

Clerk's stamp:



COURT FILE NUMBER 1401-05914

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT CP ENERGY MARKETING LP

RESPONDENT KYOTO FUELS CORPORATION

I hereby certify this to be a true copy of the original Order

Dated this 27 day of January 2015

[Signature]
for Clerk of the Court

DOCUMENT Order
(re: Approval and Vesting)

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

DENTONS CANADA LLP
Bankers Court
15th Floor, 850 - 2nd Street S.W.
Calgary, Alberta T2P 0R8
Attention: David W. Mann / Derek M. Pontin
Ph. (403) 268-7097/6301 Fx. (403) 268-3100
File No.: 131079-90

DATE ON WHICH ORDER WAS PRONOUNCED January 27, 2015

LOCATION WHERE ORDER WAS PRONOUNCED Calgary Courts Centre, Calgary, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER Honourable Justice Macleod

ORDER
(re: Approval and Vesting)

UPON the application of Ernst & Young Inc., in its capacity as receiver manager (the "Receiver") of Kyoto Fuels Corporation ("KFC") in these proceedings; AND UPON having read the Application of the Receiver, dated January 21, 2015, the Second Report of the Receiver, dated January 21, 2015 (the "Report"), the Affidavit of Rosie Cooney, dated January 27, 2015 (the "Service Affidavit"), and such other material in the pleadings and proceedings as deemed necessary; AND UPON hearing counsel for the Receiver, including confirmation that, by agreement in writing dated January 23, 2015, made between the

Receiver and the Purchaser, the Receiver and Purchaser have waived the condition precedent set out in paragraph 2.5(d) of the Purchase and Sale Agreement (as defined herein), and the Receiver and Purchaser have agreed that the Closing Time, defined and agreed in the Purchase and Sale Agreement, is amended to 12:00 noon on February 19, 2015, or such other date as the parties may agree in writing; AND UPON hearing counsel for Agriculture Financial Services Corporation (“AFSC”), CP Energy Marketing LP (“CP”) and other interested parties; IT IS HEREBY ORDERED AND DECLARED THAT:

Service

1. The time for service of notice of this application is abridged to the time actually given and service of the Application and supporting material as described in the Service Affidavit is good and sufficient, and this hearing is properly returnable before this Honourable Court today and further service thereof is hereby dispensed with.

2. All capitalized terms not otherwise defined in this Order shall have the meaning ascribed to them in the Report and the following terms shall have the following meaning:

(a) **“Assets”** means the real and personal property described at Schedule “A” of the Purchase and Sale Agreement;

(b) **“Closing Adjustments”** means the amounts required to pay all reasonable and ordinary closing costs, including without limitation goods and services and other applicable sales taxes, property taxes, commissions, applicable condominium fees, and legal fees and disbursements;

(c) **“Lands”** means the lands municipally described as 212054 TWP Road 81A, County of Lethbridge, Alberta and legally described as:

PLAN 1112836
BLOCK: 1
LOT/UNIT: 19
TITLE: 111245244
EXCEPTING THEREOUT ALL MINES AND MINERALS

and any and all real property and buildings located on the Lands, including, without limitation, attachments and fixtures thereto;

(d) **“Net Proceeds”** means the proceeds from the sale of the Property less amounts required to pay the Closing Adjustments;

(e) **“Property”** means all of KFC’s right, title and interest in and to the Lands and other Assets;

(f) **“Purchase and Sale Agreement”** means the Asset Purchase Agreement, dated January 21, 2015 respecting the sale of the Property by the Receiver to the Purchaser; and

(g) **“Purchaser”** means Pelican Transfer Inc.

