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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF WYOMING**

In re:)
)
WESTERN BIOMASS ENERGY, LLC,) Case No. 12-21085
) CHAPTER 11
Debtor.)
)

MOTION FOR APPROVAL OF AUCTION SALE OF PERSONAL PROPERTY

COMES NOW Western Biomass Energy, LLC (“WBE”), as Debtor-in-Possession, by and through its counsel, and pursuant to 11 U.S.C. § 363(f) and 1107, and F.R.B.P. 6004(c), hereby seeks authorization to sell free and clear of liens by auction sale to be conducted by Great American Group, LLC (“Great American”) to the highest bidder or bidders (“Buyer(s)”) substantially all personal property of WBE (“Assets”), including but not limited to the assets more particularly described in “Exhibit A” attached hereto and those related to its ethanol plant, according to the auction procedures outlined below, and in support hereof states as follows:

1. On October 31, 2012 (the “Petition Date”), WBE commenced this case by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Wyoming (the “Bankruptcy Court”).
2. WBE has continued in the possession of its property and has continued to operate and manage its business as a debtor-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

3. On November 26, 2012, a committee of unsecured creditors (“Committee”) was appointed by the United States Trustee for Region 19.

4. WBE determined that it is in the best interests of its estate and all creditors to liquidate a substantial portion of its assets. In order to maximize the value of said assets, WBE required the employment of a professional that was knowledgeable of the industry in which WBE operates as well as executing a sales process for an entity in bankruptcy.

5. WBE, as Debtor-in-Possession, retained Great American to act as its auctioneer/liquidator pursuant to this Court’s *Order for Debtor to Employ Great American Group, LLC as Financial Consultant and Liquidator* (“Retention Order”) entered herein on February 26, 2013.

6. Due to cash-flow constraints, it is imperative that the sale of WBE Assets occurs in a timely and efficient manner. Specifically, WBE is no longer in a financial position to satisfy its ongoing operational expenses.

7. After consulting with its hired professional, Great American, WBE has determined that the proposed auction sale should be conducted according to the following procedures:

a. Marketing Period for Going Concern Buyer

- i. Great American will market the Assets in bulk to known current ethanol producers and tangential biofuel/chemical and related industries for a period of three (3) weeks (“Initial Period”). Great American will market from internal databases, externally acquired lists, social media, and industry trade publications to identify potential buyers for all Assets. Great American will qualify the potential buyers

and provide solicitation and due diligence materials, in consultation with WBE, to the “Going Concern Buyer(s)”. All such Going Concern Buyers will have the opportunity to inspect the Assets. Going Concern Buyers may then provide an offer for all Assets to Great American prior to the expiration of the Initial Period.

ii. The Initial Period shall begin the day after an order is entered by this Court approving the *Motion for Approval of Auction Sale of Personal Property*.

b. Selection of Going Concern Buyer as Winning Bidder

i. Great American will review and qualify all bids by Going Concern Buyer(s) and present a complete report of all bids to WBE. If a Going Concern Buyer provides a material offer and has demonstrated the wherewithal to complete a purchase, their bid will be considered a “Qualified Bid”. As part of the qualification, Great American may request a bid deposit from the potential buyers as desired by WBE. If it is determined that the Qualified Bid is the highest and best bid for the Assets, WBE shall immediately seek input from the Bank and the Committee to determine if the Qualified Bid should be accepted. If the Qualified Bid is accepted, Great American will work with the Going Concern Buyer and WBE to complete the sale of the Assets.

c. Marketing Period for Piecemeal Buyer(s)

i. Concurrently with the process to sell in-bulk, Great American will market the Assets, piecemeal, to known current ethanol producers and

tangential biofuel/chemical and related industries. Great American will market from internal databases, externally acquired lists, social media, and industry trade publications to identify potential buyers for certain segments of the Assets. Great American will qualify the potential buyers and provide solicitation and due diligence materials, in consultation with the WBE, to the "Piecemeal Buyer(s)". All Piecemeal Buyers will have the opportunity to inspect the Assets. Piecemeal Buyers may then provide an offer for any of the Assets to Great American prior to the expiration of the Initial Period.

d. Selection of Piecemeal Buyer as Winning Bidder

- i. Great American will review and qualify all bids by Piecemeal Buyer(s) and present a complete report of all bids to WBE. If a Piecemeal Buyer provides a material offer and has demonstrated the wherewithal to complete a purchase, their bid will be considered a "Qualified Bid". As part of the qualification, Great American may request a bid deposit from the potential buyers as desired by WBE. If it is determined that the Qualified Bid is the highest and best bid for the certain Asset(s), WBE shall immediately seek input from the Bank and the Committee to determine if the Qualified Bid(s) should be accepted. If the Qualified Bid(s) is accepted, Great American will work with the Piecemeal Buyer and WBE to complete the sale of the Assets subject to the accepted Qualified Bid(s).

