

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 SUPPLEMENTAL REPORT OF THE RECEIVER

CLERK OF THE COURT
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JUDICIAL CENTRE
OF CALGARY

MAY 8, 2015

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
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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.
5. The Sales process undertaken by the Receiver for the Kyoto plant was outlined in the Receiver's Second Report dated January 21, 2015, its Third Report dated April 23, 2015 (the "Third Report") and its Supplemental Report (the "Supplemental Report") dated May 1, 2015.
6. The purpose of this second supplemental report of the Receiver (the "Second Supplemental Report") is to provide this Honourable Court with:
 - (a) an update on the results of the bidding process established by this Honourable Court on May 1, 2015 (the "Final Bidding Process");
 - (b) details of the offers received in the Final Bidding Process; and
 - (c) the Receiver's recommendation that the bid of 1886792 Alberta Ltd. ("188") be accepted.

TERMS OF REFERENCE

7. In developing the Receiver's Second Supplemental 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 Receiver 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.
8. Unless otherwise noted, all currency references in this Supplemental Report are in Canadian dollars.

9. Capitalized terms not defined in this Second Supplemental Report are as defined in the Receivership Order or in previous reports.
10. This Second Supplemental Report should be read in conjunction with the Third Report and the Supplemental Report.

FINAL BIDDING PROCESS

11. On May 1, 2015, the Receiver brought an application to this Honourable Court to approve an offer (the "186 Offer") from 1866768 Alberta Ltd. ("186") which is described in the Third Report. One of the unsuccessful offerors, 188, established for this Honourable Court a likelihood of generating an unconditional offer superior to that of 186 by extending the sales process. As such, a Final Bidding Process was proposed to and approved by, this Honourable Court on May 1, 2015.
12. The Final Bidding Process comprised the following steps:
 - (a) 188 was to finalize an unconditional offer of \$3.2 million by 12:00 pm Monday May 4, 2015 which offer required a signed agreement in a form to be confirmed by the Receiver along with a guaranteed 10% deposit. If 188 did not meet such terms, the Receiver was to proceed to close the 186 Offer;
 - (b) If the 188 offer met the terms and the required deposit amount by the required time, the Final Bidding Process was to commence. Prospective offerors were then to deliver final offers to the Receiver in the form provided by the Receiver before 5:00 pm on Thursday, May 7, 2015 accompanied by a guaranteed non-refundable 10% deposit.
 - (c) The Receiver would subsequently advise the offerors of the best offer received and file a report with this Honourable Court outlining the results of the Final Bidding Process.
 - (d) The Receiver is to attend on May 12, 2015 at 9:00 am before this Honourable Court to seek approval of the best offer.

FINAL BIDDING PROCESS RESULTS

13. On Monday May 4, 2015 at 10:20 am, counsel for 188 provided a copy of 188's executed purchase agreement and confirmed that a courier had been dispatched to deliver the original agreement and deposit to the Receiver's counsel. The deposit and agreement were received by the Receiver's counsel shortly thereafter.
14. 188's offer (the "188 Offer") was for a purchase price of \$3.2 million with a \$320,000 non-refundable deposit, subject only to approval of the sale to 188 by this Honourable Court.
15. In accordance with the Final Bidding Process, the Receiver's counsel circulated the form of purchase agreement for the submission of any further offers by the established deadline of Thursday May 7, 2015 at 5:00 PM (the "Final Bid Deadline").

16. Prior to the Final Bid Deadline, 186 delivered to the receiver a new offer (the "New 186 Offer") for a purchase price of \$2.2 million with \$220,000 non-refundable deposit, subject only to approval of the sale to 186 by this Honourable Court.
17. No further offers were received at or after the Final Bid Deadline by the Receiver or its counsel.
18. The Receiver is of the view that the 188 Offer in the amount of \$3.2 million is superior to the New 186 Offer given the significantly higher purchase price of the 188 Offer. A copy of the 188 Offer is attached to this Second Supplemental Report as Appendix "A".

RECOMMENDATION

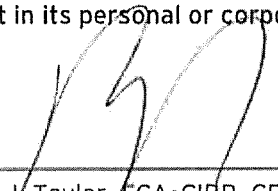
19. In the Receiver's view, the Final Bidding Process provided an opportunity for the interested parties to submit their best and final offers for consideration. The 188 Offer is the superior offer and the Receiver respectfully recommends that this Honourable Court approve the 188 Offer.

* * *

All of which is respectfully submitted this 8th day of May, 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

Appendix A

ASSET PURCHASE AGREEMENT

DATED this 4th day of May, 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 -

1886792 Alberta Ltd

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) on or before 21 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 \$3,200,000
- (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.** Concurrent with the execution and delivery of this Agreement, the Purchaser shall provide to the Receiver a deposit equivalent to at least 10% of the Purchase Price (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. The Deposit will be forfeited if this Agreement is terminated for any other reason.

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; and
- (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.

2.6 **Termination.** If the conditions contained in section 2.5 are not satisfied or waived on or before ~~May 12,~~ ^{May 14} 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.

 May 14
FR

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:

1886792 Alberta Ltd

Attention: John Kollaska

Fax: 403-317-7768

with a copy to:

Pat Robinson

Peacock Linder Halt and Mack

probinson@plhlaw.ca

Attention:

(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 / Nick JB Purich

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.

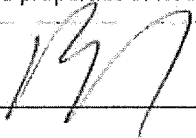
- 4.3 Legal Advice. The parties have consulted with and been advised by their own solicitors before entering into this Agreement, have read same and know the contents thereof.
- 4.4 Entire Agreement. This Agreement constitutes the entire agreement between the parties and there are no representations 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.

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

1886792 Alberta Ltd.

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 April 6th, 2015, 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) Including Thermofisher unit located in lab; 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