secured Party Rights and Obligations

6.1 **General rights.** In addition to the rights granted herein, the Secured Party may enforce any other rights and remedies it may have at law or in equity, and specifically shall have all rights and remedies of a Secured Party under the PPSA. All rights and remedies of the Secured Party are cumulative and one or more of these rights may be exercised independently or in combination from time to time including marshalling.

6.2 **Collection of debts forming part of Collateral.** The Secured Party may direct Account Debtors of the Debtor to make all payments owing to the Debtor on Collateral subject to the Security Interest directly to the Secured Party, by notifying such Account Debtors of the Secured Party's interest, either before or after default.

6.3 **Inspection of Collateral and right of access.** The Secured Party shall have the right at any time to confirm the existence and state of the Collateral in any manner the Secured Party may consider appropriate and the Debtor agrees to furnish all assistance as the Secured Party may reasonably request in connection therewith. The Debtor grants to the Secured Party or its agents access to all places where Collateral may be located and to all premises occupied by the Debtor for the purposes of inspection or obtaining possession.

6.4 **Receivers and others.** The Secured Party may, with respect to any or all Collateral, appoint by instrument or by application to a court of competent jurisdiction a receiver or other person to act on its behalf, before or after default, or in any insolvency or like proceeding (receiver includes a receiver-manager). The appointee has all the powers of the Secured Party under this Security Agreement. In addition, on instructions from the Secured Party, the receiver shall be entitled to carry on the business of the Debtor, with all the powers the Debtor would have to operate its business, for such time as the receiver determines it advisable and in the best interest of the Secured Party. The Secured Party is not liable for any act or omission by any receiver appointed hereunder.

6.5 **Remedies on Default.** Without limitation, during the occurrence and continuance of an event of default, the Secured Party shall have the following rights and powers, which the Secured Party may exercise immediately:

(a) to declare all or any part of the Indebtedness which is not by its terms payable on demand to be immediately due and payable;

(b) to enter upon the premises of the Debtor or any other premises where the Collateral may be situated and to take possession of all or any part of the Collateral, by any method permitted by law, to the exclusion of all others, including the Debtor, its partners, agents and employees, and the Debtor hereby waives and releases the Secured Party and any receiver from all claims in connection therewith or arising therefrom;

(c) to remove all or any part of the Collateral to such place as the Secured Party deems advisable;

(d) to preserve and maintain the Collateral and to do all such acts incidental thereto as the Secured Party considers advisable, including but not limited to making replacements and additions to the Collateral;

(e) to collect, demand, sue on, enforce, recover and receive Collateral and give receipts and discharges therefor, and may do any such act and take any proceedings related thereto in the name of the Debtor or otherwise as the Secured Party considers appropriate;

(f) to sell, lease, or otherwise dispose of the Collateral in such manner, at such time or times and place or places, for such consideration and upon such terms and conditions as the Secured Party deems reasonable (including without limitation, by deferred payment) all in the Secured Party's absolute discretion and without the concurrence of the Debtor; provided however, that the Secured Party shall not be required to do so and it shall be lawful for the Secured Party to use and possess the Collateral for any and all purposes and in any manner the Secured Party sees fit, all without hindrance or interruption by the Debtor or any other person or persons, provided however that none of the foregoing shall prejudice the Secured Party's right to pursue the Debtor for recovery in full of the amount of the Indebtedness, including the amount of any deficiency owing after the application of the proceeds of realization (and to the extent permitted by laws, the Debtor waives its rights to the protection afforded by any rule of law or legislation respecting such deficiency);

(g) to rescind or vary any contract for sale, lease or other disposition that the Debtor or the Secured Party may have entered into and to resell, release or redispose of the Collateral;

(h) to deliver to any purchasers of the Collateral good and sufficient conveyances or deeds for the same free and clear of any claim by the Debtor. For such purposes, the purchaser or lessee receiving any disposition of the Collateral need not inquire whether an event of default under this Security Agreement has actually occurred but may as to this and all other matters rely upon a statutory declaration of the Secured Party, which declaration shall be conclusive evidence as between the Debtor and such purchaser or lessee, and any such disposition shall not be affected by any irregularity of any nature or kind relating to the enforcement of this Security Agreement; and

(i) to take the benefit of or to exercise any other right, proceeding or remedy authorized or permitted at law or in equity, whether as a secured party pursuant to the PPSA as the same is in force from time to time or otherwise.

Provided always that the Secured Party shall not be liable or accountable for any failure to exercise its remedies, take possession of, collect, enforce, realize, sell, maintain, lease or otherwise dispose of the Collateral, or to institute any proceedings for such purposes. The Secured Party shall have no obligation to take any steps to preserve rights against other parties, shall have no obligation to exercise any of the rights and remedies available to it on default and shall not be liable or accountable for not exercising any such rights and remedies.

6.6 **Costs.** The Debtor agrees to pay all charges, including solicitors', auditors', receivers' or like persons' costs and remuneration or other expenses reasonably incurred by the Secured Party or other party appointed by the Secured Party in operating the Debtor's accounts and in preparing or enforcing this Security Agreement. Such sums shall constitute a future advance increasing the Indebtedness hereunder.

6.7 **Deficiencies.** The failure of the Secured Party to receive full payment or satisfaction of Indebtedness through its rights and remedies herein provided shall not in any way release the Debtor from the obligation to satisfy any deficiency, including any costs of realization.

6.8 **Waivers.**

(a) No variation, amendment (except for any schedules which may be added hereto pursuant to the provisions of this Security Agreement) or waiver of any provision of this Security Agreement shall be effective unless made by written agreement executed by the parties to this Security Agreement.

(b) No delay or omission by the Secured Party in exercising any right or remedy hereunder or with respect to any Indebtedness shall operate as a waiver of that right or remedy and no single or partial exercise of any right or remedy shall preclude any other exercise of cumulative rights and remedies.

(c) The Secured Party may remedy any default or perform any duty of the Debtor hereunder or with respect to any Indebtedness in any reasonable manner without waiving the default remedied and without waiving any other prior or subsequent default by the Debtor.

6.9 **Notice of intention to realise.**

(a) Prior to realisation, there is an obligation on the Secured Party to deliver a notice of intention to realise to the Debtor under s.244 of the *Bankruptcy and Insolvency Act*. Any events which trigger default, including those within paragraph 5.1(e), shall be deferred as required by that legislation. Valid service of this notice will occur upon sending of the notice to the address herein or as changed by the Debtor in accordance with paragraph 3.9.

(b) Prior to realisation, to the extent applicable, the Secured Party shall also give notice in writing in the applicable time period to those persons such notice is required to be given pursuant to the provisions of the PPSA, all in accordance with the provisions of the PPSA.

7. No Positive Obligation

Nothing in this Security Agreement shall be interpreted so as to obligate or make the Secured Party liable to observe or perform any term, covenant or condition of any agreement, document or instrument to which the Debtor is a party or by which it is bound.

8. Further Documents

The Debtor hereby agrees to execute, acknowledge and deliver such further agreements and documents supplemental hereto (including financing statements, further schedules to this Security Agreement, assignments and transfers) and to do all acts, matters and things as may be requested by the Secured Party in order to give effect to this Security Agreement and to perfect the Security Interest, including but not limited to any of the same which may be required to correct or amplify the description of any Collateral or for any other purpose not inconsistent with the terms of this Security Agreement.

9. Appropriation of Payments

All payments made at any time in respect of the Indebtedness and all proceeds realized from any Collateral may be applied (and reapplied from time to time notwithstanding any previous application) in such manner as the Secured Party sees fit or, at the option of the Secured Party, may be held without appropriation in a collateral account or released to the Debtor all without prejudice to the rights of the Secured Party hereunder, including the Secured Party's right to collect from the Debtor the amount of any deficiency remaining after application of all such payments and proceeds.

10. Power of Attorney

The Debtor hereby authorizes the Secured Party to file such financing statements and other documents and do such acts, matters and things (including completing and adding schedules to this Security Agreement identifying Collateral or locations) as the Secured Party from time to time deems appropriate to perfect, continue and realize upon the Security Interest and to protect and preserve the Collateral. In addition, for valuable consideration, the Debtor hereby irrevocably appoints the Secured Party and its representatives from time to time, or any one or more of them, to be the true and lawful attorney of the Debtor, with full power of substitution, in the name of and on behalf of the Debtor to execute and to do all deeds, transfers, conveyances, assignments, assurances, and other things which the Debtor ought to execute and do under the covenants and provisions contained in this Security Agreement and generally to use the name of the Debtor in the exercise of all or any of the rights, remedies and powers of the Secured Party.

11. Real Property

For the purposes of any application to register a crystallized floating charge against any real property, the floating charge created by this Security Agreement shall be crystallized and become a fixed charge upon the occurrence of any default hereunder.

12. Costs and Expenses

12.1 The Debtor hereby agrees to pay all costs and expenses on a full indemnity basis (including legal fees as between a solicitor and his own client) incidental to:

(a) the preparation, execution and filing of this Security Agreement,

(b) maintaining, protecting and defending the Collateral, the Security Interest, and all of the Secured Party's rights and interest arising pursuant to this Security Agreement, and

(c) the exercise of any rights or remedies of the Secured Party pursuant to this Security Agreement, including but not limited to the costs of the appointment of a receiver and all expenditures incurred by such receiver, the cost of any sale proceedings (whether the same prove abortive or not), and all costs of inspection, and all other costs and expenses incurred by the Secured Party in connection with or arising out of, directly or indirectly, this Security Agreement, all without limitation. All such costs and expenses shall be payable by the Debtor immediately upon demand from the Secured Party and until paid shall bear interest from the date incurred by the Secured Party at the highest rate of interest then chargeable by the Secured Party to the Debtor on any of the Indebtedness. The amount of all such costs and expenses shall be added to the Indebtedness and shall be secured by this Security Agreement;

13. Waiver

To the fullest extent permitted by law, the Debtor waives all of the rights, benefits and protections given by the provisions of any existing or future law which imposes limitations upon the powers, rights or remedies of a secured party or upon the methods of realization of security, including any seize or sue or anti-deficiency statute or any similar provisions of any other law.

14. Security in Addition

This Security Agreement and the security afforded by it is in addition to and not in substitution for any other security now or hereafter held by the Secured Party and is intended to be a continuing security agreement and shall remain in full force and effect until released in writing by the Secured Party. The Secured Party shall have no obligation to provide such release unless and until the full amount of the Indebtedness has been paid in full.

15. **Severance**

If any provision of this Security Agreement is held invalid, in whole or in part, by any court of competent jurisdiction, the remaining terms and provisions of this Security Agreement shall remain in full force and effect and this Security Agreement shall be enforced to the fullest extent permitted by law.

16. **Successor Interests**

This Security Agreement shall enure to the benefit of and be binding on the parties hereto and their respective heirs, executors, administrators, successors and assigns.

17. **Applicable Law**

This Security Agreement and Related Documents shall be governed by the laws of the Province of Alberta and the federal laws of Canada applicable therein.

18. **Termination**

This Security Agreement shall remain in full force and effect until the Indebtedness has been paid and written notice of discharge by the Secured Party is received by the Debtor.

19. **Acknowledgments of Debtor**

The Debtor hereby acknowledges receipt of a copy of this Security Agreement and waives all rights to receive from the Secured Party a copy of any financing statement, financing change statement, or verification statement, filed or issued at any time in respect of this Security Agreement.

IN WITNESS WHEREOF, the Debtor has executed this Security Agreement effective as of the date first written above.

MRC RESOURCE PARTNERSHIP

Per: ______________________________
Name:
Title:

Per: ______________________________
Name:
Title:

MFC ENERGY CORPORATION

Per: ______________________________

Name:

Title:

SCHEDULE "A"

LINC	*Short Legal Description*	*Nature of Interest*
0013 573 861	4;28;19;26;NE	Working interest
0013 570 438	4;28;19;35;SE	Working interest
0015 203 672	7520523;OT	Working interest

PROMISSORY NOTE

PRINCIPAL AMOUNT: $37,570,500 DUE ON DEMAND

The undersigned (the "**Payor**") hereby promises to pay, ON DEMAND, to 1041189 B.C. LTD., a British Columbia company having an office at 400 Burrard Street, Suite 1860, Vancouver, British Columbia V6C 3A6 (the "**Payee**"), the principal sum of THIRTY SEVEN MILLION FIVE HUNDRED SEVENTY THOUSAND FIVE HUNDRED DOLLARS in lawful money of the Canada, at the above location or such other location as the Payee shall designate in writing. This promissory note shall bear interest in accordance with the terms of the Loan Agreement (as defined below).

This promissory note is a "Note" referred to in the Loan Agreement, dated as of the 30th day of June, 2015 (the "**Loan Agreement**"), between the Payee and the Payor, and is subject to the terms and conditions thereof. In the event of any conflict between this promissory note and the Loan Agreement, the Loan Agreement shall govern.

The Payor hereby waives diligence, presentment, demand, protest or notice of any kind in connection with this promissory note. ALL PAYMENTS UNDER THIS PROMISSORY NOTE SHALL BE MADE BY THE PAYOR WITHOUT ANY RIGHT OR DEFENCE OF SET-OFF, COUNTERCLAIM OR DEDUCTION OF ANY KIND, IN LAW OR IN EQUITY, whatsoever, howsoever existing or arising between the Payor or Payee or otherwise, including pursuant to the Loan Agreement. This promissory note shall be binding upon the Payor and its successors and assigns, and the terms and provisions of this promissory note shall inure to the benefit of the Payee and its successors and assigns, including subsequent holders hereof. The Payor's obligations under this promissory note may not be assigned without the prior written consent of the Payee. This promissory note is fully assignable by the Payee, in whole or in part, to any person at any time without notice to, or the consent of, the Payor.

This promissory note shall be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein. The Payor and the Payee irrevocably attorn to the exclusive jurisdiction of the Courts of British Columbia located in Vancouver, British Columbia with respect to any matters arising out of this promissory note.

DATED this 30th day of June, 2015.

MFC RESOURCE PARTNERSHIP

By: ______________________
Name:
Title: Authorized Signatory

By: ______________________
Name:
Title: Authorized Signatory

15 AUGUST 2018
PRADEEP KUMAR

THIS IS EXHIBIT "2" REFERRED TO IN THE AFFIDAVIT OF PRADEEP KUMAR

SWORN BEFORE ME THIS 15th DAY OF AUGUST, 2018.

A Notary Public in and for the State of California

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of LOS ANGELES
Subscribed and sworn to (or affirmed) before me on this 15th day of August, 20 18, by PRADEEP KUMAR, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature (Seal)

MUTHIAH NACHIAPPAN
COMM. # 2175823
NOTARY PUBLIC - CALIFORNIA
COUNTY OF LOS ANGELES
MY COMM. EXP. JAN. 13, 2021

GENERAL SECURITY AGREEMENT

This **GENERAL SECURITY AGREEMENT** (this "**Security Agreement**") dated as of the 30th day of June, 2015 is made by **MFC RESOURCE PARTNERSHIP**, with an office at 400 Burrard Street, Suite 1860, Vancouver, British Columbia V6C 3A6, a general partnership existing under the laws of the Province of British Columbia, and **MFC ENERGY CORPORATION**, solely in its capacity as a partner of MFC Resource Partnership and to the extent that it holds title to property for and on behalf of MFC Resource Partnership, a corporation existing under the laws of the Province of British Columbia (individually and together the "**Debtor**") to and in favour of **1041189 B.C. LTD.** (the "**Secured Party**") with an office at 400 Burrard Street, Suite 1860, Vancouver, British Columbia V6C 3A6, in conjunction with:

(a) a Loan Agreement between MFC Resource Partnership, as borrower, and the Secured Party, as lender, dated on or about the date hereof, as it may be amended, supplemented, restated or otherwise modified from time to time, (the "**Loan Agreement**"); and

(b) a Promissory Note issued by the MFC Resource Partnership in favour of the Secured Party dated on or about the date hereof as it may be amended, supplemented, restated or otherwise modified from time to time (together with the Loan Agreement, the "**Loan Documents**").