e. Marketing Period for Auction Buyer(s)

i. Concurrently with the process to sell in-bulk, Great American will market all Assets to known current ethanol producers and tangential biofuel/chemical and related industries. Great American will market from internal databases, externally acquired lists, social media, and industry trade publications to identify potential buyers for certain segments of the Assets. Great American will qualify the potential buyers and provide solicitation and due diligence materials, in consultation with the WBE, to the "Auction Buyer(s)". All such Auction Buyers will have the opportunity to inspect the Assets.

f. Online Auction Process

i. If a "Qualified Bid(s)" from a Going Concern Buyer or a Piecemeal Buyer(s) is not accepted, or if certain Assets remain after a "Qualified Bid(s)" from a Going Concern Buyer or a Piecemeal Buyer(s) is accepted, Great American will conduct an auction to sell all remaining Assets. Potential Auction Buyers may then bid on the Assets during an on-line auction process. Great American has normal Terms and Conditions by which it conducts auctions ("Exhibit B"). Great American will operate the auction according to historical practice and will include, at a minimum, selling all remaining Assets "AS IS WHERE IS WITH ALL FAULTS", "No Warranties Implied", and Assets will be sold free and clear of all liens and encumbrances pursuant to 11 U.S.C. § 363(f). Auction Buyers will post deposits equal to 25% of their estimated total bid with which to secure their

bids. The highest bid (“Winning Bid”) will be awarded the Asset, and Great American will collect the sales price and work with each Auction Buyer to remove the Assets as soon as practical. Information related to the second highest bidder will be utilized to sell an Asset if the Auction Buyer fails to close on a Winning Bid. Great American will conduct the auction approximately 14 days after the expiration of the Initial Period.

g. Final Removal and Scrap Period

- i. Great American will engage demolition or scrap vendors to provide bids to remove all unsold Assets that have additional value as scrap. Great American will evaluate these offers and provide recommendations to WBE for its review and approval. Great American will oversee the removal of the remaining Assets and ensure WBE’s property is left in a neat, clean and orderly basis upon completion of the sale.

h. Sale Proceeds

- i. All sale proceeds, except the Consultant Fees of Great American as that term is defined in paragraph 4 of the Auction Agreement approved in accordance with the Retention Order, shall be segregated in a separate Debtor-in-Possession account until further order of the Court.
- ii. Great American shall be entitled to immediate payment of its Consultant Fees once all sale proceeds are received from any Going

Concern Buyer, Piecemeal Buyer(s) and/or Auction Buyer(s) that submits a Qualified Bid(s) that is accepted.

i. Final Report

i. Within fourteen (14) days after the completion of the Final Removal and Scrap Period, WBE shall cause to be filed with the Court a final report pursuant to F.R.B.P. 6004.

WHEREFORE, WBE respectfully requests on order allowing the sale of the above described personal property according to the auction procedures outlined above.

DATED this 5th day of April, 2013.

WESTERN BIOMASS ENERGY, LLC

By: /s/

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CERTIFICATE OF SERVICE

I, Brad T. Hunsicker, hereby certify that a true and correct copy of the foregoing **Motion for Approval of Auction Sale of Personal Property** was served upon the **Office of the United States Trustee** and **all Parties** registered on the **CMECF Electronic Mailing System**, electronically, this 5th day of April, 2013.

 /s/
Bradley T. Hunsicker

Exhibit A

Tag #	Description	Material
B1517	Boiler	SA-106 Gr B CS
CT1410	Cooling Tower	CS
EXT0203	Extruder	SS Alloy
TK0301	Thin Stillage Tank	CS
TK0302	PC Tank	CS
TK0303	Hydrolysis Tank	516 70 CS
TK0304	Hydrolysis Tank	516 70 CS
TK0601	Fermentation Tank #1	A-283 CS
TK0602	Fermentation Tank #2	A-283 CS
TK0603	Fermentation Tank #3	A-283 CS
TK0604	Fermentation Tank #4	A-283 CS
TK0605	Fermentation Tank #5	A-283 CS
TK0606	Fermentation Tank #6	A-283 CS
TK0607	Yeast Prop	SA-240-2B
TK0608	Fermentation Tank #7	316 SS
TK1001	Final Product Tank	CS
TK1002	190 Proof Tank	CS
TK1415	Vacuum Seal Tank	SS
TK2070	Aqua Ammonia Tank	Poly
VS0126	Reactor	SS
VS0130	Reactor Discharger	304 SS
VS0701	Stripper Column	304L - tray material
VS0901	Mole Sieve Bed	516 70 Steel
VS0902	Mole Sieve Bed	516 70 Steel
VS1101	Evaporator First Effect	304 SS
VS1102	Evaporator Second Effect	304 SS
VS1103	Evaporator Third Effect	304 SS
VS1104	Evaporator Fourth Effect	304 SS
WB0201	Weigh Belt	CS



