

COURT FILE NUMBER 1401-05914
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
APPLICANT CP ENERGY MARKETING LP
RESPONDENT KYOTO FUELS CORPORATION
DOCUMENT SECOND REPORT OF THE RECEIVER

JANUARY 21, 2015

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

RECEIVER

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COUNSEL

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INTRODUCTION

1. On April 30, 2014, the Court of Queen's Bench of Alberta ("Court") issued an order ("Initial Order") granting Kyoto Fuels Corporation ("Kyoto" or the "Company") protection pursuant to the *Companies' Creditors Arrangement Act* ("CCAA") (the "CCAA Proceedings"). Ernst & Young Inc. ("EY") was appointed monitor ("Monitor") under the Initial Order.
2. The Initial Order was granted upon the application of T&E Ventures Inc. ("T&E"), a secured creditor of Kyoto.
3. Kyoto's CCAA Proceedings were terminated and on May 29, 2014, the Court issued a Receivership Order appointing EY as Receiver (the "Receiver") of the property, assets, and undertakings (the "Property") of Kyoto.
4. The Receivership Order authorized the Receiver, *inter alia*, to carry on the business of Kyoto, to sell, convey, transfer, lease or assign the Property out of the normal course of business, subject to Court approval for transactions in excess of \$500,000 individually and \$1,000,000 in aggregate and to make such arrangements or agreements as deemed necessary by the Receiver. The Receivership Order also authorized the Receiver to borrow up to \$600,000 by way of Receiver's Certificates which amount was subsequently increased to \$850,000 by order of this Honourable Court granted October 24, 2014.
5. The purpose of this second report of the Receiver (the "Second Report") is to:
 - (a) Provide this Honourable Court with an update on the actions of the Receiver since the first report of the Receiver dated October 17, 2014 (the "First Report");
 - (b) Provide this Honourable Court with an update on the Receiver's actions in respect of marketing the Property for sale; and
 - (c) Respectfully recommend that this Honourable Court grant orders approving the Pelican Sale Transaction (as defined below).

TERMS OF REFERENCE

6. In developing this Second Report, the Receiver has relied upon unaudited financial information previously prepared by Kyoto's management, Kyoto's books and records and discussions with its former management. The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Monitor expresses no opinion or other form of assurance in respect of the information. Future orientated financial information relied upon in this report is based on assumptions regarding future events and actual results achieved will vary from this information and the variations may be material.
7. Unless otherwise noted all currency references in this Second Report are in Canadian dollars.
8. Capitalized terms not defined in the Second Report are as defined in the Receivership Order.

BACKGROUND

9. Kyoto's plan was to become a commercial producer of biodiesel fuel, a fuel made from feedstock such as plant oils or animal fats. Kyoto's biodiesel plant is located near Lethbridge, Alberta and is the second largest biodiesel plant in Canada, with production capacity of 79 million litres per year (the "Plant").
10. The Plant never operated at commercial production capacity. The Plant operated briefly in the fall of 2013 to test the production process and produced a small amount of biodiesel. The Plant never operated subsequent to the test production process.
11. The Receiver understands that additional investment would have been required for the Plant to be able to produce biodiesel commercially including funding additional test production, specification testing of such production, and completion of the Plant's testing lab.
12. Kyoto's major secured creditors are as follows:
 - (a) T&E has a first priority position for \$400,000 plus accrued interest for the debtor in possession financing ("DIP") it provided to fund the CCAA Proceedings;
 - (b) Agriculture Financial Services Corporation ("AFSC") has a second priority position pursuant to the issuance of Receiver's Certificates totalling \$850,000 (plus accrued interest);
 - (c) CP Energy Marketing LP ("CP") and AFSC ranking pari passu pro-rata to the amounts advanced and interest thereon having a third priority position, for approximately \$11.2 million (together, the "Senior Secured Lenders"); and
 - (d) T&E has a fourth priority position of approximately \$3.9 million.
13. Background and other information regarding these receivership proceedings has been posted on the Receiver's website at: www.ey.com/ca/kyotofuels.