For valuable consideration, the receipt and sufficiency of which is conclusively acknowledged by the Debtor, the Debtor hereby grants to the Secured Party a security interest over the Collateral in accordance with the terms of this Security Agreement, as follows:

1. Definitions

All words and phrases which are defined in the PPSA and not otherwise defined in this Security Agreement shall have the meaning ascribed by the PPSA. The following definitions shall apply herein:

1.1 "**Collateral**" shall mean all present and after-acquired personal property and real property of the Debtor of whatever kind and wherever situate, together with all documents, writings, papers, books of account and records relating to the foregoing and all rights and interests therein, including without limitation, all right, title and interest that the Debtor now has, may be possessed of, entitled to, or acquire, by way of amalgamation or otherwise, now or hereafter or may hereafter have in all property of the following kinds:

(a) **Accounts Receivable**: all debts, accounts, accounts receivables, claims and choses in action which are now or which may hereafter become due, owing or accruing due to the Debtor;

(b) **Inventory**: all inventory of whatever kind and wherever situated including, without limiting the generality of the foregoing, all goods held for sale or lease, or furnished or to be furnished under contracts for service, or that are work in progress, or that are raw materials used or consumed in the business of the Debtor (collectively the "**Inventory**");

(c) **Equipment**: all goods, machinery, equipment, fixtures, furniture, plant, vehicles and other tangible personal property which are not Inventory, including, without limiting the generality of the foregoing, the tangible personal property described in any schedule hereto executed by both the Debtor and the Secured Party;

(d) **Chattel Paper**: all chattel paper;

(e) **Documents of Title**: all warehouse receipts, bills of lading and other documents of title, whether negotiable or not;

(f) **Investment Property and Instruments**: all shares, stock, warrants, bonds, debentures, debenture stock and other investment property and all instruments;

(g) **Intangibles**: all intangibles not described in paragraph 1.1(a) including, without limiting the generality of the foregoing, all goodwill, patents, trademarks, copyrights and other industrial and intellectual property;

(h) **Money**: all coins or bills or other medium of exchange adopted for use as part of the currency of Canada or of any foreign government;

(i) **Books, Records, Etc.**: all books, papers, accounts, invoices, documents and other records in any form evidencing or relating to any of the property described in paragraphs 1.1(a) to (h) inclusive, and all contracts, securities, instruments and other rights and benefits in respect thereof;

(j) **Transferable Rights**: all statutory licences, quotas and other transferable rights, including an equitable right in the Collateral assigned or charged under this Security Agreement which might otherwise at law be incapable of being Collateral subject to a security interest;

(k) **Substitutions, Etc.**: all replacements of, substitutions for and increases, additions and accessions to any of the property described in paragraphs 1.1(a) to (i) inclusive;

(l) **Proceeds**: all proceeds of the property described in paragraphs 1.1(a) to (k) inclusive including, without limiting the generality of the foregoing, all personal property in any form or fixtures derived directly or indirectly from any dealing with such property or that indemnifies or compensates for the loss of or damage to such property;

(m) **Leases and Licenses**: all petroleum and natural gas rights, leases, licences, permits, reservations, agreements, authorizations and other instruments under which the Debtor derives, holds, or maintains an interest in land, and all servitudes, privileges, easements, rights-of-way, right of entry orders, rights of ingress and egress and other surface rights, which in each case constitute an interest in land, including without limitation, those listed in <u>Schedule "A"</u>;

but shall not include:

(n) the last day of any term reserved by any lease, verbal or written, or any agreement therefor now or hereafter held by the Debtor, it being the intention that the Debtor shall stand possessed of the reversion remaining in respect of any leasehold interest forming part of the Collateral upon trust to assign and dispose thereof as the Secured Party may after default direct, or

(o) Consumer Goods.

1.2 **"Indebtedness"** shall mean all debts, liabilities and obligations of every kind and description of the Debtor to the Secured Party, whether now or hereafter owed or any future advance, whether direct, indirect, contingent, and whether the Debtor be bound alone or with others and whether as principal or surety, including without limitation, those in connection with the Loan Documents.

1.3 **"Permitted Encumbrances"** means:

(a) liens for taxes, assessments and governmental charges which are not due or the validity of which is being diligently contested in good faith by or on behalf of the Debtor;

(b) mechanics', builders' and material men's liens arising by operation of law and in respect of services rendered or goods supplied for which payment is not due or if due, is being contested in good faith;

(c) the lien or any right of distress reserved in or exercisable under any real property lease for rent or otherwise to effect compliance with the terms of such lease, in respect of which the Debtor is not in default;

(d) security interests given by the Debtor in favour of a public utility or any municipality or other public authority which is required by such utility or municipality or governmental or other public authority in connection with operations of the Debtor;

(e) the right reserved to or vested in any municipality or government or other public authority by the terms of any lease, license, franchise, grant or permit or by any statutory provision, to terminate any such lease, license, franchise, grant or permit or to require annual or other periodic payments as a condition of the continuance thereof;

(f) any capital lease or purchase money security interest upon property created or assumed to secure all or any part of the funds required for the lease or purchase of such property, and shall include any extension, renewal or replacement thereof upon the same property if the principal amount of the indebtedness secured thereby is not increased;

(g) any security interest created by or pursuant to this Security Agreement and any security interest now or at any time hereafter made or granted by the Debtor to the Secured Party;

(h) any other liens or encumbrances permitted under the definition of "Permitted Encumbrances" in the Loan Agreement; and

(i) those registrations agreed to in writing between the Secured Party and the Debtor.

1.4 **"PPSA"** means the *Personal Property Security Act* (Alberta);

1.5 **"Related Documents"** shall mean the promissory notes, loan agreements, account agreements, guaranties, trust deeds, mortgages, other security agreements or any other documents executed in connection with this Security Agreement or the Indebtedness or related to its operation or administration, whether already existing or executed now or later, including without limitation, the Loan Documents.

2. **Creation of Security Interest**

2.1 Security

As general and continuing security for the payment and performance of the Indebtedness, the Debtor hereby:

(a) grants, assigns, conveys, mortgages, pledges and charges to the Secured Party, as and by way of a specific mortgage, pledge and charge, a security interest in the Collateral (excepting real property); and

(b) with respect to real property, charges such in favour of the Secured Party as and by way of a floating charge.

2.2 Attachment of Security Interest

The Debtor acknowledges that value has been given and agrees that the security interest granted hereby (the **"Security Interest"**) shall attach when the Debtor signs this Security Agreement and the Debtor has any rights in the Collateral.

2.3 Grant resulting in Termination

If the grant of the Security Interest in respect of any contract, lease, agreement to lease, license, permit, approval or intellectual property right would result in the termination or breach of such contract, lease, agreement to lease, license, permit, approval or intellectual property right, then the applicable contract, lease, agreement to lease, license, permit, approval or intellectual property right will not be subject to the Security Interest but will be held in trust by the Debtor for the benefit of the Secured Party and, on exercise by the Secured Party of any of its rights under this Security Agreement following default, assigned by the Debtor as directed by the Secured Party.

3. **Rights, Obligations, Covenants, Representations and Warranties of Debtor**

3.1 **Representations and Warranties.** The Debtor hereby represents and warrants:

(a) that it has the right, power and authority to enter into this Security Agreement and to grant the security interest described herein;

(b) the execution, delivery and performance of this Security Agreement has been duly authorized by all necessary action and is not in contravention of any instrument by which the Debtor has been formed or continued, any instrument amending any such instrument, any internal regulation of the Debtor, any law, or any indenture, agreement or undertaking to which the Debtor is a party or by which it is bound;

(c) the Debtor has not previously carried on business, does not currently carry on business, and shall not, without the prior written consent of the Secured Party, in the future carry on business under any name other than the name set forth in the preamble hereof;

(d) the Collateral is genuine and is legally and beneficially owned by the Debtor free of all security interests except for the Security Interest and Permitted Encumbrances;

(e) each chattel paper, intangible and instrument constituting Collateral is enforceable in accordance with its terms against the party obligated to pay the same ("**Account Debtor**"), the amount represented by the Debtor to the Secured Party from time to time as owing by each Account Debtor shall be the correct amount owing unconditionally by such Account Debtor, and no Account Debtor shall have any defence, set-off, claim or counterclaim against the Debtor which can be asserted against the Secured Party, whether in any proceedings to enforce the Collateral or otherwise; and

(f) there are no actions, suits or proceedings pending or, to the knowledge of the Debtor, threatened against the Debtor except as have been disclosed in writing to and approved by the Secured Party.

3.2 **Possession and use of Collateral.** Subject to paragraph 6.2, until default or unless otherwise agreed with the Secured Party, the Debtor may deal with Collateral in the ordinary course of the Debtor's business in any manner consistent with the provisions of this Security Agreement. Except for Inventory sold or accounts collected in the ordinary course of the Debtor's business the Debtor shall not sell or otherwise transfer the Collateral without the express consent of the Secured Party. Where the Secured Party provides such consent and the Collateral gives rise to proceeds that are serial numbered goods or serial numbered equipment the Debtor shall provide the Secured Party with such information as is required to maintain a perfected security interest in the proceeds. All proceeds from dealing with the Collateral, whether or not in the ordinary course of the Debtor's business, will be received by the Debtor as trustee for the Secured Party and will be immediately paid to the Secured Party pursuant to the fiduciary obligation as trustee.

3.3 **No Encumbrances.** Except pursuant to the terms of any Permitted Encumbrances, the Debtor shall not encumber or permit the Collateral to be encumbered without the prior written consent of the Secured Party, other than by this Security Agreement.

3.4 **Change in use.** Where goods that are Inventory to the Debtor cease to be Inventory other than in the ordinary course of business and do not become proceeds of Inventory, the Debtor shall notify the Secured Party forthwith of the change.

3.5 **Removal of Collateral.** The Collateral (or to the extent the Collateral consists of intangible property such as accounts, the records concerning the Collateral) is located at the address of the Debtor set forth in the recitals herein, or at such other locations as the Secured Party may agree. Except in the ordinary course of the Debtor's business, the Debtor shall not remove the Collateral from its location without the prior written consent of the Secured Party, which shall not be unreasonably withheld.

3.6 **Securities as Collateral.** Where Collateral includes securities, the Secured Party may require the Debtor to transfer such securities into the Secured Party's name so that the Secured Party may appear of record as the owner of the securities. Until default, the Debtor may retain the voting and dividend rights attached to any such securities and the Secured Party will facilitate exercise of those dividend and voting rights.

3.7 **Insure Collateral.** The Debtor covenants to insure the Collateral for such periods, in such amounts, on such terms, with such insurers and against such loss or damage by fire and other such risks as the Secured Party reasonably directs, with loss payable to the Secured Party and the Debtor as insureds, as their respective interests may appear, to pay all premiums therefor, to deliver evidence of the same on request, and to do all acts necessary to obtain payment to the Secured Party of any insurance proceeds.

3.8 **Preservation of rights and Collateral.** The Debtor shall defend its own and the Secured Party's rights in the Collateral against the claims and demands of all persons. The Debtor shall maintain the Collateral in a condition and state of repair that preserves the value of the Collateral, reasonable wear and tear excluded. The Debtor will not commit or permit damage to or destruction of the Collateral and will effect repair if it occurs. The Debtor shall prevent the Collateral from being or becoming an accession or fixture to other property not covered by this Security Agreement or other security granted by the Debtor in favour of the Secured Party. The Debtor shall procure and maintain policies of fire and other casualty insurance covering the Collateral on a full-replacement basis on terms satisfactory to the Secured Party and with loss payable to the Secured Party and Debtor jointly.

3.9 **Material changes in information.** The Debtor shall notify the Secured Party promptly of:

(a) any material change in the information contained in this Security Agreement (including any schedules hereto) relating to the Debtor, the Debtor's business or Collateral, including any address change or establishment of an additional place of business;

(b) the details of any change in name of the Debtor;

(c) the details of any significant acquisition of Collateral;

(d) the details of any claims or litigation affecting the Debtor or Collateral;

(e) any loss of or damage to Collateral; and

(f) any default by any Account Debtor in its obligations with respect to any Collateral.

3.10 **Debtor's existence.** The Debtor shall maintain its existence, and diligently preserve all its rights, licences, powers, privileges, franchises and goodwill.

3.11 **Debtor's conduct.** The Debtor will conduct its business and affairs in a proper and efficient manner, in accordance with applicable law and keep records in accordance with generally accepted accounting procedures. The Debtor shall pay all charges, such as taxes, assessments, claims, liens and encumbrances relating to the Collateral or the Debtor's business and affairs when the same become due. The Debtor will deliver to the Secured Party promptly such information concerning Collateral, the Debtor and the Debtor's business and affairs as the Secured Party may reasonably request. The Debtor shall maintain all of the Collateral in accordance with all applicable laws, including without limitation, all environmental laws.

3.12 **Protest and notice.** The Debtor waives protest and notice of same of any instrument constituting Collateral at any time held by the Secured Party on which the Debtor is in any way liable and, subject to the notice requirements of the PPSA, notice of any other action taken by the Secured Party.

3.13 **Joint and several liability.** If more than one Debtor executes this Security Agreement the obligations of such Debtors hereunder shall be joint and several.

4. Ranking and Subordination

No action by the Secured Party shall constitute a subordination of its Security Interest to any other interest in the Collateral unless such subordination is express and is effected by an agreement in writing signed by the Secured Party.

5. Events of Default

5.1 The Debtor shall be in default under this Security Agreement or Related Documents upon occurrence of any of the following:

(a) The occurrence of an Event of Default under any Loan Document.

(b) Non-payment when due, whether by acceleration or otherwise, of any Indebtedness.

(c) Failure to comply within seven (7) days after written notice from the Secured Party demanding compliance with any provision contained in this Security Agreement or Related Documents and if compliance is not practically possible, failure to take steps that will produce compliance as soon as is reasonably practical.

(d) Any warranty, representation or statement made or furnished to the Secured Party by or on behalf of the Debtor proves in any material respect to have been false when made or furnished.

(e) Bankruptcy or insolvency of the Debtor; the filing against the Debtor of a petition in bankruptcy; the making of an authorized assignment for the benefit of creditors by the Debtor; the appointment of a receiver, trustee, monitor, or liquidator for the Debtor or for any assets of the Debtor; or the institution by or against the Debtor of any type of insolvency proceeding or creditor rearrangement.

(f) Cessation of the Debtor's viability as a going business concern, which includes the cessation or threat by the Debtor to cease to carry on in the normal course of the Debtor's business or any material part thereof.

(g) On the occurrence of such other events where the Secured Party considers in good faith and on commercially reasonable grounds that the Collateral is in jeopardy or that the Secured Party's position is insecure or jeopardized.

6. Secured Party Rights and Obligations

6.1 **General rights.** In addition to the rights granted herein, the Secured Party may enforce any other rights and remedies it may have at law or in equity, and specifically shall have all rights and remedies of a Secured Party under the PPSA. All rights and remedies of the Secured Party are cumulative and one or more of these rights may be exercised independently or in combination from time to time including marshalling.

6.2 **Collection of debts forming part of Collateral.** The Secured Party may direct Account Debtors of the Debtor to make all payments owing to the Debtor on Collateral subject to the Security Interest directly to the Secured Party, by notifying such Account Debtors of the Secured Party's interest, either before or after default.

6.3 **Inspection of Collateral and right of access.** The Secured Party shall have the right at any time to confirm the existence and state of the Collateral in any manner the Secured Party may consider appropriate and the Debtor agrees to furnish all assistance as the Secured Party may reasonably request in connection therewith. The Debtor grants to the Secured Party or its agents access to all places where Collateral may be located and to all premises occupied by the Debtor for the purposes of inspection or obtaining possession.

6.4 **Receivers and others.** The Secured Party may, with respect to any or all Collateral, appoint by instrument or by application to a court of competent jurisdiction a receiver or other person to act on its behalf, before or after default, or in any insolvency or like proceeding (receiver includes a receiver-manager). The appointee has all the powers of the Secured Party under this Security Agreement. In addition, on instructions from the Secured Party, the receiver shall be entitled to carry on the business of the Debtor, with all the powers the Debtor would have to operate its business, for such time as the receiver determines it advisable and in the best interest of the Secured Party. The Secured Party is not liable for any act or omission by any receiver appointed hereunder.