Approval of Sale and Vesting of the Property

3. The Purchase and Sale Agreement is commercially reasonable and the sale and conveyance of the Property to the Purchaser in accordance with the terms of the Purchase and Sale Agreement be and is hereby authorized and approved.
4. The Receiver is hereby authorized and directed to execute all deeds, documents, and agreements, and to do all things reasonably necessary to complete the conveyance of the Property pursuant to the terms of the Purchase and Sale Agreement and carry out the terms of this Order.
5. Upon the Receiver delivering a certificate (the "**Receiver's Certificate**") certifying that the sale of the Property has closed in accordance with the terms of the Purchase and Sale Agreement and all purchase monies due and owing in respect of such sale have been tendered to the Receiver's solicitors, then:
 - (a) the Property shall be vested in the name of the Purchaser free of all estate, right, title, interest, royalty, rental, and equity of redemption of KFC and all persons who claim by, through or under KFC in respect of the Property, subject only to the permitted encumbrances outlined in Schedule "A" of this Order (the "**Permitted Encumbrances**");
 - (b) KFC and all persons who claim by, through or under KFC in respect of the Property, save and except the Permitted Encumbrances, shall stand absolutely barred and foreclosed from all estate, right, title, interest, royalty, rental, and equity of redemption of the Property and, to the extent that any such person remains in possession or control of any of the Property, they shall forthwith deliver possession of same to the Purchaser or its nominee;
 - (c) the Purchaser shall be entitled to enter into and upon, hold and enjoy the Property for its own use and benefit without any interference of or by KFC, or any person claiming by or through or against KFC; and
 - (d) the Registrar of the Land Titles Office of Alberta shall discharge all encumbrances in respect of the Lands, save and except the Permitted Encumbrances, and shall register the Property in the name of the Purchaser notwithstanding the requirements of section 191 of the *Land Titles Act* (Alberta) (the "**LTA**").
6. The Receiver is authorized and empowered, in respect of the Property, to execute and deliver:
 - (a) such additional, related and ancillary documents and assurances governing or giving effect to the conveyance of the Property, which, in the Receiver's discretion are reasonably necessary or advisable to conclude the transactions contemplated in or in furtherance of the transfer of the Property and/or this Order; and
 - (b) any and all instruments and documents in respect of the Property as may be required by the Registrar of the Land Titles Office of Alberta or deemed necessary by the Receiver, and the Registrar is hereby directed, notwithstanding any restrictions in the LTA, including but not limited to s. 191(1) of the LTA, to effect registration of any such instrument or document so executed by the Receiver or the Receiver's solicitors.
7. Upon the filing of the Receiver's Certificate, the Receiver shall discharge, or authorize the discharge of, any security registration or registrations in the Personal Property Registry of the

Province of Alberta as may be required to properly convey clear title of the Property to the Purchaser.

8. Upon the filing of the Receiver's Certificate, the Net Proceeds shall be held by the Receiver in the place and stead of the Property transferred pursuant to this Order. The amount of \$396,000 of the Net Proceeds will be held back by the Receiver as a reserve and may be applied by the Receiver for the following purposes:
 - (a) the amount of \$50,000 for payment of any purchase price adjustments in relation to the KFC Property;
 - (b) the amount of \$100,000 for payment of operating costs accruing up to the closing date for the sale of the Property;
 - (c) the amount of \$120,000 for payment of professional fees as have accrued and are unpaid and as are estimated to be incurred in the completion of the receivership; and
 - (d) the amount of \$126,000 for payment of potential priority claims, as may be proven (the "**Claims Reserve**");

(collectively, the "**Holdback Amounts**").
9. The Net Proceeds shall be disbursed by the Receiver only with the consent of the Receiver or upon further Order of the Court. The Claims Reserve will be held by the Receiver and not disbursed to any party until further Order of this Honourable Court.
10. All claims of whatsoever nature or kind, including without limitation, all real property taxes not subject to adjustment hereunder, liens, claims, encumbrances, mortgages, proprietary claims, including Thermo Fisher Financial Services Inc. ("**Thermo Fisher**") claim that it retains title and has priority to certain equipment delivered to KFC prior to the commencement of these receivership proceedings (the "**TF Claim**"), trust claims, lease claims, royalty claims, and other interests, other than the Permitted Encumbrances, (the "**Claims**") shall attach solely to the Net Proceeds, subject to the Holdback Amounts, with the same validity, priority and in the same amounts and subject to the same defences that were or may have been available when the Claims were attached to the Property itself. For clarity, and without limiting the generality of the foregoing, Thermo Fisher shall have the same legal entitlement, priority and all legal arguments available to it in respect of the TF Claim as against the Claims Reserve as are in existence prior to the sale contemplated by the Purchase and Sale Agreement.

Miscellaneous


11. Any conveyance or transfer of the Property made pursuant to the provisions of this Order shall be valid and enforceable and not be rendered invalid or unenforceable and the rights and remedies of the parties thereto shall not otherwise be limited or impaired in any way by: (i) the pendency of these receivership proceedings and the declaration of KFC's insolvency made herein; (ii) any Bankruptcy Order sought or issued pursuant to the *Bankruptcy and Insolvency Act (Canada)* ("**BIA**") in respect of KFC; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing agreement, lease, sub-lease, offer to lease or other arrangement which

binds KFC (a "Third Party Agreement"), and notwithstanding any provision to the contrary in any Third Party Agreement:

- (a) the transaction contemplated hereby shall not create or be deemed to constitute a breach by KFC of any Third Party Agreement to which they are a party; and
 - (b) the Purchaser shall not have liability to any person whatsoever as a result of any breach of any Third Party Agreement caused by or resulting from the creation, execution, delivery or performance of any transaction contemplated hereby.
12. Notwithstanding (i) the pendency of these proceedings and the declaration of KFC's insolvency made herein, (ii) any Bankruptcy Order sought or issued pursuant to the BIA in respect of KFC, and (iii) the provisions under the BIA, or any other applicable federal or provincial legislation or common law, the purchase and transaction contemplated hereby shall constitute legal, valid and binding obligations of KFC enforceable against it in accordance with the terms thereof, and no transaction contemplated herein will be void or voidable at the instance of creditors and claimants and do not constitute nor shall they be deemed to constitute settlements, fraudulent preferences, assignments, fraudulent conveyances, oppressive conduct, or other reviewable transactions under the BIA, or any other applicable federal or provincial legislation or common law.
13. The Receiver, the Purchaser, or any interested party may apply to this Court for advice and direction on notice to any party likely to be affected by the Order sought or on such notice as this Court directs.

General

14. The Receiver shall serve, by courier, facsimile transmission, e-mail transmission, or ordinary post, a copy of this Order on all parties present at this application and on all parties who received notice of this application or who are presently on the service list established in these proceedings, and service on any or all other parties is hereby dispensed with. Service affected as aforesaid shall be good and sufficient service.


Justice of the Court of Queen's Bench of Alberta

SCHEDULE A
(Order re: Approval and Vesting)

PERMITTED ENCUMBRANCES

1. The claim or claims of Superior Steel Products, Inc. in relation to assets of Kyoto Fuels Corporation in the possession of Superior Steel Products, Inc.
2. The following registered encumbrances affecting the lands legally described as Plan 1112836, Block 1, Lot 19:

Registration Number	Encumbrances & Interests
6992GI	AGREEMENT "RESTRICTIVE COVENANT AND EASEMENT" " AFFECTS PART OF THIS TITLE "
7519GM	RESTRICTIVE COVENANT " AFFECTS PART OF THIS TITLE "
4911HQ	ZONING REGULATIONS SUBJECT TO THE LETHBRIDGE AIRPORT ZONING REGULATIONS
1485KX	IRRIGATION ORDER/NOTICE THIS PROPERTY IS INCLUDED IN THE ST. MARY RIVER IRRIGATION DISTRICT
771 069 919	UTILITY RIGHT OF WAY GRANTEE - CANADIAN WESTERN NATURAL GAS COMPANY LIMITED. "AS TO PORTION OF SW 1/4 OF SEC. 10"
931 013 520	UTILITY RIGHT OF WAY GRANTEE - CANADIAN WESTERN NATURAL GAS COMPANY LIMITED. " AFFECTS PART OF THIS TITLE "
951 069 938	UTILITY RIGHT OF WAY GRANTEE - CANADIAN WESTERN NATURAL GAS COMPANY LIMITED. AS TO PORTION OR PLAN:9510753 (R/W B)
951 069 939	UTILITY RIGHT OF WAY GRANTEE - FORTISALBERTA INC. 320 - 17 AVENUE S.W. CALGARY ALBERTA T2S2Y1 AS TO PORTION OR PLAN:9510753

(R/W A)

(DATA UPDATED BY: TRANSFER OF
UTILITY RIGHT OF WAY 001301263)
(DATA UPDATED BY: CHANGE OF
NAME 051028858)

031 289 817

UTILITY RIGHT OF WAY
GRANTEE - PENGROWTH CORPORATION.
2100, 222 THIRD AVENUE SW
CALGARY ALBERTA T2P0B4
(DATA UPDATED BY: TRANSFER OF
UTILITY RIGHT OF WAY 081060268)

041 060 396

DISCHARGE OF UTILITY RIGHT OF WAY
031289817
PARTIAL
EXCEPT PLAN/PORION: 0312658

081 317 617

EASEMENT
OVER AND FOR BENEFIT OF: SEE INSTRUMENT
AS TO PLAN AND PORTION: SEE INSTRUMENT

081 317 618

EASEMENT
OVER AND FOR BENEFIT OF: SEE INSTRUMENT
AS TO PLAN AND PORTION: SEE INSTRUMENT

081 317 619

EASEMENT
OVER AND FOR BENEFIT OF: SEE INSTRUMENT
AS TO PLAN AND PORTION: SEE INSTRUMENT