RECEIVER'S ACTIVITIES

14. As described in the First Report, the Receiver undertook two sales processes neither of which produced an acceptable offer capable of completion. The Receiver requested liquidation proposals from liquidation firms but no acceptable proposals were received.
15. Accordingly, the Receiver and the Senior Secured Lenders devised a Proposed Final Bid Process (as defined in the First Report). Subsequent to the filing of the First Report and in further discussions with the Senior Secured Lenders it was determined not to proceed with the Proposed Final Bid Process but rather to investigate a real estate sale either with or without prior dismantling of the Plant.
16. The Receiver requested and obtained two proposals to dismantle the Plant (the "Dismantling Proposals"). Both Dismantling Proposals quoted dismantling costs of approximately \$500,000. Although both proposals indicated that there may be value in the dismantled equipment in excess of the dismantling costs, neither party would provide such a guarantee to the Receiver.

17. The Receiver obtained an appraisal of the Property from Cushman Wakefield Ltd. ("CW") assuming that the biodiesel production equipment was removed. CW appraised the Property in this manner at a value between \$3.2 and \$3.8 million. In connection with considering a real estate sale, the Receiver obtained three additional indications of value from local Lethbridge realtors that ranged between \$1.5 million and \$3 million.
18. Given the uncertainty of the dismantling costs and potential environmental risks, the Receiver, in discussions with the Senior Secured Lenders, concluded that dismantling the Plant was not appropriate.
19. Accordingly, it was determined that the most appropriate mechanism to further market the Property and therein achieve the best possible realization would be by engaging an appropriate realtor to market the Property as a real estate sale rather than as a biodiesel plant.

Real Estate Brokerage Proposals

20. The Receiver requested real estate brokerage proposals from six Realtors: Avison Young Lethbridge Inc. ("AY"); CW; CBRE, Inc. ("CBRE"); Colliers Canada Ltd. ("Colliers"); Royal LePage South Country Real Estate Services Ltd. ("Royal LePage"); and Bankers Commercial Real Estate Ltd. ("Bankers") (collectively, the "Brokers").
21. Proposals were received from AY, Royal LePage and Bankers (the "Brokerage Proposals").
22. The other Realtors declined to present proposals due to a conflict (CBRE) or to a lack of resources located in Lethbridge (CW and Colliers).
23. The terms of the Brokerage Proposals were similar with a listing price of between \$1.53 million and \$3 million.
24. AY was selected to market the Property due to its:
 - (a) national and international contacts and marketing approach;
 - (b) experience with previous receivership sales;
 - (c) depth of understanding of the Lethbridge real estate market; and
 - (d) proposed marketing plan.
25. AY was engaged to list the Property for sale on November 26, 2014 (the "Listing Agreement").

Environmental Site Assessment Proposals

26. The Receiver determined, in consultation with both the Senior Secured Lenders and AY, that it would be beneficial to obtain an Environmental Site Assessment ("ESA") of the Property. The Receiver approached two environmental consultants to provide quotes for the ESA and the most cost effective proposal was received from WA Environmental ("WA") of Lethbridge. WA was engaged to complete a Phase II ESA on December 11, 2014.

27. As a result of receiving offers on the Property (detailed below), the Phase II ESA was no longer necessary and WA's engagement was terminated on January 7, 2015.

SALES PROCESS

28. AY's marketing efforts (the "AY Marketing Process") included:
- (a) Listing the Property at a sale price of \$2.25 million on November 26, 2014;
 - (b) Preparing and distributing a brochure to over 500 relevant contacts from AY's databases;
 - (c) Direct contact with approximately 20 prospects identified by AY;
 - (d) Direct contact with approximately 30 additional parties identified by the Receiver;
 - (e) Advertising the listing:
 - (i) on AY's website and affiliated marketing sites;
 - (ii) in AY's periodic email distribution to its contacts; and
 - (iii) on Loopnet and Spacelist (two high traffic real estate websites); and
 - (f) Conducting four tours of the Plant with three interested parties.
29. AY engaged in substantive discussions with five interested parties.
30. Two offers were received, one on December 17 and the other on December 18, 2014. The Receiver and AY negotiated with both parties to remove the majority of conditions. Moreover, as the offers were for approximately the same amount, the Receiver also requested that each offeror consider increasing its offer price. A deadline of December 20, 2014 was established for the two offerors to submit their best and final offers.
31. The best offer received on December 20, 2014 was from Pelican Transfer Inc. ("Pelican") in the amount of \$2,819,651.20 (the "Pelican Offer"). The Pelican Offer was provisionally accepted by the Receiver and has been negotiated to provide as follows:
- (a) Deposit in the amount of \$500,000;
 - (b) A purchase price of \$2,809,651.20 being \$10,000 less than originally tendered (the price reduction being further described below);
 - (c) Conditions being limited to Court approval of the sale and necessary government approvals being obtained; and
 - (d) A condition date of the earlier of satisfaction of conditions or February 27, 2015 and a closing date of two business days following the condition date.