6.5 **Remedies on Default.** Without limitation, during the occurrence and continuance of an event of default, the Secured Party shall have the following rights and powers, which the Secured Party may exercise immediately:

(a) to declare all or any part of the Indebtedness which is not by its terms payable on demand to be immediately due and payable;

(b) to enter upon the premises of the Debtor or any other premises where the Collateral may be situated and to take possession of all or any part of the Collateral, by any method permitted by law, to the exclusion of all others, including the Debtor, its partners, agents and employees, and the Debtor hereby waives and releases the Secured Party and any receiver from all claims in connection therewith or arising therefrom;

(c) to remove all or any part of the Collateral to such place as the Secured Party deems advisable;

(d) to preserve and maintain the Collateral and to do all such acts incidental thereto as the Secured Party considers advisable, including but not limited to making replacements and additions to the Collateral;

(e) to collect, demand, sue on, enforce, recover and receive Collateral and give receipts and discharges therefor, and may do any such act and take any proceedings related thereto in the name of the Debtor or otherwise as the Secured Party considers appropriate;

(f) to sell, lease, or otherwise dispose of the Collateral in such manner, at such time or times and place or places, for such consideration and upon such terms and conditions as the Secured Party deems reasonable (including without limitation, by deferred payment) all in the Secured Party's absolute discretion and without the concurrence of the Debtor; provided however, that the Secured Party shall not be required to do so and it shall be lawful for the Secured Party to use and possess the Collateral for any and all purposes and in any manner the Secured Party sees fit, all without hindrance or interruption by the Debtor or any other person or persons, provided however that none of the foregoing shall prejudice the Secured Party's right to pursue the Debtor for recovery in full of the amount of the Indebtedness, including the amount of any deficiency owing after the application of the proceeds of realization (and to the extent permitted by laws, the Debtor waives its rights to the protection afforded by any rule of law or legislation respecting such deficiency);

(g) to rescind or vary any contract for sale, lease or other disposition that the Debtor or the Secured Party may have entered into and to resell, release or redispose of the Collateral;

(h) to deliver to any purchasers of the Collateral good and sufficient conveyances or deeds for the same free and clear of any claim by the Debtor. For such purposes, the purchaser or lessee receiving any disposition of the Collateral need not inquire whether an event of default under this Security Agreement has actually occurred but may as to this and all other matters rely upon a statutory declaration of the Secured Party, which declaration shall be conclusive evidence as between the Debtor and such purchaser or lessee, and any such disposition shall not be affected by any irregularity of any nature or kind relating to the enforcement of this Security Agreement; and

(i) to take the benefit of or to exercise any other right, proceeding or remedy authorized or permitted at law or in equity, whether as a secured party pursuant to the PPSA as the same is in force from time to time or otherwise.

Provided always that the Secured Party shall not be liable or accountable for any failure to exercise its remedies, take possession of, collect, enforce, realize, sell, maintain, lease or otherwise dispose of the Collateral, or to institute any proceedings for such purposes. The Secured Party shall have no obligation to take any steps to preserve rights against other parties, shall have no obligation to exercise any of the rights and remedies available to it on default and shall not be liable or accountable for not exercising any such rights and remedies.

6.6 **Costs.** The Debtor agrees to pay all charges, including solicitors', auditors', receivers' or like persons' costs and remuneration or other expenses reasonably incurred by the Secured Party or other party appointed by the Secured Party in operating the Debtor's accounts and in preparing or enforcing this Security Agreement. Such sums shall constitute a future advance increasing the Indebtedness hereunder.

6.7 **Deficiencies.** The failure of the Secured Party to receive full payment or satisfaction of Indebtedness through its rights and remedies herein provided shall not in any way release the Debtor from the obligation to satisfy any deficiency, including any costs of realization.

6.8 **Waivers.**

(a) No variation, amendment (except for any schedules which may be added hereto pursuant to the provisions of this Security Agreement) or waiver of any provision of this Security Agreement shall be effective unless made by written agreement executed by the parties to this Security Agreement.

(b) No delay or omission by the Secured Party in exercising any right or remedy hereunder or with respect to any Indebtedness shall operate as a waiver of that right or remedy and no single or partial exercise of any right or remedy shall preclude any other exercise of cumulative rights and remedies.

(c) The Secured Party may remedy any default or perform any duty of the Debtor hereunder or with respect to any Indebtedness in any reasonable manner without waiving the default remedied and without waiving any other prior or subsequent default by the Debtor.

6.9 **Notice of intention to realise.**

(a) Prior to realisation, there is an obligation on the Secured Party to deliver a notice of intention to realise to the Debtor under s.244 of the *Bankruptcy and Insolvency Act*. Any events which trigger default, including those within paragraph 5.1(e), shall be deferred as required by that legislation. Valid service of this notice will occur upon sending of the notice to the address herein or as changed by the Debtor in accordance with paragraph 3.9.

(b) Prior to realisation, to the extent applicable, the Secured Party shall also give notice in writing in the applicable time period to those persons such notice is required to be given pursuant to the provisions of the PPSA, all in accordance with the provisions of the PPSA.

7. No Positive Obligation

Nothing in this Security Agreement shall be interpreted so as to obligate or make the Secured Party liable to observe or perform any term, covenant or condition of any agreement, document or instrument to which the Debtor is a party or by which it is bound.

8. Further Documents

The Debtor hereby agrees to execute, acknowledge and deliver such further agreements and documents supplemental hereto (including financing statements, further schedules to this Security Agreement, assignments and transfers) and to do all acts, matters and things as may be requested by the Secured Party in order to give effect to this Security Agreement and to perfect the Security Interest, including but not limited to any of the same which may be required to correct or amplify the description of any Collateral or for any other purpose not inconsistent with the terms of this Security Agreement.

9. Appropriation of Payments

All payments made at any time in respect of the Indebtedness and all proceeds realized from any Collateral may be applied (and reapplied from time to time notwithstanding any previous application) in such manner as the Secured Party sees fit or, at the option of the Secured Party, may be held without appropriation in a collateral account or released to the Debtor all without prejudice to the rights of the Secured Party hereunder, including the Secured Party's right to collect from the Debtor the amount of any deficiency remaining after application of all such payments and proceeds.

10. Power of Attorney

The Debtor hereby authorizes the Secured Party to file such financing statements and other documents and do such acts, matters and things (including completing and adding schedules to this Security Agreement identifying Collateral or locations) as the Secured Party from time to time deems appropriate to perfect, continue and realize upon the Security Interest and to protect and preserve the Collateral. In addition, for valuable consideration, the Debtor hereby irrevocably appoints the Secured Party and its representatives from time to time, or any one or more of them, to be the true and lawful attorney of the Debtor, with full power of substitution, in the name of and on behalf of the Debtor to execute and to do all deeds, transfers, conveyances, assignments, assurances, and other things which the Debtor ought to execute and do under the covenants and provisions contained in this Security Agreement and generally to use the name of the Debtor in the exercise of all or any of the rights, remedies and powers of the Secured Party.

11. **Real Property**

For the purposes of any application to register a crystallized floating charge against any real property, the floating charge created by this Security Agreement shall be crystallized and become a fixed charge upon the occurrence of any default hereunder.

12. **Costs and Expenses**

12.1 The Debtor hereby agrees to pay all costs and expenses on a full indemnity basis (including legal fees as between a solicitor and his own client) incidental to:

(a) the preparation, execution and filing of this Security Agreement,

(b) maintaining, protecting and defending the Collateral, the Security Interest, and all of the Secured Party's rights and interest arising pursuant to this Security Agreement, and

(c) the exercise of any rights or remedies of the Secured Party pursuant to this Security Agreement, including but not limited to the costs of the appointment of a receiver and all expenditures incurred by such receiver, the cost of any sale proceedings (whether the same prove abortive or not), and all costs of inspection, and all other costs and expenses incurred by the Secured Party in connection with or arising out of, directly or indirectly, this Security Agreement, all without limitation. All such costs and expenses shall be payable by the Debtor immediately upon demand from the Secured Party and until paid shall bear interest from the date incurred by the Secured Party at the highest rate of interest then chargeable by the Secured Party to the Debtor on any of the Indebtedness. The amount of all such costs and expenses shall be added to the Indebtedness and shall be secured by this Security Agreement;

13. **Waiver**

To the fullest extent permitted by law, the Debtor waives all of the rights, benefits and protections given by the provisions of any existing or future law which imposes limitations upon the powers, rights or remedies of a secured party or upon the methods of realization of security, including any seize or sue or anti-deficiency statute or any similar provisions of any other law.

14. **Security in Addition**

This Security Agreement and the security afforded by it is in addition to and not in substitution for any other security now or hereafter held by the Secured Party and is intended to be a continuing security agreement and shall remain in full force and effect until released in writing by the Secured Party. The Secured Party shall have no obligation to provide such release unless and until the full amount of the Indebtedness has been paid in full.

15. Severance

If any provision of this Security Agreement is held invalid, in whole or in part, by any court of competent jurisdiction, the remaining terms and provisions of this Security Agreement shall remain in full force and effect and this Security Agreement shall be enforced to the fullest extent permitted by law.

16. Successor Interests

This Security Agreement shall enure to the benefit of and be binding on the parties hereto and their respective heirs, executors, administrators, successors and assigns.

17. Applicable Law

This Security Agreement and Related Documents shall be governed by the laws of the Province of Alberta and the federal laws of Canada applicable therein.

18. Termination

This Security Agreement shall remain in full force and effect until the Indebtedness has been paid and written notice of discharge by the Secured Party is received by the Debtor.

19. Acknowledgments of Debtor

The Debtor hereby acknowledges receipt of a copy of this Security Agreement and waives all rights to receive from the Secured Party a copy of any financing statement, financing change statement, or verification statement, filed or issued at any time in respect of this Security Agreement.

IN WITNESS WHEREOF, the Debtor has executed this Security Agreement effective as of the date first written above.

MRC RESOURCE PARTNERSHIP

Per: ____________________________
Name:
Title:

Per: ____________________________
Name:
Title:

MFC ENERGY CORPORATION

Per: ______________________

Name:
Title:

{00129809.2}

SCHEDULE "A"

LINC	*Short Legal Description*	*Nature of Interest*
0013 573 861	4;28;19;26;NE	Working interest
0013 570 438	4;28;19;35;SE	Working interest
0015 203 672	7520523;OT	Working interest

15 AUGUST 2018
PRADEEP KUMAR

THIS IS EXHIBIT "3" REFERRED TO IN THE AFFIDAVIT OF PRADEEP KUMAR

SWORN BEFORE ME THIS 15TH DAY OF AUGUST, 2018.

____
A Notary Public in and for the State of California

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of LOS ANGELES
Subscribed and sworn to (or affirmed) before me on this 15th **day**
of August, **20**18, **by** PRADEEP KUMAR
______________________________, **proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.**

Signature ______________________________ **(Seal)**

MUTHIAH NACHIAPPAN
COMM. # 2175823
NOTARY PUBLIC - CALIFORNIA
COUNTY OF LOS ANGELES
MY COMM. EXP. JAN. 13, 2021

Clerk's Stamp

JUDICIAL CENTRE OF CALGARY
FILED
JUL 17 2017
CALGARY
CLERK OF THE COURT

COURT FILE NUMBER	**1701-03460**
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	**ALBERTA ENERGY REGULATOR**
DEFENDANTS	**LEXIN RESOURCES LTD., 1051393 B.C. LTD., 0989 RESOURCE PARTNERSHIP, LR PROCESSING LTD. and LR PROCESSING PARTNERSHIP**
DOCUMENT	**ORDER APPROVING SALES PROCESS AND THE ENGAGEMENT OF SALES ADVISOR**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Robyn Gurofsky/Jessica L. Cameron Borden Ladner Gervais LLP 1900, 520 3rd Ave. S.W. Calgary, AB T2P 0R3 Telephone: (403) 232-9774/9715 Facsimile: (403) 266-1395 Email: rgurofsky@blg.com/ jcameron@blg.com File No. 547730-000021

I hereby certify this to be a true copy of
the original Order
dated this 17 day of July 2017
for Clerk of the Court

DATE ON WHICH ORDER WAS PRONOUNCED: July 14, 2017

NAME OF JUSTICE WHO MADE THE ORDER: The Honourable Justice K.M. Horner

LOCATION OF HEARING: Calgary, Alberta

UPON the Application of Grant Thornton Limited, in its capacity as the court-appointed receiver (the "**Receiver**") of Lexin Resources Ltd. ("**Lexin**"), 1051393 B.C. Ltd. ("**105**"), 0989 Resource Partnership "**0989**"), LR Processing Ltd. ("**LR Ltd.**") and LR Processing Partnership ("**LR Processing**" and collectively with Lexin, 105, 0989 and LR Ltd. the "**Debtors**"); **AND UPON** having read the Fourth Report of the Receiver dated July 6, 2017, filed (the "**Fourth Report**"), the Affidavit of Service of Stella Kim, filed, and the pleadings and proceedings filed herein, including the Lexin Receivership Order granted on March 20, 2017 and the Expanded Receivership Order granted on June 13, 2017 (the "**Expanded Receivership Order**"); **AND UPON** hearing from counsel for the Receiver, counsel for the Alberta Energy Regulator ("**AER**"), and counsel for any other interested parties appearing at the hearing of this application:

IT IS HEREBY ORDERED AND DECLARED THAT:

1. The time for service of this application together with all supporting materials is hereby declared to be good and sufficient and no other person is required to have been served with such documents, and this hearing is properly returnable before this Honourable Court today and further service thereof is hereby dispensed with.

Approval of the Sales Process & Financial Advisor

2. All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the sales process attached hereto as **Schedule "A"** (the "**Sales Process**").

3. The Sales Process is hereby approved. The Receiver is hereby authorized and directed to implement the Sales Process and do all things as are reasonably necessary to conduct and give full effect to the Sales Process and carry out its obligations thereunder, including seeking approval of this Court following the selection of a Successful Bid under the Sales Process.

4. The engagement letter between Sayer Energy Advisors (the "**Sales Advisor**") and the Receiver dated June 28, 2017 (the "**Engagement Letter**") and as attached as Confidential Appendix "8" to the Fourth Report (the "**Confidential Appendix**"), is hereby approved. The Receiver is hereby authorized and directed to do all things as are reasonably necessary to conduct and give effect to the Engagement Letter and carry out its obligations thereunder, including payment of amounts due to be paid pursuant to the terms of the Engagement Letter.

5. The Sales Advisor, its affiliates, partners, directors, employees, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to any person in connection with or as a result of either its engagement by the Receiver as sales advisor or any matter referred to in the Engagement Letter except to the extent such losses, claims, damages or liabilities result from the gross negligence or willful misconduct of the Sales Advisor in performing its obligations under the Engagement Letter.

Sealing Order

6. The Confidential Appendix shall be sealed on the Court file, kept confidential and not form part of the public record.

7. The Clerk of the Court shall file 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 IN COURT FILE NO. 1701-03460. THE CONFIDENTIAL MATERIALS ARE SEALED PURSUANT TO THE SEALING ORDER ISSUED BY THE HONOURABLE JUSTICE K.M. HORNER ON JULY 14, 2017 UNTIL FURTHER DIRECTED PURSUANT TO ORDER OF THE COURT.

8. The Receiver is empowered and authorized, but not directed, to provide the Confidential Appendix (or any portion thereof, or information contained therein) to any interested party, entity or person that the Receiver considers reasonable in the circumstances, subject to confidentiality arrangements satisfactory to the Receiver.

9. Leave is hereby granted to any person or party affected by this Order to apply to this Honourable Court for a further order modifying or varying the terms of this Order, with such Application to be brought on no less than 7 days' notice to the Receiver and the AER, and any other affected party pursuant to the Alberta Rules of Court.

Increase to Borrowings Charge

10. The Receiver's Borrowings Charge provided by paragraphs 24 to 26 of the Expanded Receivership Order is hereby increased from $1,200,000 to $2,100,000 and the Receiver shall be authorized 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 $2,100,000.

Approval of Receiver's Activities & Accounts

11. The Receiver's activities as set out in the Third Report of the Receiver dated June 9, 2017 and the Fourth Report, each filed herein, are hereby ratified and approved.

12. The Receiver's Statement of Receipts and Disbursements for the period March 20, 2017 to July 5, 2017, as more particularly set out in paragraph 70 and Appendix 12 of the Fourth Report, is approved, including the accounts of the Receiver for its fees and disbursements and the fees and disbursements of the Receiver's legal counsel, Borden Ladner Gervais LLP, without the necessity of a formal assessment of their accounts.