32. The Receiver has discussed the Pelican Offer with the Senior Secured Lenders, and has accepted the Pelican Offer subject to obtaining approval of the sale from this Honourable Court.
33. The Receiver recommends this Honourable Court approve the sale of the Property to Pelican (the "Pelican Sale Transaction") as:
- (a) The property was extensively marketed through the CCAA and Receivership proceedings and the Pelican Offer represents the best bid received;
 - (b) The Receiver believes that Pelican has the wherewithal to close the sale;
 - (c) Pelican does not require dismantling the Plant or completion of an ESA;
 - (d) The Property's ongoing holding costs (as detailed in the First Report) will cease upon closing;
 - (e) The \$10,000 price reduction relates to a tank held at a supplier in the USA which cost approximately \$40,000 but will incur costs of approximately \$30,000 to move to Canada;
 - (f) The sale price will provide for repayment in full of the financing provided during the CCAA Proceedings (\$400,000 plus accrued interest) and of the Receiver's Certificates (\$850,000 plus accrued interest); and
 - (g) It is supported by the Senior Secured Lenders who are the only creditors that will receive any repayment in respect of their security (other than those parties that provided financing during the CCAA Proceedings and by way of Receiver's Certificates or with valid priority claims).
34. A purchase and sale agreement was executed on January 21, 2015 (the "Pelican PSA"). A copy of the Pelican PSA is attached as Exhibit "1".

RECEIPTS AND DISBURSEMENTS

35. Attached as Exhibit "2" is an interim statement of receipts and disbursements for the period May 29, 2014 to January 21, 2015.
36. The Receiver is authorized, as described above, to borrow up to \$850,000 by way of Receiver's Certificates. This amount has been fully drawn.
37. The Receiver has billed and been paid \$264,717 (inclusive of GST) to date. The Receiver has current unbilled time of approximately \$40,000.
38. The Receiver's legal counsel has billed and been paid \$107,021 (inclusive of GST) to date. It currently has unbilled time of approximately \$30,000.
39. The Receiver has cash on hand of approximately \$70,000. If the Proposed Sale Transaction is not approved by this Honourable Court, the Receiver will have insufficient funds to pay monthly

operating costs and professional fees beyond the month of January, 2015 and accordingly would immediately require additional funding.

PROPOSED SCHEME OF DISTRIBUTION

40. Should the Pelican Sale Transaction be approved by this Honourable Court, the Receiver anticipates having funds available of approximately \$2.7 million taking in to consideration the cash on hand and the proceeds of the Pelican Sale Transaction less AY's commission.
41. The Receiver proposes to make the following distributions:
 - (a) Repayment of \$400,000 (plus accrued interest) advanced by T&E during Kyoto's CCAA proceedings (the "CCAA Financing");
 - (b) Repayment of \$850,000 (plus accrued interest) advanced by AFSC by way of Receiver's Certificates and secured by the Receiver's Borrowing Charge (the "Receivership Financing"); and
 - (c) Payment of approximately \$1 million for distribution to the secured creditors (the "Proposed Interim Distribution").
42. The Receiver intends to hold back (the "Holdback") a total of \$396,000 in respect of the following:
 - (a) \$50,000 to allow for any purchase price adjustments which may arise in the Pelican Sale Transaction;
 - (b) \$100,000 for operating costs to the Closing Date;
 - (c) \$70,000 in respect of unpaid professional fees as detailed above and an additional \$50,000 for professional fees estimated to be incurred in concluding the Receivership; and
 - (d) \$126,000 which represents the maximum potential claim of two parties in respect of leased equipment over which title is claimed:
 - (i) National Leasing Group Inc. which was owed approximately \$11,000 at the date of Receivership; and
 - (ii) Thermo Fisher Scientific Inc. which delivered equipment to Kyoto with an original value of approximately \$115,000.
43. A summary of the funds available at the Closing Date, the Holdback, the CCAA Financing Repayment and the Receivership Financing Repayment is attached at Exhibit "3".
44. The Receiver's legal counsel has opined that the security held by the Senior Secured Lenders, subject to the assumptions and qualifications contained therein, which ranks *pari passu*, is valid and enforceable and ranks in priority to all other debts of Kyoto other than amounts outstanding under the Administration Charge, the CCAA Charges, and the Receiver's Borrowing Charge.