Miscellaneous Matters

13. Service of this Order shall be deemed good and sufficient by serving the same on:
    a) the persons listed on the service list (attached as Schedule "A" to the Application); and
    b) by posting a copy of this Order on the Receiver's website at: www.grantthornton.ca/lexin

14. No other persons are entitle to be served with a copy of this Order.

15. Service of this Order shall be deemed good and sufficient regardless of whether service is effected by PDF copy attached to email, facsimile, courier, personal deliver or ordinary mail.

"K.M. Horner"

Justice of the Court of Queen's Bench of Alberta

Schedule "A" Sales Process

LEXIN RESOURCS LTD., 1051393 B.C. LTD., 0989 RESOURCE PARTNERSHIP, LR PROCESSING LTD. and LR PROCESSING PARTNERSHIP, IN RECEIVERSHIP

SALES PROCESS

1. On March 20, 2017, the Alberta Court of Queen's Bench (the "**Court**") made an order (the "**Lexin Receivership Order**") appointing Grant Thornton Limited ("**GT**") as receiver (the "**Receiver**") of Lexin Resources Ltd. ("**Lexin**"), under Section 243(1) of the *Bankruptcy and Insolvency Act*, and Section 13(2) of the *Judicature Act*. On June 13, 2017, the Court granted a consent receivership order (the "**Expanded Receivership Order**" and together with the Lexin Receivership Order, the "**Receivership Orders**") appointing GT as Receiver of all of 1051393 B.C. Ltd., 0989 Resources Partnership, LR Processing Ltd. and LR Processing Partnership (collectively the "**Affiliated Debtors**" and together with Lexin the "**Debtors**").

2. On July 14, 2017, the Court approved the sales process (the "**Sales Process**") set forth herein to be undertaken to seek a Successful Bid (as defined below), and if there is a Successful Bid, to complete the transactions contemplated by the Successful Bid.

Defined Terms

3. All capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Receivership Orders. In addition, in this Sale Process:

"**Business Day**" means a day, other than a Saturday or Sunday, on which banks are open for business in the City of Calgary;

"**Licensee**" has the meaning ascribed under the OGCA or the Pipeline Act, as the case may be;

"**OGCA**" means the *Oil and Gas Conservation Act*, RSA 2000, c O-6;

"**Pipeline Act**" means the *Pipeline Act,* RSA 2000, c. P-15;

"**Property**" means the undertaking, property and assets of the Debtors or any portion thereof;

"**Regulator**" means the Alberta Energy Regulator;

"**Sales Advisor**" means Sayer Energy Advisors;

Sales Process

4. The Sales Process set forth herein describes, among other things, the manner in which prospective bidders may gain access to or continue to have access to due diligence materials concerning the Property, the manner in which bidders and bids become Qualified Bidders and Qualified Bids (each as defined below), respectively, the receipt and

negotiation of bids received, the ultimate selection of a Successful Bidder(s) (as defined below) and the Court's approval thereof. The Receiver shall administer the Sales Process. In the event that there is disagreement as to the interpretation or application of this Sales Process, the Court will have jurisdiction to hear and resolve such dispute.

5. The Sales Process will be completed under the timeline set out in **Schedule "1"** hereto, subject to amendment from time to time by the Receiver in its discretion in consultation with the Sales Advisor.

6. The Sales Advisor is appointed for the purpose of administering the Sales Process set out herein. The Sales Advisor shall implement the Sales Process with the assistance and supervision of the Receiver.

Purchase Opportunity

7. A non-confidential teaser letter prepared by the Sales Advisor describing the opportunity to acquire some, all or substantially all of the Property will be made available by the Sales Advisor to prospective purchasers and will be posted on the websites of the Receiver and the Sales Advisor as soon as practicable.

8. Confidential information describing the opportunity will be made available to prospective purchasers that have executed a non-disclosure agreement ("**NDA**") with the Receiver, in a form satisfactory to the Receiver.

9. The Property may be separated into packages as deemed advisable by the Receiver, in consultation with the Sales Advisor.

"As Is, Where Is"

10. The sale of the Property will be on an "as is, where is" basis and without surviving representations, warranties, covenants or indemnities of any kind, nature, or description by the Receiver, the Sales Advisor, or any of their respective agents, or any other person except to the extent set forth in the relevant definitive purchase and sale agreement.

Free of Any and All Claims and Interests

11. In the event of a sale, to the extent permitted by law, all of the rights, title and interests of the Debtors in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon and there against (collectively the "**Claims and Interests**"), such Claims and Interests to attach to the net proceeds of the sale of such Property (without prejudice to any claims or causes of action regarding the priority, validity or enforceability thereof), pursuant to an approval and vesting order made by the Court, upon the application of the Receiver, except to the extent otherwise set forth in the relevant sale agreement with a Successful Bidder.

Publication of Notice and Teaser

12. As soon as reasonably practicable after the approval of this Sales Process, the Receiver and the Sales Advisor shall cause a notice of the Sales Process and such other relevant information which the Sales Advisor or the Receiver consider appropriate to be published in the *Daily Oil Bulletin, BOE* and the *Calgary Herald.*

Participation Requirements

13. In order to participate in the Sales Process, each person interested in bidding on the Property (a "**Potential Bidder**") must deliver to the Receiver at the address specified in **Schedule "2"** hereto (including by email or fax transmission), and prior to the distribution of any confidential information to a Potential Bidder, an executed NDA in form and substance satisfactory to the Receiver, which shall inure to the benefit of any purchaser of the Property, as well as a statement indicating that it is a licensee in good standing with the AER, or is eligible to obtain or hold AER licenses, permits or approvals (the "**Bidder Conditions**").

14. A Potential Bidder that has executed an NDA and who satisfies the Bidder Conditions, and who the Receiver determines has a reasonable prospect of completing a transaction contemplated herein, will be deemed a "**Qualified Bidder**" and will be promptly notified of such classification by the Receiver.

Due Diligence

15. The Sales Advisor shall provide any person deemed to be a Qualified Bidder with access to an electronic data room and the Sales Advisor shall provide to Qualified Bidders further access to such due diligence materials and information relating to the Property as the Receiver deems appropriate. The Sales Advisor, Receiver and their respective agents make no representation or warranty as to the information provided through the due diligence process or otherwise, except to the extent otherwise contemplated under any definitive sale agreement with a Successful Bidder executed and delivered by the Receiver and approved by the Court.

Seeking Qualified Bids from Qualified Bidders

16. A Qualified Bidder desiring to make a bid for all or part of the Property must deliver written copies of a final, binding proposal (the "**Final Bid**") in the form of a fully executed letter of intent to the Receiver at the address specified in Schedule "2" hereto so as to be received no later than 12:00 p.m. Calgary time on September 15, 2017 (the "**Bid Deadline**").

Qualified Bids

17. A Final Bid will be considered a Qualified Bid only if it is submitted by a Qualified Bidder and the Final Bid complies with, among other things, the following (a "**Qualified Bid**"):

    (a) it contains an executed binding letter of intent ("**LOI**") in substantially similar form to the template LOI to be posted in the data room, together with a blackline of the

LOI highlighting any changes to the template LOI and if applicable, an allocation of the purchase price as between the specific Property contained in the LOI;

(b) it provides written evidence of a firm, irrevocable financial commitment for all required funding or financing;

(c) it does not include any request for or entitlement to any break fee, expense reimbursement or similar type of payment;

(d) it contains evidence of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body);

(e) it is accompanied by a refundable deposit (the "**Deposit**") in the form of a wire transfer (to a bank account specified by the Receiver), certified cheque or bank draft, payable to the order of the Receiver, in trust, in an amount equal to 10% of the total consideration in the Qualified Bid to be held and dealt with in accordance with this Sales Process;

(f) it provides confirmation that it is a Licensee in good standing with the Regulator and that is has, or will, meet the requirements and conditions of the Regulator in order to become a Licensee of the Property to be conveyed, transferred or assigned to it, including but not limited to applying for and obtaining a business associate code from the Regulator;

(g) it provides a written list of its current officers and directors and all shareholders who directly or indirectly own more than 10% of its issued and outstanding shares (the "**Arm's Length List**");

(h) all parties listed on the Arm's Length List are arm's length to the Debtors; and

(i) it is received by the Bid Deadline.

18. Following the Bid Deadline, the Receiver shall hold a bid review meeting with the Sales Advisor and any other interested party as determined in the sole discretion of the Receiver.

19. The Receiver will assess any Qualified Bids received and may waive any one or more of the requirements specified herein, and may deem such non-compliant bids to be Qualified Bids in the Receiver's sole discretion.

20. The Receiver may reject any Qualified Bid if it determines that such bid is inadequate or insufficient, or is otherwise contrary to the best interests of the receivership estate or any of its creditors or other stakeholders.

21. The Receiver reserves the right to request that Qualified Bidders revisit Qualified Bids in the event several competitive Qualified Bids are received. The Receiver reserves the right not to accept any of the Qualified Bids if no acceptable Qualified Bids are received. If the Receiver determines a Qualified Bid is acceptable and provides superior value to the

receivership estate such Qualified Bid will be selected as a successful bid ("**Successful Bid**") with the proponent of such Successful Bid being a "**Successful Bidder**".

22. The Successful Bidder(s) will be notified and the Receiver, in consultation with the Sales Advisor, will finalize a definitive purchase and sale agreement(s) with the Successful Bidder(s). Any purchase and sale agreement entered into by the Receiver with a Successful Bidder shall contain as a condition of that agreement, that Court approval of the agreement be obtained.

Approval Motion

23. The Receiver shall apply to the Court (the "**Approval Motion**") for an order (the "**Sale Approval and Vesting Order**") approving the Successful Bid(s) and authorizing the Receiver to enter into any and all necessary agreements with respect to the Successful Bidder(s), as well as an order vesting title to Property in the name of the Successful Bidder(s).

24. The Approval Motion will be held on a date to be scheduled by the Court upon application by the Receiver. The Approval Motion may be adjourned or rescheduled by the Receiver without further notice.

25. All Qualified Bids (other than the Successful Bid(s)) shall be deemed rejected on and as of the date of approval of the Successful Bid(s) by the Court.

Deposits

26. Upon entry of an LOI by a Qualified Bidder, the Receiver will be paid a refundable deposit (the "**Deposit**") in the form of a wire transfer (to a bank account specified by the Receiver), or such other form of payment acceptable to the Receiver, payable to the order of the Receiver, in trust, in an amount equal to 10% of the total consideration in the Qualified Bid to be held and dealt with in accordance with this Sales Process.

27. All Deposits shall be retained by the Receiver in an interest bearing trust account. The Deposit(s) plus accrued interest paid by the Successful Bidder(s) whose bid is approved at the Approval Motion shall be applied to the purchase price to be paid by the Successful Bidder(s) upon closing of the approved transaction and the Deposit(s) will become non-refundable upon court approval. The Deposit(s) of Qualified Bidders not selected as Successful Bidder(s) shall be returned together with the accrued interest to such bidders within five (5) Business Days of the date upon which the Sale Approval and Vesting Order is granted.

Approvals

28. For greater certainty, the approvals required pursuant to the terms hereof are in addition to, and not in substitution for, any other approvals required by the applicable law in order to implement a Successful Bid.

No Amendment

29. There shall be no amendments to this Sales Process, including, for greater certainty the Sales Process set out herein, without the written consent of the Receiver.

No Obligation to Conclude a Sale

30. The Receiver has no obligation to conclude a sale arising out of this Sales Process, and it reserves the right and unfettered discretion to reject any Final Bid or Qualified Bid.

Further Orders

31. At any time during the Sales Process, the Receiver may apply to the Court for advice and directions with respect to the discharge of its powers and duties hereunder.

SCHEDULE "1"

SALES PROCESS TIMELINE

July 14, 2017	Court Order approving the sales process
July 17-August 7, 2017	Compile information, establish electronic data room and prepare marketing materials
August 7-September 15, 2017	Launch sales process including contacting interested parties, distributing Teaser, placing advertisements in *Daily Oil Bulletin, BOE* and *Calgary Herald*, compiling NDA's, responding to requests for information and facilitating due diligence meetings and calls
September 15, 2017	Bids to be submitted by 12:00 p.m. Calgary time

SCHEDULE "2"

NOTICE

TO THE RECEIVER:

Grant Thornton Limited
900, 833-4th Avenue SW
Calgary, Alberta T2P 3T5

Attention: Andrew Basi & Michael Costello

Phone: 403-296-2992/403-296-3087
Fax: 403-260-2571
E-Mail: Andrew.Basi@ca.gt.com/Michael.Costello@ca.gt.com

WITH A COPY TO:

Sayer Energy Advisors
1620, 540 5th Avenue SW
Calgary, AB T2P 0M2

Attention: Alan Tambosso

Phone: 403-266-6133
Fax: 403-266-4467

15 AUGUST 2018

PRADEEP KUMAR

THIS IS EXHIBIT "4" REFERRED TO IN THE AFFIDAVIT OF PRADEEP KUMAR

SWORN BEFORE ME THIS 15th DAY OF AUGUST, 2018.

____

A Notary Public in and for the State of California

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this 15th day of August, 2018, by PRADEEP KUMAR

______________________________, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature ______________________________ (Seal)

MUTHIAH NACHIAPPAN
COMM. # 2175823
NOTARY PUBLIC - CALIFORNIA
COUNTY OF LOS ANGELES
MY COMM. EXP. JAN. 13, 2021

Court of Queen's Bench of Alberta

Citation: Alberta Energy Regulator v Lexin Resources Ltd, 2018 ABQB 590

Date:
Docket: 1701 03460
Registry: Calgary

Between:

Alberta Energy Regulator

Applicant

- and -

Lexin Resources Ltd., 1051393 B.C. Ltd., 0989 Resource Partnership, LR Processing Ltd., and LR Processing Partnership

Respondents

**Decision
of the
Honourable Madam Justice B.E. Romaine**

I. Introduction

[1] This is an application by the Receiver of Lexin Resources Ltd, 1051393 BC Ltd, 0989 Resource Partnership, LR Processing Ltd and LR Processing Partnership (the Lexin Group) seeking advice and direction respecting the characterization of funds indirectly advanced by MFC Energy Finance Inc to the 0989 partnership, a member of the Lexin Group, on June 30, 2015. The original amount of the advance was $37,570,500 (the Finance Advance). Finance advances a secured claim in the receivership against 0989 in the amount of $15,058,116.08, which it alleges is the remaining amount of the Finance Advance.

[2] For the reasons set out in this decision, I find that the Finance Advance is more properly characterized as equity rather than debt. In the alternative, I find that the Finance Advance should be postponed to the claims of other creditors pursuant to section 137 of *the Bankruptcy and Insolvency Act*, RSC 1985, C. B-3, as it is not a proper transaction.

II. Facts

[3] The relevant facts are as follows:

[4] MFC Bancorp Ltd (Bancorp) is a merchant banking company that invests in distressed businesses. In 2012, a subsidiary of Bancorp acquired the shares of Lexin Resources Inc, and in effect assumed or paid down Lexin's existing debt. At the time it did so, another of Bancorp's subsidiaries, MFC Energy Holding Austria Gmbh (MFC Austria) entered into two loan facility agreements with Austrian banks.

[5] Debt under these facilities was incurred in order to aid in the restructuring of Lexin, and used by the subsidiary to acquire a TD bank loan facility that had been used by Lexin's predecessor. The subsidiary and Lexin were then amalgamated, thus extinguishing Lexin's debt.

[6] While Finance submits that the intention was that the facility loans would be repaid from Lexin's cash flow, no loan agreement or other debt obligation has ever been put in place between MFC Austria and Lexin. Any payments by Lexin to MFC Austria have been made by way of a return of share capital.

[7] In 2013, Lexin's assets were transferred to the 0989 partnership, in which Lexin and Bancorp are partners. Again, there is no loan agreement between MFC Austria and 0989. The outstanding balance of the Finance Advance was reduced from time to time, and Finance now submits that the current balance is $15,058,116.08.

[8] In June, 2015, approximately $10.2 million in payments under the Austrian facilities became due.

[9] At this point in time, Bancorp held 100% of the shares of M Financial Corp (M Financial) and MFC Austria, which was wholly-owned by Bancorp, owned all the shares of Lexin. Lexin and Bancorp were partners of 0989, Lexin as to 66 2/3% and Bancorp as to 33.68%.

[10] Finance was incorporated on June 26, 2015 as a wholly-owned subsidiary of M Financial. Thus, each of Finance, M Financial, MFC Austria and Lexin were wholly –owned subsidiaries of Bancorp.

[11] Michael Smith was a director of Bancorp, M Financial, Finance, MFC Austria and Lexin and a member of the management committee of 0989.

[12] The following transactions all occurred on the same day, June 30, 2015:

(a) the directors of Finance resolved to issue 37,570,500 shares in Finance to M Financial for consideration of $37,570,500 and to grant a loan to 0989 in the same amount. Mr. Smith and Samuel Morrow, a director of Finance, MFC Austria and Bancorp, signed the directors' resolution. At the time, Finance had no other business or assets;

(b) 0989 received a wire transfer of $37,570,500 directly from M Financial;

[13] Finance and 0989 entered into a demand loan agreement dated June 30, 2015 which states that Finance was providing a loan to 0989 in the amount of $37,570,500. As security for the loan, 0989 and Lexin executed a general security agreement and 0989 executed a demand promissory note payable to Finance in the amount of the advance, all dated June 30, 2015. Before this, neither 0989 nor Lexin had any debt.

[14] All of the documentation with respect to the Finance Advance was signed or co-signed by Mr. Smith on behalf of both Finance and 0989.

[15] The loan agreement between Finance and 0989, provides, among other things, that:

(a) the Finance Advance is to be payable by 0989 only upon demand of Finance. There is no schedule for repayment;
(b) interest will only accrue if 0989 commits an event of default;
(c) 0989 is prohibited from selling assets of a value of more than $100,000 in any 12 month period, other than usual course sales of assets;
(d) 0989 may only make a payment on account of redemption or a distribution or return of capital if Finance consents to such a payment; and
(e) Finance is free to assign its rights and obligations under the agreement.

[16] Prior to the receivership of 0989 and Lexin, only two variable payments were made by 06989 to Finance, and no interest was ever charged.

[17] 0989 did not record receiving $37,570,500 in its accounting records in June, 2015 or any other date, but instead recorded an account payable of $37,570,500 to M Financial and a corresponding reduction in the share capital account of 0989 and Lexin.

[18] On the same day, June 30, 2015, the management committee of the 0989 partnership resolved to issue distributions to its two partners, Lexin and Bancorp, in the total amount of $37,570,500. At the time the Finance Advance was made, Finance was aware of this resolution.

[19] 0989's bank records show that on June 30, 2015, $12,653.744.40 was transferred to Bancorp and $24,916,755.60 was transferred to Lexin, resulting in no net change in 0989's bank accounts. Again on the same day, Lexin transferred the $24,916,755.60 to MFC Austria, resulting in no net change in Lexin's bank accounts. Given the over lapping nature of Finance and Lexin's directors, it is reasonable to infer that Finance was aware of these transfers.

[20] On June 30, 2015, MFC Austria paid down the Austrian bank facilities in the amount of $10,200,000 and transferred the remaining approximately $15,000,000 back to M Financial, the originator of the funds, as repayment for a 2013 loan made by the M Financial to MFC Austria.

[21] In summary, the Finance Advance was received by 0989, not from Finance but from M Financial directly, on June 30, 2015, and the whole advance was withdrawn from 0989's account on the same day and transferred to each of Lexin and Bancorp. Bancorp received and kept $12,653,744.40. On the same day, Lexin transferred the entirety of the amounts it had received to MFC Austria, MFC Austria then paid part of the amount to reduce bank debt and the rest, about $15 million, to M Financial, the originator of the funds for the Finance Advance. 0989 and Lexin only served as conduits though which the money flowed.

[22] In December, 2015, Finance transferred a portion of Lexin and 0989's assets to itself in partial settlement of the Finance Advance, at a time when Lexin's liabilities to creditors had started to accrue.

III. Position of the Parties

[23] Finance submits that the Finance Advance is a debt incurred for purposes of recapitalizing Lexin Resources Ltd. and 0989 with some additional "local" leverage to reduce their costs of capital.

[24] The Receiver, however, submits that, when considering the Finance Advance in light of all the surrounding circumstances at the time it was advanced, including the economic reality of 0989 and Lexin and the manner in which the advance was used, the Finance Advance should properly be characterized as an equity contribution made by Finance to 0989. Thus, the Receiver seeks an order declaring that 0989 is not indebted to Finance by reason of the Finance Advance, and that any claim that Finance has against 0989 or Lexin as a result of the Finance Advance is an "equity claim" as that term is defined under the *BIA*.

[25] In the alternative, if the Finance Advance is determined to be debt, the Receiver submits it is appropriate to postpone the Finance Advance to the claims of all of Lexin and 0989's other creditors pursuant to section 137 of the *BIA*, as an improper transaction between the debtors and a non-arm's length party. Further in the alternative, the Receiver submits that the Finance Advance should be postponed pursuant to the doctrine of equitable subordination.

IV. Preliminary Issues

A. Procedural Unfairness

[26] Finance complains that the Receiver has acted unfairly in this application, in that contrary to the procedural order, it not only addressed the validity of the Finance Advance, but also its priority. I do not agree that the Receiver was limited in its submissions on these issues by the procedural order or that issues of priory and equitable subordination do not fall within the broad issue of the reasons for the Receiver's denial of the claim, or that the Receiver was not clear in its reasons for its denial of the claim, which were set out in its letter of November 29, 2017. Without agreeing that there was any unfairness, however, I allowed Finance to tender a late affidavit, and a few additional days to respond to the Receiver's submissions on equitable subordination. Finance was also given the opportunity of filing a supplemental brief.

B. Brown v Dunn

[27] Finance submits that, as the Receiver did not comply with ***Brown v Dunn*** by questioning Mr. Morrow on whether it was Finance's intention to create an equity claim, his evidence that the intention was to re-leverage 0989 with some debt should be accepted as contradicted. However, as noted by the Receiver, in the absence of an arm's length relationship, it is not the stated intention of the parties that is determinative of the character of the advance, but rather all of the surrounding circumstances. I agree that the issue is whether the substance of the transaction is different from what the parties expressed it to be: ***Re U.S. Steel Ltd***, 2016 ONSC 569, upheld 2016 ONCA 662m at para 140.

V. Analysis

A. Should the Finance Advance be characterized as an investment of capital in 0989 by Finance or as a loan by Finance to 0989?

[28] If the Finance Advance is characterized as an equity contribution, Finance's secured claim will be subordinated to the claims of all other "creditors by the operation of s. 140.1 of the *BIA*, which states that a creditor is not entitled to a dividend in respect of an equity claim until all claims that are not equity claims have been satisfied".

1. Onus

[29] In the normal course in an insolvency, the onus is on a creditor to prove its claim.

[30] While Finance concedes that it has the "initial" burden to prove that the Finance Advance is a secured claim in the receivership, it submits that it does not have the burden of disproving that the Finance Advance is equity, or that it ought to be subordinated. By this, Finance means that, once it has proved that there is a contract, pursuant to which one person delivers money, and the other person agrees to repay the borrowed amount. Finance has met its burden and the onus proving that the advance is equity shifts to the Receiver. Finance relies in this respect on comments made by the Court in ***U.S Steel***.

[31] Those comments were made in context of a contest between competing creditors, and not an application by a receiver for advice and directions with respect to its findings on the validity of a claim. The Receiver has made its objections to the claim clear: the transaction bears the characteristics of a claim in equity and not in debt. Thus, the normal rule that the creditor bears the onus of establishing otherwise should apply. In any event, even if the burden shifts to the Receiver, the Receiver has met the burden in this case.

2. Analysis

[32] The issue of: supra particular claim is to be treated as debt or equity is a matter of statutory interpretation: ***supra*** at para 152.

[33] An "equity claim" is defined in the *BIA* as a claim that is in respect of an equity interest, including a claim for a return of capital or a contribution in respect of such a claim. An "equity interest" is defined as a share in the corporation, or another right to acquire a share in the corporation, other than one that is derived from a convertible debt. As noted by Wilton-Seigel, J. in ***U.S. Steel***, this type of situation can be distinguished from the situation in ***Canada Deposit Insurance Corp v Canadian Commercial Bank***, [1992] 3 SCR 558, where the transaction was arm's length.

[34] In ***U.S. Steel***, the Court held at para 155-156 that the definition of "equity claim" can extend to a contribution to capital by a sole shareholder unaccompanied by a further issuance of shares. Further, the reference to "a return of capital" need not be limited to a claim in respect of express contribution to capital, and a transaction can be a contribution of capital in substance even if it is expressed otherwise.

[35] Both the Receiver and Finance rely on the decision of ***U.S. Steel***, as the Court in that case considered the specific circumstances of the characterization of the claim, such as this one, involving wholly-owned subsidiaries engaged in non-arm's length transactions.

[36] As noted at para 154 of ***U.S. Steel***:

> In the circumstances of a sole shareholder, there is no practical difference...... between a shareholding of a single share and a shareholding of multiple shares. Accordingly, for the purposes of the definition of an "equity claim", there should be no difference between a payment to a debtor company on account of the issuance of new shares and a payment to a debtor company by way of a contribution to capital in respect of the existing shares.

[37] Thus, as was the case in ***U.S. Steel***, the determination of whether Finance's claim is to be treated as debt or equity must address, not just the expressed intentions of the parties as reflected in the transaction documentation but also the manner in which the transaction was implemented and the economic reality of the surrounding circumstances. The form of the documentation is merely the "point of departure": ***supra*** at para 149.

[38] The issue in situations where the parties are not arm's length is not what the parties say they intended regarding the substance of the transaction but the "underlying substantive reality of the transaction": ***supra*** para 167. As actually implemented, is the substance of the transaction different from what was expressed in the transaction documentation?

[39] It is not as simple as submitted by Finance. The approach to characterization is not merely a narrow "rubber-stamping" of the form of transaction chosen by the sole shareholder: ***supra*** para 168.

[40] While the characterization of the claim must be analyzed at the date of advance, subsequent behavior, rather than subsequent stated intention, may be relevant if it illuminates the intentions of the parties at the date of advance although it cannot on its own justify a re-characterization of such advance: ***U.S. Steel*** at para 195; ***Canadian Deposit Insurance*** at para 52. The determination is not based on inequitable behaviour, but on the underlying substantive reality of the transaction.

[41] ***U.S. Steel*** sets out a helpful two-part test in to be followed in situations involving parent-subsidiary relationships at paras 186-190:

(a) subjectively, did the alleged lender actually expect to be repaid the principle amount of the loan with interest out of the cashflows of the alleged borrower; and
(b) objectively, was the expectation reasonable under the circumstances?

[42] The Court in ***U.S. Steel*** referred to various factors used by American courts to aid in determining appropriate characterization, including the following:

(a) the names given to the instruments, if any, evidencing the indebtedness;
(b) the presence or absence of a fixed maturity date and schedule of payments. The American cases suggest that the absence of a fixed maturity date and a fixed obligation to repay is an indication that the advances were capital contributions and not loans;
(c) the presence or absence of a fixed rate of interest and interest payments. Again, it is suggested that the absence of a fixed rate of interest and interest payments is a strong indication that the advances were capital contributions rather than loans;

(d) the source of repayments. If the expectation of repayment depends solely on the success of the borrower's business, the cases suggest that the transaction has the appearance of a capital contribution;
(e) the adequacy or inadequacy of capitalization. Thin or inadequate capitalization is strong evidence that the advances are capital contributions rather than loans;
(f) the identity of interest between the creditor and the shareholder. If shareholders make advances in proportion to their respective stock ownership, an equity contribution is indicated;
(g) the security, if any, for advances;
(h) the corporation's ability to obtain financing from outside lending institutions. When there is no evidence of other outside financing, some cases indicate that the fact no reasonable creditor would have acted in the same manner is strong evidence that the advances were capital contributions rather than loans;
(i) the extent to which the advances were subordinated to the claims of outside creditors;
(j) the extent to which the advances were used to acquire capital assets. The use of the advance to meet the daily operating needs for the corporation, rather than to purchase capital assets, is arguably indicative of bona fide indebtedness; and
(k) the presence or absence of a sinking fund to provide repayments.

[43] However, these and other factors are no more than an aid in determining substantive reality and should not be used in a "score-card" manner: supra para 181.

[44] However, the Receiver submits that these factors overwhelmingly point to the Finance Advance being in reality equity and not debt, particular factors b), c), e), f) and j).

[45] While there is formal documentation in this case, it does not include a schedule for repayment and there is no obligation to pay interest until default. Since it is characterized as a demand loan, there is no fixed maturity date. Thus, it would be possible, and in fact has been the case, that no demand for repayment has been made. Although there is evidence indicating the commencement of enforcement proceedings by various creditors, and thus default, Finance has issued no formal notice of default and no interest is alleged to be payable.

[46] Payments made under the Finance Advance were sporadic and the first payment made was in the form of an actual transfer of assets to Finance and its subsidiaries. Two variable cash repayments were made in 2016.

[47] It is relevant that the Finance Advance was not available for use by 0989 for daily operations or the acquisition of assets, but was immediately flowed through to its partners as distributions.

[48] It is also relevant that Bancorp was a guarantor of the Austrian bank debt, and that the transaction allowed that debt to be paid down, to the advantage of the parent company.

[49] The Receiver submits that this series of transactions was a plan to save the consolidated Bancorp enterprise at the expense of Lexin, 0989 and their stakeholders and, in effect, to secure ties to equity distributions for themselves against the Lexin Group's assets. Thus, it submits, referring back to the first part of the two-part test, there was no subjective intention for the Finance Advance to have ever been repaid.

[50] As noted at para 257 of ***U.S. Steel***:

> As a polar case, I accept that there may be circumstances in which a parent corporation is expectation from the outset is that it will sacrifice a subsidiary's profitability over the long-term for the benefit of the consolidated enterprise. In such circumstances, a court could find that the parent corporation had no intentions of causing the subsidiary to repay with interest any financing extended to the subsidiary or, more precisely, no expectation that the subsidiary would generate sufficient cash flow to enable it to make such payments based on the parent's anticipated business plan for it. In such circumstances, a court could also find that the entire amount of the financing extended by the parent corporation to the subsidiary was, in reality, an equity contribution.

[51] Finance submits that there are valid responses to all of these factors. It submits that the fact that the Finance Advance is a demand loan is responsive to the lack of maturity date. As noted in ***U.S. Steel*** ,a lack of maturity date and the absence of a schedule for the principal payment may only indicate the desire for flexibility to align payments of principal with 0989's economic performance against the back drop of a cyclical industry: ***supra*** at para 224.

[52] Despite submissions by both parties, I am unable on the basis of the evidence before me to determine whether undercapitalization is an issue.

[53] However, for Finance, the lack of any interest provision except on default is more problematic. Mr. Morrow alleges that withholding tax issues are the reasons for the advance being non-interest bearing. While there is nothing improper about this, this lacks of interest implies equity disguised as debt. Business choices on structure, while otherwise entirely proper, can have consequences for characterization.

[54] The Receiver submits that the restructuring of 0989 and Lexin as of June 30, 2015 with additional debt at a time when these entities had no debt does not make commercial sense. I accept the Receiver's view, particularly as none of the funds remained with 0989 or Lexin, and $15 million went full-circle back to M Financial, as Finance was clearly aware was the plan.

[55] Finance states that the commercial propose of the Finance Advance was (i) to fund the repayment of the MFC Austria loans, and (ii) to recapitalize Lexin and 0989 with some additional leverage, with one advantage being to add a "modest amount of local leverage to reduce Lexin and 0989's cost of capital".

[56] However, there was no debt obligation between MCF Austria and Lexin or 0989 at any point in time.

[57] In addition, the explanation that a modest amount of local leverage would reduce 0989 and Lexin's costs of capital is inconsistent with the fact that, as early as December, 2014, Bancorp was pursing the disposition of some of the Lexin properties. The commercially unusual aspects of the Finance Advance, including its nature as a demand loan, the fact that it was payable only upon default and that it included restrictions on redemption, distribution and return of capital without Finance's consent, could hardly be considered to be attractive to a prospective purchaser, even if the loan did not bear interest until default. If a cash and debt offer was more attractive to a purchaser, it could be negotiated at the time of the sale.

[58] However, I am not able to decide the issue of the credibility of Mr. Morrow's assertions with respect to Finance's subjective expectations despite these contradictory indicators without the benefit of viva voce evidence. Thus, given the circumstances in which this application was heard, I must accept that Finance has met the first part of the two-part test.

[59] However, was that expectation reasonable in the circumstances? The surrounding economic circumstances provide context to this question.