45. Collectively, the Holdback, the CCAA Financing Repayment, the Receivership Financing Repayment and the Interim Distribution comprise the Receiver's proposed scheme of distribution (the "Proposed Scheme of Distribution").

RECOMMENDATIONS

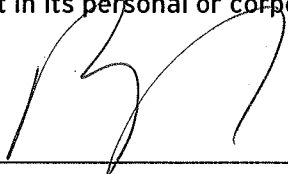
46. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court grant orders providing the relief detailed in Paragraph 5(5(c) of this Second Report.

* * *

All of which is respectfully submitted this 21st day of January, 2015.

ERNST & YOUNG INC.

**in its capacity as Receiver and Manager of Kyoto Fuels Corporation
and not in its personal or corporate capacity**



Robert J. Taylor, FCA • CIRP, CFE
Senior Vice-President

ASSET PURCHASE AGREEMENT

DATED this 21st day of January, 2015, among:

ERNST & YOUNG INC., in its capacity as receiver and manager (the "**Receiver**") of the
current and future assets, undertakings and properties of
KYOTO FUELS CORPORATION ("KFC")

- and -

PELICAN TRANSFER INC., a corporation incorporated under the laws of the
Province of Alberta (the "**Purchaser**")

WHEREAS:

- A. On May 29, 2014, the Court of Queen's Bench of Alberta in Action Number 1401-05914 (the "**Receivership Proceedings**") granted a receivership order (the "**Receivership Order**") appointing the Receiver as the receiver and manager of the current and future assets, undertakings and properties of KFC (the "**Property**").
- B. The Receivership Order empowers and authorizes the Receiver to market any or all of the Property and negotiate such terms and conditions of sale as the Receiver in its discretion may deem appropriate.
- C. The Purchaser wishes to purchase the Assets (as defined below) subject to, and in accordance with, the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and provisions herein contained, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed between the parties as follows:

ARTICLE 1 – DEFINITIONS

1.1 Definitions. In this Agreement, the following terms shall have the following meanings:

- (a) "**Agreement**" means this Asset Purchase Agreement;
- (b) "**Assets**" means all of the property and assets set out in Schedule "A";
- (c) "**Business Day**" means a day other than a Saturday, Sunday or statutory holiday in Alberta;
- (d) "**Canadian Dollars**" or "Cdn. \$" or "\$" shall mean lawful money of Canada;
- (e) "**Claim**" shall mean any secured, lien, possessory lien, unsecured, administrative, trust or other type of claim, against KFC and/or any and all of the Assets, of every nature and kind and howsoever arising, including, without limitation, debts, dues, rights, actions,

causes of action, third party claims, rights by way of indemnity, surety or set-off and securities, whether legal, beneficial, equitable, absolute or contingent, liquidated or unliquidated, vested or not vested, due or accruing due, present or future, known or unknown, but not including the Permitted Encumbrances;

- (f) **"Closing"** means the closing of the transactions set forth in this Agreement at the Closing Time;
- (g) **"Closing Time"** shall mean 10:00 a.m. (Calgary time) two Business Days after the satisfaction or waiver of the conditions set out in paragraph 2.5 of this Agreement, or such later date as the parties may agree to in writing;
- (h) **"Court"** means the Court of Queen's Bench of Alberta in the Judicial District of Calgary presiding over the Receivership Proceedings;
- (i) **"Deposit"** has the meaning attributed thereto in paragraph 2.4 of this Agreement;
- (j) **"GST"** has the meaning attributed thereto in paragraph 2.3 of this Agreement;
- (k) **"ITA"** means the *Income Tax Act* (Canada), as amended;
- (l) **"Order"** means an order granted by the Court;
- (m) **"Permitted Encumbrances"** means the permitted encumbrances set out in Schedule "B" to this Agreement;
- (n) **"Purchase Price"** means the sum of \$2,809,651.20;
- (o) **"Transaction"** means the transaction of purchase and sale of the Assets and other arrangements, if any, contemplated by this Agreement; and
- (p) **"Vesting Order"** means an Order, in form and substance acceptable to the Purchaser and the Receiver acting reasonably, approving the sale of, and vesting title to, the Assets, upon Closing, to the Purchaser free and clear of all Claims.

1.2 **Headings.** The headings appearing in this Agreement are inserted for convenience of reference only and will not affect the interpretation of this Agreement.

1.3 **Plurality and Gender.** Words used herein importing the singular number only shall include the plural and vice versa and words importing gender shall include all genders and words importing individuals shall include corporations, partnerships, trusts, syndicates, joint ventures, governments and governmental agents and authorities and vice versa.

1.4 **Schedules.** The following Schedules are incorporated into and form part of this Agreement:

Schedule "A" Assets

Schedule "B" Permitted Encumbrances

ARTICLE 2 – PURCHASE AND SALE

- 2.1 Sale of the Assets.** Upon the satisfaction of the terms and conditions stated herein, on Closing, the Purchaser hereby purchases from the Receiver, and the Receiver hereby sells, assigns, conveys and delivers to the Purchaser, the Assets, on an as is where is basis, at and for the Purchase Price.
- 2.2 Payment of Purchase Price.** Upon the satisfaction of the terms and conditions stated herein, the Purchaser shall pay to the Receiver, on or before the Closing Time, the Purchase Price plus applicable GST. Unless otherwise agreed, all amounts payable shall be paid to the Receiver by cheque certified by, or draft of, a Canadian chartered bank to be released upon Closing.
- 2.3 GST.** The Purchase Price shall not include the amount of Goods and Services Tax exigible on the within transaction pursuant to the provisions of the *Excise Tax Act* (Canada) (the "GST"), which GST shall be tendered by the Purchaser to the Receiver in addition to the Purchase Price. At or before the Closing Time, the Purchaser shall deliver, or cause to be delivered, to the Receiver i) the registration number of the Purchaser for purposes of the GST together with the covenant and indemnity of the Purchaser to make appropriate filings with respect to this transaction as it relates to GST as required by the ITA, or ii) payment or evidence of payment of applicable federal or provincial taxes including GST, or, alternatively, iii) appropriate exemption certificates in form and substance satisfactory to the Receiver.
- 2.4 Deposit.** Upon execution of this Agreement, the Purchaser shall provide the Receiver with a deposit in the amount of \$500,000 (the "**Deposit**"). The Deposit shall be made by a cheque certified by, or draft of, a Canadian chartered bank. The Deposit shall be deemed to be a cash deposit to be applied to the Purchase Price. The Deposit shall be returned to the Purchaser if this Agreement is terminated pursuant to paragraph 2.6.
- 2.5 Conditions Precedent.** This Agreement is conditional on the satisfaction or waiver of the following conditions, which are inserted for the benefit of all of the parties to this agreement and may be waived, in whole or in part, in writing by all of the parties hereto:
- (a) the Court shall have granted the Vesting Order, which shall, among other things, approve the Purchaser's acquisition of the Assets free and clear of all Claims, interests and encumbrances, howsoever arising, except for the Permitted Encumbrances;
 - (b) the Vesting Order shall not be subject to any stay or other impediment in connection with the execution and closing of the Transaction;
 - (c) at the Closing Time, subject only to the Permitted Encumbrances, the Assets shall be absolutely unencumbered and free of any and all Claims pursuant to the Vesting Order; and
 - (d) any applicable governmental, regulatory and judicial consents or orders, and other similar consents and approvals, and all filings with all governmental authorities and other regulatory authorities having jurisdiction, in each case to the effect deemed necessary or desirable for the completion of the Transactions contemplated by this Agreement or any aspect thereof, shall have been made, obtained or received.

- 2.6 **Termination.** If the conditions contained in section 2.5 are not satisfied or waived on or before February 27, 2015 or such later date as may be agreed to in writing by all of the parties, this Agreement shall terminate and cease to have any further force or effect.