[60] While Finance asserts that the Austrian bank loans were intended to be repaid from Lexin's cash flow, in 2013, when the loans were made, Finance provided funds to MFC Austria to repay the principal and interest installments due under the loans, as neither 0989 nor Lexin generated sufficient returns to make equity distributions.

[61] In 2014, Lexin did make payments to MFC Austria, but it was by way of a return of capital. Finance states that MFC Austria used these funds to reduce the MFC Austria loans and to partially repay M Financial for the amounts it had advanced to MFC Austria in 2013.

[62] The funds distributed to Lexin and Bancorp by 0989 on June 30, 2015 are characterized by Finance as distributions to 0989's partners. The funds distributed by Lexin to MFC Austria the same day are characterized by Finance as a return of capital to Lexin's sole shareholder, MFC Austria, by way of a reduction of share capital pursuant to Section 74 of the British Columbia *Business Corporations Act*, SBC 2002 c 57. This raises the issue of why the flow-through of funds to 0989 was structured as a loan.

[63] Finance's answer is that the benefit of this leverage was in reducing 0989 and Lexin's cost of capital. However, Finance also submits that purpose of the loan was to facilitate a future sale.

[64] Finance's counsel included in its brief a hypothetical example that purported to demonstrate this increased saleability. However, the hypothetical example did not adequately take into account the effect of the Finance Loan. The Receiver revised the example, incorporating both the advance and actual data from the June 30, 2015 Lexin financial statements. This revision shows that the result would be the opposite of what Finance suggested would be increased saleability and that the advance would make a sale less attractive. As noted previously, the uncommon aspects of the debt would more likely make the existence of the Finance Advance a negative, rather than a positive, despite the lack of interest prior to default.

[65] Between July and September of 2015, the Bancorp board approved a plan to sell all of Lexin's assets, and in Bancorp's consolidated financial statements dated December 31, 2015, Bancorp referred to declining prices for oil and gas beginning in December 2014 and further declining by September 2015, leading to impairment assessments on its hydrocarbon properties in each of 2013 and 2014. In those financial statements, Bancorp indicates that on December 30th, 2015, it sold a 95 percent interest in certain hydrocarbon assets to a third party for nominal and contingent consideration, and that the contingent consideration was valued at nil.

[66] Even though the June 30, 2015 transactions occurred prior to these financial statements, and thus, some of these records are dated after the date of the Finance Advance, subsequent events are sometimes relevant to the extent they illuminate the intentions of the parties at the time of the advance. In this case, the subsequent events followed within weeks and months of the advance. In any event, Bancorp knew of declining commodity prices in 2013 and 2014, thus, it

cannot have had any objectively reasonable expectation that 0989 would be able to pay the principle amount of the Finance Advance out of cashflow, even without interest.

[67] The Receiver submits that it is clear that 0989 and Lexin were underperforming at the time of the Finance Advance, but Mr. Morrow alleges that Lexin was profitable, and that he was not aware of any creditor that was outstanding as of June 30, 2015 or the rest of 2015 that was not paid in full. However, affidavits filed by the municipalities of Willow Creek and Vulcan indicate that Lexin had failed to pay property taxes levied by the counties since 2015, resulting in liens and seizures beginning in November, 2015. Mr. Morrow also relied on the GLG reserve reports for the period, but failed to mention that the report assumes that the company would have to incur costs of development much higher than expected cash flowed in 2017 in order to earn such cash flows. The unaudited consolidated financial statements, without notes, do not aid in the determination of whether the expectation of repayment was objectively reasonable.

[68] In conclusion, I find that the expectation that the Finance Advance would be repaid by the borrower from cashflow was not objectively reasonable, and that the Finance Advance is properly characterized as an equity contribution.

[69] In the event I am wrong in this determination, I have considered whether it is appropriate to postpone the Finance Advance to all of Lexin and 0989's other creditors.

B. Should the Finance Advance be postponed pursuant to section 137 of the *BIA*?

[70] Section 137 of the *BIA* provides that a non-arm's length creditor that entered into a transaction with the debtor before bankruptcy is not entitled to payment of its claim arising from that transaction "until all claims of the other creditors have been satisfied, unless the transaction was in the opinion of the...court a proper transaction."

[71] It is clear that the Finance Advance was a transaction entered into with a non-arm's length party before bankruptcy. Thus, section 137 would postpone Finance's claim to the claims of other creditors unless this Court finds that the Finance Advance was a "proper transaction".

1. Onus

[72] When a debt claim is being advanced by a non-arm's length party, the claimant has the onus of proving that the transaction is a proper claim if it hopes to avoid having the claim subordinated pursuant to section 137 of the *BIA*: ***Re Tudor Sales Ltd***, 2017 BCSC 119 at para 48. However, even if I am wrong in this regard, the Receiver has satisfied the onus of establishing that the Finance Advance is not a proper transaction for the purpose of section 137.

2. Analysis

[73] Finance submits that, if the Finance Advance is debt, the Court cannot find that it is not a proper transaction under s. 137, relying on ***Stone Mountain Resource Holdings Ltd v Stone Mountain Resources Ltd***, 2012 ABQ 534. That is not what the Court in ***Stone Mountain*** establishes. Kent, J, found that the transaction in that case was for a proper purpose because a) there was no preference, and b) there was an injection of new money from an arm's length creditor to the debtor's parent company, and a subsequent loan of that money to the debtor subsidiary as a direct contribution to the debtor company's working capital, in accordance with a development plan: ***supra*** paras 31, 39-43.

[74] The facts in this case are different from those in ***Stone Mountain***. In this case, the funds advanced were flowed through 0989 as distributions to its partners, leaving 0989 without additional operating funds or working capital but only debt.

[75] In addition, there is nothing in the plain language of section 137 that would prevent it from applying to a transaction that is structured as debt. Indeed, the postponement created by the section would not be necessary if it applied merely to equity.

[76] The Receiver references ***Tudor Sales*** as a case that considered issues similar to the ones that arise here.

[77] In ***Tudor***, the applicant was an unsecured creditor of the bankrupt Tudor, seeking an order under section 135(5) of the *BIA* that the claim of a shareholder of Tudor with respect to shareholder loans be expunged or subordinated to the claims of other creditors.

[78] There was no written documentation of the shareholder loans, no fixed interest rate and no schedule for repayment. The advances were secured by a GSA. The interest rate that the company paid to the shareholder each year fluctuated with the fortunes of the company.

[79] The Court first considered whether the shareholder loans should be characterized a debt or equity, and found them to be equity, not because of the lack of a schedule for repayment or the absence of loan documentation, but because of the variable nature of the interest payments and the circumstances surrounding the advances at the time they were made. The Court considered events that took place shortly after the dates of the advances, noting that the "very close proximity in time" between the advances and these subsequent events "strongly implies that [the] advances were in substance consideration paid for [the shareholder's] ownership stake." Saunders, J. thus found the purported shareholder loans to be equity claims. The Court also considered whether the claim would fail by reason of section 137(1), and was satisfied that there was "simply no justification for allowing [the shareholder] the luxury of securing his investment in [another venture] through the mechanism of the GSA... and thereby defeating the legitimate interests of creditors": para 47.

[80] The Receiver submits that the Finance Advance was not made for the purpose of Lexin or 0989's ongoing operating expenses, or for their benefit at all, rather it was made for the sole purpose of enabling 0989 to issue partnership distributions which were ultimately return to Bancorp, MFC Austria and M Financial the originator of the funds, on the same day they were received.

[81] As previously noted, Finance claims that the purpose underlying the Finance Advance was to "recapitalize Lexin and 0989 with some additional leverage" and "reduce Lexin and 0989's costs of capital. This assertions is inconsistent with certain of Finance's other evidence, including the fact that at the time the Finance Advance was made, neither Lexin or 0989 had any debt. I accept that the substantive reality of the transactions was that, through the Finance Advance, Bancorp and its subsidiaries, including Finance, made equity distributions to themselves with their own funds, and secured such distributions against the assets of Lexin and 0989, both of whom previously had no debt.

[82] Mr. Morrow's evidence is that the purpose of the Finance Advance was to "facilitate a potential sale of the company at some point in the future through a deal that could include as part of the consideration an acquisitions of debt as opposed to a purely cash sale." Finance submits that this is evidence of a legitimate business purpose, and a benefit to 0989 and Lexin. As noted previously, a cash and debt sale could also be accomplished thought negotiation at the time of sale, and the hypothetical submitted through on Finances behalf does not support this theory.

[83] Finance also suggests that a benefit accrued to 0989 and Lexin in that MFC Austria used the proceeds of the MFC Austria loans to satisfy Lexin's pre-acquisition secured debt. However, 0989 and Lexin have no liability for that debt.

[84] Finance submits that, by retiring the debt, it freed up Lexin's cash flow but it is clear that in 2013 and 2014, cash flow was insufficient to warrant distributions sufficient to cover the Austrian loan. The Finance Advance occurred two and a half years after the alleged benefit, after numerous inter-corporate distributions, and in a climate of acknowledged declines in commodity prices. I find that there was no appreciable benefit to 0989 and Lexin in imposing debt as part of the 2015 transactions.

[85] I agree that the purpose and result of the Finance Advance was to leverage 0989 and Lexin for the benefit of Bancorp, which was at risk as a guarantor of the MFC Austria loan, and to benefit MFC Austria.

[86] As noted in ***U.S. Steel*** at para 257, there may be circumstances in which a parent corporation will sacrifice a subsidiary's profitability over the long-term for the benefit of the consolidated enterprise. This is that type of case. It does not fall within the exception set out in section 37 as a proper transaction.

C. Should the Finance Advance be postponed pursuant to the doctrine of equitable subordination?

[87] It is not necessary in this case to resort to the doctrine of equitable subordination, given that I have found the Finance Advance to be in substance equity rather than debt, and, in the alternative, debt that must be subordinated claims of the other creditors under s. 137 of the *BIA*.

[88] Application of the doctrine by the courts in Canada has been inconsistent. Most recently, the Ontario Court of Appeal in ***Re U.S. Steel***, 2016 ONCA 662 declined to grant a declaration that the *CCAA* contains no restrictions within the meaning of s. 11 on the court's ability to apply the doctrine of equitable subordination, noting that "this is the wrong inquiry": para 100. The Court instead declined to grant the relief sought because there was no specific authority within the *CCAA* to apply the doctrine, and the appellant had not identified how the doctrine would further the remedial purpose of the *CCAA*: para 102.

[89] The Receiver describes the elements of the American doctrine in the terms set out by the Supreme Court in Canada in the 1992 case of ***Canada Deposit Insurance***. However, as noted in ***Re Blue Range Resource Corp***, 2000 ABQB 4 at para 50, and in ***Re I. Waxman & Sons Limited***, [2008] OJ No 885 at para 29, the doctrine as interpreted in American cases is not static, and appears to have evolved over time to the point that it no longer requires inequitable conduct by the creditors but rather depends on considerations of fairness on a case-by-case basis. This illustrates the danger of "taking a doctrine divorced from its legal home and applying it to Canada's statutory bankruptcy regime unencumbered with deep knowledge of the origin, development and legal system from which it originated": ***Waxman*** at para 33.

[90] At any rate, this case does not require consideration of the doctrine of equitable subordination; since the provisions set out in the *BIA* at sections 140.1and 137 are sufficient to determine the issue.

Dated at the City of Calgary, Alberta this 08th day of August, 2018.

B.E. Romaine
J.C.Q.B.A.

Appearances:

Robin Gurofksy and Jessica L. Cameron
for the Receiver Grant Thorton

Douglas A. McGillivray, Q.C., David LeGeyt and David A. de Groot
for MFC Energy Finance Inc.

Keely R. Cameron
for the Alberta Energy Regulator

Chris D. Simard
for Exxon Mobil Energy Canada

Gregory C. Plester and Megan Van Huizen
for the Municipal District of Willow Creek No. 26 and Vulcan County

Mary Buttery
for Energy Leasing Partners Ltd.

Richard Billington, Q.C.
for Young Energy Services Inc.

Karen Fellows
for MNP Ltd.

David Girard
for MD of Foothills Ranchland

15 AUGUST 2018
PRADEEP KUMAR

THIS IS EXHIBIT "5" REFERRED TO IN THE AFFIDAVIT OF PRADEEP KUMAR

SWORN BEFORE ME THIS 15TH DAY OF AUGUST, 2018.

____
A Notary Public in and for the State of California

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Los Angeles
Subscribed and sworn to (or affirmed) before me on this 15th day
of August, 20 18, by PRADEEP KUMAR
, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature ______________ (Seal)

MUTHIAH NACHIAPPAN
COMM. # 2175823
NOTARY PUBLIC - CALIFORNIA
COUNTY OF LOS ANGELES
MY COMM. EXP. JAN. 13, 2021

CLERK OF THE COURT
FILED
AUG 10 2018
CALGARY, ALBERTA

COURT OF APPEAL OF ALBERTA

Form AP-1
[Rules 14.8 and 14.12]

Registrar's Stamp:
REGISTRAR
FILED
AUG 10 2018
Court of Appeal of Alberta

COURT OF APPEAL FILE NUMBER:	1801-0249AC
TRIAL COURT FILE NUMBER:	1701-03460
REGISTRY OFFICE:	CALGARY
PLAINTIFF:	ALBERTA ENERGY REGULATOR
STATUS ON APPEAL:	Not Party to the Appeal
DEFENDANT:	LEXIN RESOURCES LTD., 1051393 B.C. LTD., 0989 RESOURCE PARTNERSHIP, LR PROCESSING LTD. and LR PROCESSING PARTNERSHIP
STATUS ON APPEAL:	Not Party to the Appeal
APPELLANT/APPLICANT:	MFC ENERGY FINANCE INC.
RESPONDENT/RESPONDENT:	GRANT THORNTON LIMITED in its capacity as the Court Appointed Receiver and Manager of LEXIN RESOURCES LTD., 1051393 B.C. LTD., 0989 RESOURCE PARTNERSHIP, LR PROCESSING LTD. and LR PROCESSING PARTNERSHIP
DOCUMENT:	**CIVIL NOTICE OF APPEAL** [redacted] [redacted]
APPELLANT'S ADDRESS FOR SERVICE AND CONTACT INFORMATION:	Burnet, Duckworth & Palmer LLP 2400, 525 – 8 Avenue SW Calgary, Alberta T2P 1G1 Douglas A. McGillivray/David LeGeyt/David A. de Groot Phone Number: (403) 260-0349/0210/0167 Fax Number: (403) 260-0332 dam@bdplaw.com/dlegyt@bdplaw.com/ddegroot@bdplaw.com File No. 55825-3/DDG

WARNING

To the Respondent: If you do not respond to this appeal as provided for in the Alberta Rules of Court, the appeal will be decided in your absence and without your input.

1. **Particulars of Judgment, Order or Decision Appealed From:**

   Date pronounced: August 8, 2018

   Date entered:

   Date served:

   Official neutral citation of reasons for decision, if any:
   (do not attach copy): Alberta Energy Regulator v. Lexin Resources Ltd, 2018 ABQB 590

   (Attach a copy of order or judgment: Rule 14.12(3). If a copy if not attached, indicate under item 14 and file a copy as soon as possible: Rule 14.18(2).)

2. **Indicate where the matter originated:**

   Alberta Court of Queen's Bench

   Judicial Centre: Calgary

   Justice: B.E.C. Romaine

   On appeal from a Queen's Bench Master or Provincial Court Judge?:

   No

   Official neutral citation of reasons for decision, if any, of the Master or Provincial Court Judge: (do not attach copy)

   (If originating from an order of a Queen's Bench Master or Provincial Court Judge, a copy of that order is also required: Rule 14.18(1)(c).)

   Board, Tribunal or Professional Discipline Body

   Specify Body:

3. **Details of Permission to Appeal, if required** (Rules 14.5 and 14.12(3)(a)).

   Leave to appeal is not required as the Appellant has an automatic right to appeal pursuant to subsection 193(c) of the *Bankruptcy and Insolvency Act* R.S.C. 1985 c B-3 (the "**BIA**").

   On August 8, 2018, Madam Justice Romaine disallowed entirely the Appellants first-ranking secured claim in the amount of $15,058,116.08, which has resulted in an actual loss to the Appellant in excess of $10,000.00.

   In the alternative, if leave to appeal is required, the Appellant seeks leave to appeal pursuant to subsection 193(e) of the BIA.

   If necessary, the Appellant will schedule a hearing in respect of the leave issues before this Honourable Court as soon as possible, and if necessary file an Application (the "**Leave Application**"). An Affidavit in support of the Leave Application will be filed and served as soon as possible.

   In the alternative that leave to appeal is necessary:

a) the point of appeal is of significance to the practice to clarify the case law on (1) whether Rules 7.2 to 7.11 of the *Alberta Rules of Court* regarding Summary Judgment and Summary Trial apply to proceedings under the BIA (2) when secured advances are properly characterized as equity or debt, (3) when section 137 of the BIA is applicable to postpone a secured claim, and (4) whether the doctrine of equitable subordination is law in Canada, and if so, when equitable subordination may be applied to subordinate a secured claim;

b) the point raised on appeal is of the utmost significance to the Lexin receivership proceedings, as the Appellant is the first ranking senior secured creditor, but for the decision appealed from;

c) the appeal is *prima facie* meritorious and is not frivolous; and

d) the appeal will not unduly hinder the progress of the proceedings below.

4. **Portion being appealed** (Rule 14.12(2)(c)):

Whole.

5. **Provide a brief description of the issues:**

The procedure implemented by the Court for the litigation and determination of the Appellant's secured claim was unfair and was prejudicial to the Appellant.

Madam Justice Romaine erred in refusing to follow the rule in *Brown v. Dunn.*

Madam Justice Romaine erred in not directing a trial notwithstanding the need for expert evidence, the conflicting evidence before her Ladyship, and the need to access the credibility of the witnesses.

Madam Justice Romaine erred in characterizing the Appellant's secured loan as equity.

Madam Justice Romaine erred in postponing the Appellant's secured loan pursuant to section 137 of the BIA.

6. **Provide a brief description of the relief claimed:**

An Order reversing the disposition of Madam Justice Romaine and directing the Respondent to accept the Appellant's secured claim in the amount of $15,058,116.08.

In the alternative, an Order directing a trial of an issue concerning the validity of the Appellant's secured claim.

7. **Is this appeal required to be dealt with as a fast track appeal?** (Rule 14.14)

No

8. **Does this appeal involve the custody, access, parenting or support of a child?** (Rule 14.14(2)(b))

No

9. Will an application be made to expedite this appeal?

Yes

10. Is Judicial Dispute Resolution with a view to settlement or crystallization of issues appropriate? (Rule 14.60)

No

11. Could this matter be decided without oral argument? (Rule 14.32(2))

No

12. Are there any restricted access orders or statutory provisions that affect the privacy of this file? (Rules 6.29, 14.12(2)(e),14.83)

Yes, the Appellant's evidence is subject to a non-disclosure order.

13. List respondent(s) or counsel for the respondent(s), with contact information:

Robyn Gurofsky and Jessica L. Cameron
Borden Ladner Gervais LLP
1900, 520 - 3 Avenue SW
Calgary, AB T2P 0R3
Fax: (403) 266-1395
rgurofsky@blg.com
jcameron@blg.com
Counsel to the Respondent

If specified constitutional issues are raised, service on the Attorney General is required under s. 24 of the Judicature Act: Rule 14.18(1)(c)(viii).

14. Attachments (check as applicable)

Order or judgment under appeal if available (not reasons for decision) (Rule 14.12(3))

Earlier order of Master, etc. (Rule 14.18(1)(c))

Order granting permission to appeal (Rule 14.12(3)(a))

Copy of any restricted access order (Rule 14.12(2)(e))

If any document is not available, it should be appended to the factum, or included elsewhere in the appeal record.

15 AUGUST 2018
PRADEEP KUMAR

THIS IS EXHIBIT "6" REFERRED TO IN THE AFFIDAVIT OF PRADEEP KUMAR

SWORN BEFORE ME THIS 15th DAY OF AUGUST, 2018.

____

A Notary Public in and for the State of California

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of LOS ANGELES
Subscribed and sworn to (or affirmed) before me on this 15th **day of** August, **20**18, **by** PRADEEP KUMAR
______________________________, **proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.**

Signature ______________________________ **(Seal)**

MUTHIAH NACHIAPPAN
COMM. # 2175823
NOTARY PUBLIC - CALIFORNIA
COUNTY OF LOS ANGELES
MY COMM. EXP. JAN. 13, 2021

Form 27
[Rules 6.3 and 10.52(1)]

Clerk's Stamp
CLERK OF THE COURT
FILED
OCT 12 2017
JUDICIAL CENTRE
OF CALGARY

COURT FILE NUMBER	**1701-03460**
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	Calgary
PLAINTIFF	**ALBERTA ENERGY REGULATOR**
DEFENDANTS	**LEXIN RESOURCES LTD., 1051393 B.C. LTD., 0989 RESOURCE PARTNERSHIP, LR PROCESSING LTD. and LR PROCESSING PARTNERSHIP**
DOCUMENT	**APPLICATION BY RECEIVER: ADVICE & DIRECTION**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Robyn Gurofsky/Jessica L. Cameron Borden Ladner Gervais LLP 1900, 520 3rd Ave. S.W. Calgary, AB T2P 0R3 Telephone: (403) 232-9774/9715 Facsimile: (403) 266-1395 Email: rgurofsky@blg.com/jcameron@blg.com File No. 547730-000021

NOTICE TO RESPONDENTS: See Service List, Schedule "A" to this Application

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the master/judge.

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

Date	October 25, 2017
Time	10:00 a.m.
Where	Calgary Courts Centre, 601-5th Street SW, Calgary AB
Before Whom	The Honourable Justice B.E. Romaine

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. Grant Thornton Limited, in its capacity as the court-appointed receiver (the "**Receiver**") of Lexin Resources Ltd. ("**Lexin**"), 1051393 B.C. Ltd. ("**105**"), 0989 Resource Partnership ("**0989**"), LR Processing Ltd. ("**LR Ltd.**") and LR Processing Partnership ("**LR Processing**" and collectively with Lexin, 105, 0989 and LR Ltd. the "**Lexin Group**"), seeks:

   (a) The advice and direction of this Court in respect of the Receiver's court-approved sales process (the "**Sales Process**"), which is presently in progress, and in particular, the advice and direction of the Court as a result of certain ownership claims in a portion of the property located on Lexin owned Sites and listed for sale in the Sales Process;

   (b) The advice and direction of this Court in respect of a series of transactions (the "**Reviewable Transactions**") entered into by the Lexin Group and certain non-arm's length parties, including:

      (i) a secured loan MFC Energy Finance Inc. ("**Finance**") asserts it advanced to 0989 in the amount of $37,570,500 (the "**Finance Loan**");

      (ii) a transfer of equipment from Lexin or 0989 to 1049597 B.C. Ltd. ("**597**"), the consideration for which is stated to be a reduction to the Finance Loan;

      (iii) a transfer of certain lease and land interests from Lexin or 0989 to 1059032 B.C. Ltd. ("**1059**"), the consideration for which is stated to be a reduction to the Finance Loan;

      (iv) a transfer of certain seismic data from Lexin or 0989 to Finance, the consideration for which is stated to be a reduction to the Finance Loan;

      (v) a transfer of certain oil and gas assets from Lexin or 0989 to Notine Holdings Inc. ("**Notine**"), the consideration for which is unclear; and

      (vi) a transfer of certain additional equipment from Lexin or 0989 to Jixin Energy Inc. ("**Jixin**") and then to Energy Leasing Partners Ltd. ("**ELP**"), the consideration for which is unclear.

   (c) The appointment of Grant Thornton Limited as trustee in bankruptcy over Lexin and 0989 for the purposes of preserving limitations periods in the event the Receiver deems it appropriate to challenge the Reviewable Transactions;

   (d) A declaration that the relief sought to date by the Receiver constitutes remedial relief pursuant to the *Limitations Act* (Alberta), such that the limitations periods in which the Receiver or a trustee in bankruptcy may pursue claims to challenge the Reviewable Transactions as any of a transfer at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction pursuant to any of the *Fraudulent Preferences Act* (Alberta), the *Fraudulent Conveyances Act 1571* (13 Eliz 1, c 5), the *Bankruptcy and Insolvency Act* (Canada), or any other applicable federal or provincial legislation is preserved;

(e) Approving the Receiver's activities and conduct to date, including the Receiver's conduct with respect to the Sales Process; and

(f) A sealing order with respect to the Confidential Supplement to the Fifth Report.

2. Such further and other relief as Counsel may advise and this Honourable Court permit.

Grounds for making this application:

Background

3. On March 20, 2017, this Court granted the Alberta Energy Regulator's ("**AER**") application to petition Lexin into receivership (the "**Lexin Receivership Order**"). Subsequently, on June 13, 2017, this Court granted the Receiver's application to petition 105, 0989, LR Ltd. and LR Processing into receivership pursuant to a consent receivership order (the "**Expanded Receivership Order**" and together with the Lexin Receivership Order the "**Receivership Orders**"). All capitalized terms used but not otherwise defined herein shall have the meaning given to them in the Expanded Receivership Order.

4. The Lexin Receivership Order and the Expanded Receivership Order appointed the Receiver over all of the Debtors' Property, but provided that, while the Receiver may take possession and exercise control over the Property, the Receiver is not required to take possession or exercise physical control over any of the Debtors' oil or gas wells, pipelines, facilities or sites regulated by the AER (the "**Sites**").

5. The Sites for which the Debtors were the sole operator and owner are now under the care and custody of the Orphan Well Association; however, Sites operated by the Debtors (or any one of them) in which there are working interest participants ("**WIPs**") have been placed under the care and custody of those WIPs.

6. While the Receiver cannot take physical possession of the Sites, the Receiver is authorized to conduct a sales and marketing process with respect to all of the Debtors' Property.

Application for Bankruptcy Order

7. The Receivership Orders allow the Receiver, with leave of the Court, to assign the Lexin Group, or any one of them, into bankruptcy, should the Receiver deem it appropriate to do so in the circumstances.

8. Each of Lexin and 0989 have debts owing to creditors in excess of $1,000 and are therefore "insolvent persons" pursuant to the BIA.

9. Given that both Lexin and 0989 are insolvent persons pursuant to the BIA, and in light of the Reviewable Transactions outlined below, the Receiver has determined that it is appropriate to assign Lexin and 0989 into bankruptcy.

10. Should this Honourable Court grant the Receiver's application to assign each of Lexin and 0989 into bankruptcy, the Receiver seeks an Order which provides that Lexin's and 0989's Property shall immediately be transferred from the trustee in bankruptcy back to the Receiver, subject to the terms of the Receivership Orders. As a result, the Receiver shall continue its efforts to sell Lexin and 0989's Property for the benefit of their stakeholders, whilst the Property remains in the care and custody of the OWA and WIPs, respectively.

Summary of Non-Arm's Length Parties

11. A lengthy overview of the corporate relationships between the Lexin Group and the parties involved in the Reviewable Transactions is contained in the Receiver's Fifth Report, dated October 12, 2017 (the "**Fifth Report**").

12. A summary of the overlapping relationships between these entities is as follows:

(a) Michael Smith is a past or present director and/or officer of all of Lexin (former), 105 (former), Finance, 1059 (former), MFC Bancorp Ltd. ("**Bancorp**"), M Financial Corp. ("**M Financial**") and MFC Energy Holding Austria GmbH ("**MFC Austria**");

(b) Samuel Morrow is a past or present director and/or officer of all of 105 (former), Finance, 597, 1059, Notine, Bancorp and MFC Austria;

(c) Ferdinand Steinbauer is a past or present director and/or officer of all of Lexin (former), Finance, 1059 and MFC Austria;

(d) Gerardo Cortina is a past or present director and/or officer of all of 597 (former), Notine (former), MFC Austria and Bancorp; and

(e) All of 0989, 105, Finance, 597, 1059, Notine and Bancorp maintain registered and/or records offices with Sangra Moller. Additionally, each of Lexin's and Jixin's registered officers were formerly also maintained with Sangra Moller.

Secure Loan Claimed by Finance

13. Pursuant to the Finance Loan, Finance claims to have advanced approximately $37.5 million to 0989 and as a result of a general security agreement, is asserting a first secured loan position as against each of 0989 and Lexin to secure those obligations.

14. All of the demand loan, promissory note and general security agreement pertaining to the Finance Loan appear to have been signed or co-signed by Michael Smith on behalf of both entities, where applicable.

15. The bank account statements of 0989 show a receipt of $37,570,500 on June 30, 2015 from M Financial, apparently on behalf of Finance, along with same-day withdrawals in the amounts of $24,916,755.60 and $12,653,744.40 (totalling $37,570,500) resulting in no net change to the account.

16. The wire statements provided to the Receiver show that the beneficiaries of the $24,916,755.60 and $12,653,744.40 withdrawals from 0989's account were Lexin and Bancorp, respectively. Lexin's account statements show that on June 30, 2015, the same day the $24,916,755.60 was deposited into its account, the entirety of the funds ($24,916,755.60) were wired to MFC Austria, resulting in no net change to Lexin's account.

17. The Receiver's investigations of the 0989 accounting records do not record a cash receipt of $37,570,500; they only record an account payable of $37,570,500 owing to M Financial and a corresponding reduction in the share capital account. The Lexin accounting records contain no entries for 2015 as all accounting activity appears to have been recorded through 0989.

Reviewable Transactions

597 Equipment Transaction

18. Pursuant to a bill of sale between 0989 and 597 dated December 29, 2015 (the "**597 PSA**"), 0989 purportedly sold to 597 certain of its surface equipment. The consideration payable pursuant to the 597 PSA was $14,093,000, which was tendered by 597 through the issuance of 14,093,000 Class A voting shares of 597 to 0989.

19. Finance has advised the Receiver that all of 0989's shares in 597 were sold by 0989 to Finance on December 29, 2015, being the same day as the 597 transaction. The consideration payable

respecting 0989's sale of the 597 shares to Finance was by way of set-off of a $24,520,781 debt owing by Finance to 0989 (the "**Finance Share Debt**") as against the Finance Loan, such that the Finance Loan balance was to be reduced at that time to $13,049,719. The Finance Share Debt arose as a result of Finance's purchase from 0989 of the 597 shares and 1059 shares pursuant to a Share Purchase Agreement between 0989 and Finance, dated December 29, 2015 (the "**Finance SPA**"). The Finance SPA provided that the consideration paid in respect of the 597 shares was $14,093,001 (and as noted below $4,768,374 was paid in respect of the 1059 shares).

1059 Land Transaction

20. Pursuant to a purchase and sale agreement between 0989 and 1059 dated December 29, 2015 (the "**1059 PSA**"), 0989 purportedly sold to 1059 certain of its land and mineral interests. The consideration payable pursuant to the 1059 PSA was $4,768,374, payable by 1059 through the issuance of 4,768,374 of its shares to 0989.

21. Finance has advised the Receiver that $4,768,374 of the Finance Loan was repaid on December 29, 2015, being the same day as the 1059 transaction, by way of a transfer of 0989's 4,768,374 shares in 1059 to Finance at an ascribed value of $1.00 per share.

MFC Energy (Montana) Inc. Share Sale

22. Finance has advised the Receiver that $790,000 of the Finance Loan was further reduced on January 6, 2016, through the sale of shares in MFC Energy (Montana) Inc. from 0989 to Finance.

Seismic Sale

23. Finance has advised the Receiver that $890,000 of the Finance Loan was further reduced on February 7, 2017, through the sale of seismic data from 0989 to Finance.

Notine Transaction

24. Pursuant to a purchase and sale agreement between 0989 and Notine dated November 6, 2015 (the "**Notine PSA**"), Notine purportedly purchased from 0989 a number of 0989's producing oil and gas assets in the Niton area of Alberta. The consideration payable pursuant to the Notine PSA was $50,000,000, payable by Notine through the issuance of 50,000,000 of its shares to 0989.

25. The Receiver has learned that 0989 sold all of its shares in Notine to MFC Austria on December 18, 2015 (the "**Notine Share Sale**").

26. The consideration from MFC Austria for the Notine Share Sale was a $50 million non-interest bearing (until demand issued) and non-assignable promissory note payable from MFC Austria to 0989. The Receiver has been advised that this promissory note has been either cancelled or satisfied and continues to investigate this matter.