ARTICLE 3 – "AS IS, WHERE IS"

- 3.1 **As Is, Where Is.** The Purchaser hereby acknowledges and agrees that the Assets are being purchased on an "as is, where is" basis, and that it has conducted to its satisfaction its own independent investigation, analysis and evaluation of the Assets as it deems necessary or appropriate and that in making its decision to enter into this Agreement and to consummate the transactions contemplated hereby it has and will rely solely on such independent investigation. Without limiting the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to any legislation in any jurisdiction do not apply hereto and have been waived by the Purchaser. The Purchaser acknowledges that there is no representation, warranty, term, condition, understanding or agreement, express or implied, oral or written, legal, equitable, conventional, collateral or otherwise, given in this Agreement or in any document furnished in connection with this Agreement, as to title, outstanding liens, encumbrances, description, merchantability, value, suitability or marketability of the Assets or in respect of any other matter or thing whatsoever, except as otherwise expressly stated herein. The Purchaser shall be deemed to have relied entirely on its own inspection and investigation in proceeding with the transactions contemplated hereunder.

ARTICLE 4 – MISCELLANEOUS

- 4.1 **Further Assurances.** The parties will execute such further and other documents and do such further and other things as may be necessary to carry out and give effect to the intent of this Agreement.
- 4.2 **Notice.** All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally to the parties or sent by courier or facsimile to the following address (or such other address for a party as shall be specified by like notice):

- (a) to Purchaser, as follows:

15304 Rio Terrace Drive,
Edmonton, AB T5R 5M5

Attention: Allan Szybunka
Fax: 780.454.5671

with a copy to:

McLennan Ross LLP
600, 12220 Stony Plain Road
Edmonton, AB T2N 3Y4
Fax: 780.733.9722

Attention: Dani V. Fialkov

- (b) to the Receiver, as follows:

Ernst & Young Inc.
Receiver of Kyoto Fuels Corporation
1000, 440 2nd Avenue SW
Calgary, AB T2P 5E9

Attention: Robert J. Taylor / Neil Honess

with a copy to:

Dentons Canada LLP
15th Floor, Bankers Court
850-2nd Street SW
Calgary, AB T2P 0R8
Fax: 403.268.3100

Attention: David Mann / Derek Pontin

Any such notice or other communication shall be effective upon delivery.

- 4.3 **Legal Advice.** The parties have consulted with and been advised by their own solicitors before entering into this Agreement, have read same and know the contents thereof.
- 4.4 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and there are no representations or warranties, express or implied, statutory or otherwise and no collateral agreements other than as expressly set forth or referred to in this Agreement.
- 4.5 **Severability.** In case any provision in this Agreement shall be prohibited, invalid, illegal or unenforceable in any jurisdiction, such provision shall be ineffective only to the extent of such prohibition, invalidity, illegality or unenforceability in such jurisdiction without affecting or impairing the validity, legality or enforceability of the remaining provisions hereof, and any such prohibition, invalidity, illegality or unenforceability shall not affect or impair such provision in any other jurisdiction.
- 4.6 **Amendment.** No amendment of this Agreement will be binding unless made in writing by all the parties.
- 4.7 **Time of the Essence.** Time shall be of the essence of this Agreement.
- 4.8 **Costs.** Each party shall be responsible for its own costs in preparation of this Agreement and completion of the Transaction.
- 4.9 **Waiver.** Failure by either party hereto to insist in any one or more instances upon the strict performance of any one of the covenants and obligations contained herein shall not be construed as a waiver or relinquishment of such covenant or obligation. No waiver by any party hereto (whether in whole or in part) of any such covenant or obligation shall be deemed to have been made unless expressed in writing and signed by the waiving party.
- 4.10 **Applicable Law and Court Jurisdiction.** This Agreement shall be governed by, and construed in accordance with, the laws of the Province of Alberta and the laws of Canada applicable therein,

and the parties hereby attorn to the jurisdiction of the Court in relation to any matter relating to this Agreement.

4.11 Successors and Assigns. This Agreement will enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

4.12 Counterparts. This Agreement may be signed in counterparts and each such counterpart will constitute an original document and such counterparts, taken together, will constitute one and the same instrument. A counterpart may be delivered by fax or any other form of electronic transmission.

[REMAINDER OF PAGE INTENTIONALLY BLANK - SIGNATURE PAGE TO FOLLOW]

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

PELICAN TRANSFER INC.