ELP Transaction

27. Pursuant to a purchase and sale agreement between Lexin, 0989 and Jixin dated March 30, 2015 (the "**Jixin PSA**"), Jixin purportedly purchased from Lexin and/or 0989 certain equipment for $1.00. Subsequently, pursuant to a bill of sale between Jixin and ELP dated November 12, 2015, Jixin sold this same equipment to ELP for $2,165,000. The sale as between Jixin and ELP was apparently a sale and lease back arrangement; however, the Receiver has not been provided with a copy of the leasing arrangements between Jixin and ELP.

28. There is no record contained in Lexin or 0989's accounting system of a sale of this equipment from Lexin or 0989 to Jixin in 2015, or anytime thereafter. Additionally, this equipment was insured by Lexin in 2015 and 2016 until the cancellation of Lexin's insurance for non-payment in September 2016.

29. ELP has not yet provided the Receiver with the information and documentation necessary for the Receiver to confirm ELP's ownership claims to this equipment. The Receiver does understand that the equipment subject to this transaction remains on Lexin licensed Sites.

Request for Advice and Direction

30. Based upon the information the Receiver has gathered to date, it has been unable to determine whether the Finance Loan was valid. This has complicated the Receiver's ability to determine the ownership claims made by each of 1059, 597 and Finance, as each of these transactions purportedly involved a reduction as against the Finance Loan.

31. Each of 1059, 597 and Finance have advised the Receiver that it is unable to market and sell the assets over which they claim an ownership interest in, and which assets are situated on Lexin licensed Sites.

32. With respect to the assets presently included in the Sales Process, the Receiver has confirmed that:

    (a) The 597 equipment is included;

(b) None of the lands and minerals claimed to be owned by 1059 are included; and

(c) None of the shares in MFC Energy (Montana) Inc. or seismic data has been included.

33. The Receiver requires the advice and direction of the Court in order to determine whether it may proceed with sales affecting the equipment over which 597 claims an ownership interest. Further, the Receiver requires the advice and direction of the Court in order to determine whether it may market and sell the lands and minerals claimed to be owned by 1059 and shares in MFC Energy (Montana) Inc. or seismic claimed to be owned by Finance, as sales of these assets would increase the potential realizations available to the Lexin Group's stakeholders.

34. As a result, the Receiver seeks Orders which:

(a) Provides the Receiver with advice and direction regarding the continuation of the Sales Process, and in particular, whether the Receiver is authorized to sell the equipment which 597 claims to own;

(b) Provides the Receiver with advice and direction regarding Finance's status as a creditor of the Lexin Group;

(c) Appoints Grant Thornton Limited as trustee in bankruptcy of Lexin and 0989 for the purposes of preserving limitations periods in the event the Receiver deems it appropriate to challenge the Reviewable Transactions, with an automatic assignment of all other business, undertaking and assets from the trustee to the Receiver pursuant to the pre-existing Receivership Order and Expanded Receivership Order;

(d) Declare that the relief sought to date by the Receiver constitutes remedial relief pursuant to the *Limitations Act* such that the limitations periods in which the Receiver or a trustee bankruptcy may pursue claims to challenge the validity of the Notine transaction and the ELP transaction as any of a transfer at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction pursuant to any of the *Fraudulent Preferences Act* (Alberta), the *Fraudulent Conveyances Act 1571* (13 Eliz 1, c 5), the *Bankruptcy and Insolvency Act* (Canada), or any other applicable federal or provincial legislation is preserved;

(e) Approve the Receiver's activities and conduct to date, including the Receiver's conduct with respect to the Sales Process; and

(f) Seals the Confidential Supplement, which contains both commercially sensitive information and information that if disclosed could adversely affect the Receiver's ongoing Sales Process.

Material or evidence to be relied on:

35. The Fifth Report of the Receiver, dated October 12, 2017.

36. The Confidential Supplement to the Fifth Report of the Receiver.

37. The pleadings and Receiver's Reports previously filed in these proceedings.

38. Such further and other material as counsel may advise and this Honourable Court may permit.

Applicable rules:

39. Alberta *Rules of Court*, AR 124/2010, and in particular Rules 1.3, 3.75, 6.3, 6.4, 11.27, 11.29 and 13.5.

40. *Bankruptcy and Insolvency General Rules*, and in particular Rules 3, 6 and 11.

41. Such further and other rules as Counsel may advise and this Honourable Court permit.

Applicable Acts and regulations:

42. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, and in particular Part XI thereof.

43. *Fraudulent Preferences Act*, RSA 2000, c F-24.

44. *Fraudulent Conveyances Act 1571* (13 Eliz 1, c 5).

45. *Limitations Act*, RSA 2000, c L-12.

46. Such further and other acts and regulations as Counsel may advise and this Honourable Court permit.

Any irregularity complained of or objection relied on:

47. None.

How the application is proposed to be heard or considered:

48. In person before the Honourable Justice B.E. Romaine with some or all of the parties' present.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) 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 date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

Schedule "A" Service List

COURT FILE NUMBER	**1701-03460**
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	Calgary
APPLICANT	**ALBERTA ENERGY REGULATOR**
RESPONDENT	**LEXIN RESOURCES LTD.**
DOCUMENT	**SERVICE LIST**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Robyn Gurofsky/Jessica L. Cameron Borden Ladner Gervais LLP 1900, 520 3rd Ave. S.W. Calgary, AB T2P 0R3 Telephone: (403) 232-9774/9715 Facsimile: (403) 266-1395 Email: rgurofsky@blg.com/jcameron@blg.com File No. 547730/000021

Summit Acceptance Corp. 4620 Blackfoot Trail SE Calgary AB T2G 4G2	
MFC Energy Finance Inc. 1860 - 400 Burrard Street Vancouver BC V6C 3A6	
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Enerflex Ltd. 10121 Barlow Trail NE Calgary AB T3J 3C6	
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THIS IS EXHIBIT "7" REFERRED TO IN
THE AFFIDAVIT OF PRADEEP KUMAR

SWORN BEFORE ME THIS 15TH DAY OF
AUGUST, 2018.

____
A Notary Public in and for the State of
California

Grant Thornton

	Clerk's Stamp CLERK OF THE COURT FILED OCT 12 2017 JUDICIAL CENTRE OF CALGARY

COURT FILE NUMBER: **1701-03460**

COURT: **COURT OF QUEEN'S BENCH OF ALBERTA**

JUDICIAL CENTRE: **CALGARY**

APPLICANT: **ALBERTA ENERGY REGULATOR**

RESPONDENT: **LEXIN RESOURCES LTD., 1051393 B.C. LTD., 0989 RESOURCE PARTNERSHIP, LR PROCESSING LTD. and LR PROCESSING PARTNERSHIP**

DOCUMENT: **RECEIVER'S FIFTH REPORT OCTOBER 12, 2017**

Volume 1 of 2

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Advice and Direction Request: Sales Process Issues

73. The state of affairs above has complicated the Receiver's ability to determine the ownership claims being asserted by all of 1059, 597 and Finance regarding the Lexin Group's land and mineral interests, equipment, seismic data and subsidiary shareholdings, as each of these transactions purportedly involved consideration through a reduction to the balance on the Finance Loan.

74. While the Sales Process was approved by the Court on July 14, 2017, and discussions ensued in which the Receiver had understood all equipment would be included in the Sales Process, on September 7, 2017 the Receiver was advised, through correspondence from Sangra Moller, that each of Finance, 597 and 1059 believed the Receiver to be conducting a false and materially misleading Sales Process by virtue of including assets owned by 597 and 1059 in that process. Attached as **Appendix 21** is a copy of the September 7, 2017 letter received from Sangra Moller.

75. The Receiver replied, advising that it had understood, based on prior discussions between the parties, that 597 consented to the inclusion of the 597 equipment in the process on the basis that purchasers would allocate values to the assets in the purchase and sale agreements and entitlement to the sale proceeds would be determined at a later date. The Receiver also advised at this time that it had concerns about the validity of the Finance Loan, and that these concerns affected the ownership claim of 597, given the nature of the stated consideration, being a set off against the Finance Loan. As referenced earlier in this report, attached as Appendix 19 is a copy of the Receiver's September 14, 2017 reply to Sangra Moller, which letter addressed a number of issues aside from equipment ownership.

76. On September 15, 2017, Sangra Moller replied to the Receiver, advising that its clients would consent to the inclusion of the disputed property in the Receiver's Sales Process, subject to the parties reaching a satisfactory agreement which at a minimum allowed their clients a right to receive and review bids, require their prior consent for the sale of any of the disputed assets and to otherwise be properly informed of the process. Attached as **Appendix 22** is a copy of Sangra Moller's September 15, 2017 correspondence.

77. The Receiver met with Sangra Moller, legal counsel to Finance, 597 and 1059 on September 28, 2017, to discuss these issues. At that meeting, the Receiver had understood that the parties had reached an agreement regarding the Receiver's continuation of the Sales Process and Sangra Moller's participation in the upcoming bid review meeting. The Receiver understood the agreement to be that, subject to executing a confidentiality agreement, Sangra Moller and a representative of Finance would be allowed to sit in on the bid review meeting. The Receiver had been advised that Finance had no intention of submitting a bid in the Sales Process and for that reason, the Receiver was prepared to allow its representative at the bid review meeting despite its concerns about the Finance Loan. The Receiver believed that the offer to attend the bid review meeting would minimize any disruption or uncertainty to the Sales Process caused by allegations that the process was flawed.

78. In the correspondence that was subsequently exchanged between the parties, it is apparent that the parties had a different understanding of the agreement that was reached, as Sangra Moller indicated it would not execute a confidentiality agreement and still required input into the Receiver's selection of bids on offers involving assets over which their clients claim an ownership interest. The correspondence between the Receiver's counsel and Sangra Moller between October 2 and October 5, 2017 is attached as **Appendices 23** to **26**.

79. While the land assets claimed to be owned by 1059 are not included in the Sales Process, if the ownership claim is invalid and the transfer is void, the Receiver could market these assets for the benefit of the Lexin Group's stakeholders. However, the equipment subject to 597's ownership claim is subject to the ongoing Sales Process. Thus it is clear that 597's ownership claim respecting the equipment on Lexin-licensed Sites needs to be resolved in order for the Receiver to be able to conclude its Sales Process with respect to any offers made regarding those Lexin-licensed Sites.

80. Based upon its discussions with the AER, the Receiver understands the AER has concerns with delays in the Sales Process due to the fact that many of the assets require winterization.

81. The Receiver also understands that both the AER and certain municipalities maintain the position that their liens pursuant to the OGCA and *Municipal Governments Act*, respectively,

give them priority over the disputed equipment, which is located on Lexin licensed Sites. The Receiver is considering these claims.

Advice and Direction Request: Implications of Finance Loan

82. Although the Receiver has determined that 0989 received an advance of funds in the amount of $37,570,500 from M Financial, apparently on behalf of Finance pursuant to the Finance Loan, it has also determined that none of these funds remained in either 0989 or Lexin and on the same day, were wired either directly to Bancorp or indirectly to MFC Austria via Lexin. The Receiver also notes that the Finance Loan was accounted for by 0989/Lexin within its financial records as a share capital reduction.

83. The Receiver requires the Court's advice and directions with respect to the validity of the Finance Loan in order to determine the ownership claims being asserted by all of 1059, 597 and Finance, as each of these transactions purportedly involved consideration through a reduction to the balance on the Finance Loan.

84. During the period between the June 30, 2015 date of the Finance Loan and the March 20, 2017 date of receivership, wherein over $22.5 million of the Lexin Group's assets were used to partially settle the Finance Loan, the Receiver understands that the Lexin Group ceased paying the majority of its obligations when due. In particular:

    a) Numerous mineral lessors were not paid when due with the result that the underlying mineral leases went into default and were cancelled and/or had large arrears owing;

    b) Surface lessors, numbering well into the hundreds as per the Surface Rights Board, were not paid when rentals were due (or at all) with the result that the Lexin Group no longer has valid access to the applicable Sites and has an unknown, but material, deficiency owing to these surface lessors;

    c) Crown, freehold and gross overriding royalties were not paid when due, the former in the quantum of at least $3.4 million based on information provided by the Alberta government, who have noted that the Lexin Group's required Petrinex reporting to them ceased in or around April 2016 and as a result this Crown royalty liability may be materially understated;

d) Security deposits owing of over $70 million to the AER were not paid when due;

e) Joint venture accounting to the Lexin Group's over 50 joint venture partners on EnergyLink was not kept current past June 2016, when virtually all of Lexin Group's accounting staff were terminated;

f) Municipal property taxes were not paid when due commencing, for some of the municipalities, as early as 2015;

g) All of the Lexin Group's employees were terminated leaving as yet unquantified obligations owing to former employees;

h) Payments for natural gas production from wells the Lexin Group operated both for its own account and for joint venture partners was directed to MFC Austria without any trust considerations for royalties or joint venture ownership of this production, with payments being made to MFC Austria even after the date of the Receivership Order; and

i) Invoices and amounts due to trade creditors of the Lexin Group were not paid when due in an unknown amount.

85. The Receiver has been unable to definitively quantify many of the above items as a result of the following factors:

a) Lack of access to records, both hard copy and electronic, which access was complicated by Lexin's assertions of privilege and which resulted in the creation and implementation of the Document Protocol Order ("**DPO**"). The Receiver has previously reported at length regarding the history of the difficulties and expense occasioned by the DPO;

b) Delayed access to the Lexin Group's banking records in Austria;

c) Lack of access to or information from former Lexin Group staff; and

d) Until just recently, an inability to utilize the section 163 examination powers which were granted to the Receiver pursuant to the Order of this Honourable Court dated May 8, 2017, due to the appeal of such Order filed by Lexin. The Alberta Court of Appeal has recently advised the parties that such appeal has been deemed abandoned by the Court of Appeal.

86. Those factors notwithstanding, based on the June 30, 2016 balance sheet of 0989/Lexin, which is attached to this report as **Appendix 27** (which is a combined balance sheet based on the Lexin Group's accounting), there are over $140 million of liabilities listed. Further, the Receiver can advise that the results of its review of the conditional bids submitted at the October 5 bid deadline in the Court-approved Sales Process, are such that significant liabilities will remain, even if all of the highest conditional bids are ultimately transacted.

87. In the Receiver's view, and subject to the advice and direction of this Court, if the Finance Loan is invalid the implications are as follows:

a) Finance will not be a creditor, let alone a secured creditor, of 0989 and will instead become a debtor for the quantum of the property and cash that it received in partial settlement of the initial loan balance, as outlined above.

b) The ownership of the equipment that is still held by 597 (i.e. that was not sold to third parties prior to the receivership), all of which, to the best of the Receiver's knowledge, is located on Sites included in the Sales Process presently underway, will need to be returned to 0989 within the terms of a Court Order so that this equipment can be sold by the Receiver.

c) The ownership of the land assets purportedly owned by 1059, which assets were not included in the Sales Process, will need to be returned to 0989 within the terms of a Court Order and realized upon by the Receiver.

d) The ownership of the seismic assets that are largely located at Calgary Archives under the Receiver's account, or at third party storage locations specializing in seismic storage, and which assets were not included in the Sales Process, will need to be returned to 0989 within the terms of a Court Order in order that these assets can be realized upon by the Receiver.

e) The ownership of the shares in MFC Energy Montana (Inc.) will need to be returned to 0989 within the terms of a Court Order and realized upon by the Receiver.

f) The Receiver's investigations into the unreconciled balance of the Finance Loan, along with efforts to identify any of the above assets that were sold by these entities above prior to the receivership, will need to continue in order to identify what additional 0989 assets, if any, were used to settle the Finance Loan balance.

Notine Transaction

88. As outlined in the Receiver's Prior Reports, Notine received a number of producing oil and gas assets in the Niton area of west central Alberta (the "**Niton Assets**") from Lexin in or around the year preceding the Receivership.

89. The AER advised the Receiver that several days after the Receivership Order, Notine contacted the AER requesting a transfer of license interests presently listed under Lexin's ownership to Notine, which Notine asserts were omitted from earlier transfers from Lexin to Notine due to possible clerical errors.

90. The Receiver's subsequent investigations into this matter revealed that:

a) Lexin transferred 171 well and facility licenses located in the Niton area to Notine between November 2015 and April 2016, which transfers contributed to a decrease in Lexin's licensee liability rating from 1.13 to 1.00 during this time frame; and

b) 81 Crown mineral leases were transferred from Lexin to Notine in November 2015.