Per: _____

ERNST & YOUNG INC., in its capacity as receiver and manager of the current and future assets, undertakings and properties of **KYOTO FUELS CORPORATION**

Per:  _____

Schedule "A"

Assets

The Assets are comprised of:

- a) 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

(the "Lands");

- b) any and all real property and buildings located on the Lands, including, without limitation, attachments and fixtures thereto;
- c) any and all personal property and unattached goods as viewed by the Purchaser on December 8, 2014, December 20, 2014 and December 21, 2014, including, without limitation, all equipment, inventory, furniture, chattels, books, records, electronic data, licenses, all intellectual property, including by not limited to the intellectual property related to the business conducted from the Lands, entitlements, and any and all other documents, equipment, inventory, furniture and chattels that are in the possession of the Receiver or are on the Lands;
- d) 500 barrel new tank that might be located at Superior Steel Products, Inc., 1604 Industrial Way, Caldwell, Idaho; and
- e) 500 barrel tank, skid and blending device that might be located at JK Trucking in Lethbridge, AB.

Schedule "B"

Permitted Encumbrances

Alberta Land Titles Registration No.	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/PORTION: 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

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

PELICAN TRANSFER INC.

Per: Allan Jylumka

**ERNST & YOUNG INC., in its capacity as receiver of
the current and future assets, undertakings and
properties of KYOTO FUELS CORPORATION**

Per: EY

Kyoto Fuels Corporation - In Receivership
 Interim Statement of Receipts and Disbursements
 For the Period May 29, 2014 to January 21, 2015
 \$ CAD, unaudited

Receipts

Cash on hand at the date of Receivership	13,579
Advances by AFSC pursuant to Receiver's Certificates	850,000
Sales of biodiesel and chemicals	153,581
Other receipts	49,852
Total receipts	1,067,012

Disbursements

Decommissioning costs - IIS	236,939
Consulting costs	50,198
Operating costs	263,797
Disposal costs	73,655
Receiver's and Receiver's counsel's fees and costs	371,738
Total disbursements	996,327

Cash on hand, end of period	70,685
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Kyoto Fuels Corporation - In Receivership			
Proposed Scheme of Distribution			
As at January 21, 2015			
\$ CAD, unaudited			
	Notes		
Cash on hand, January 21, 2015		70,685	
Pelican deposit		500,000	
Proposed Sale Transaction, proceeds on closing		2,309,651	
AY commission	1	(140,483)	
Estimated cash on hand, February 19, 2015			2,739,853
<u>Funds held back</u>			
Reserve for purchase price adjustments		50,000	
Reserve for January/February 2015 operating costs	2	100,000	
Outstanding professional fees and estimated fees to complete receivership	3	120,000	
Reserve pending resolution of priority claims	4	126,000	
Total funds held back			396,000
Funds available for distribution			2,343,853
Total repayment to T&E of CCAA Financing	5	416,494	
Total repayment to AFSC of Receivership Financing	6	870,629	
Total CCAA and Receivership funding repayments			1,287,124
Funds available to secured creditors			<u>1,056,729</u>

Notes to the Proposed Scheme of Distribution

1. AY's commission is 5% of the gross sale price of the Property in accordance with the Listing Agreement.
2. Operating costs are estimated at between \$27,000 and \$37,000 per month. Certain costs are billed in arrears and as such, not all operating costs related to December, 2014 have been paid. As such, the Receiver is reserving \$100,000 in respect of these amounts.
3. Outstanding professional fees at the date of this Second Report total approximately \$70,000. The Receiver estimates that professional fees to complete the Receivership will be below \$50,000 and as such, is reserving \$120,000 in respect of these fees.
4. A reserve of \$126,000 is included above which represents the maximum potential claim of two parties in respect of leased equipment over which title is claimed:
 - (a) National Leasing Group Inc. which was owed approximately \$11,000 at the date of Receivership; and
 - (b) Thermo Fisher Scientific Inc. which delivered equipment to Kyoto with an original value of approximately \$115,000.

5. T&E advanced \$400,000 on April 30, 2014 at an interest rate of 5% per annum compounding daily. The Receiver has calculated the accrued interest on this amount at the Closing Date (February 19, 2015) to be \$16,494.
6. AFSC advanced a total of \$850,000 in three separate advances between June 4, 2014 and November 14, 2014. The Receiver has calculated the accrued interest on this amount at the Closing Date (February 19, 2015) to be \$20,629.