TERMS & CONDITIONS OF SALE

- 1.** Buyer is required to maintain a 25% deposit on all items purchased at the auction. This is a nonrefundable deposit and will be forfeited in the event that a Buyer fails to close. Payments are accepted in the form of **CASH, CASHIER'S CHECK** made payable to Great American Group, **WIRE TRANSFER**, or **BUSINESS CHECK** accompanied by an APPROVED BANK LETTER OF GUARANTEE payable to Great American Group ONLY. **NO EXCEPTIONS.** All bidding and invoicing will be in US Dollars (\$); the above approved forms of payment must be made in US currency. **ALL INVOICES MUST BE PAID WITHIN 24 HOURS OR THE DEPOSIT WILL BE FORFEITED TO AUCTIONEER.**
- 2.** BLANK
- 3.** A premium of 15% of the bid price will be added to the price of each item purchased. The buyer's premium for each sale will be announced at the time of the auction. Taxes are calculated AFTER the buyer's premium. *Note: Buyer's premium online generally differs from onsite. The Buyer's Premium percentage will be posted on the website or announced by the auctioneer.*
- 4. ALL SALES ARE FINAL. NO EXCEPTIONS.** The condition of the merchandise being offered varies. Buyer understands and agrees: (1) that any description or sample of the merchandise given or furnished by Auctioneer is solely for identification, and does not create any warranty, express or implied, that the merchandise actually conforms to such description or sample; (2) that all merchandise is purchased and accepted by Buyer "AS IS-WHERE IS," "IN PLACE" and "WITH ALL FAULTS, KNOWN AND UNKNOWN." **AUCTIONEER MAKES NO WARRANTIES OR GUARANTEES WHATSOEVER WHETHER WRITTEN, ORAL OR IMPLIED AS TO QUALITY, QUANTITY, CONDITION, LOCATION, USEABILITY, SALEABILITY, WEIGHT, MEASUREMENT, YEAR, MODEL, MECHANICAL CONDITION, PERFORMANCE, FITNESS FOR A PARTICULAR PURPOSE OR OTHER SPECIFICATIONS. MANUFACTURERS WARRANTIES MAY BE IN EFFECT. NO SALE SHALL BE INVALIDATED AND AUCTIONEER SHALL HAVE NO LIABILITY FOR A MISDESCRIPTION OF ANY ARTICLE OR LOT WHETHER CONTAINED IN A CATALOGUE, ADVERTISEMENT OR OTHERWISE.** Descriptions have been prepared for guide purposes only and shall not be relied upon by Buyer for accuracy or completeness. By submitting a bid, Buyer/Bidder affirms it has inspected all items or has waived its right to do so prior to bidding. Buyers shall be deemed to have relied entirely upon their own inspections and investigations.
- 5.** Buyers will be charged all applicable taxes unless **SATISFACTORY PROOF OF EXEMPTION** is provided to Auctioneer prior to payment. If satisfactory proof is not provided, Buyer will pay all applicable taxes to Auctioneer. No taxes will be refunded once the tax has been collected. Proof of exemption, subject to approval by Auctioneer, includes **VALID RESELLER'S PERMITS, STATE-ISSUED LETTERS OF EXEMPTION, BILLS OF LADING** provided by shipper for **OUT-OF-STATE SHIPMENTS** only, and any other documents as governed by applicable local, state, and federal laws deemed acceptable at Auctioneer's sole discretion. Taxes are calculated AFTER the buyer's premium.
- 6.** All articles will be sold to the highest bidder conforming to the bid process. Auctioneer reserves the right to sell articles by individual group lots and "En Bloc" as he deems appropriate. Auctioneer reserves the right to group, reduce, add to or delete lots. Auctioneer reserves the right to sell on behalf of third parties, its own account or on the account of others. In the event there is a dispute between two or more claims of entitlement as the successful bidder, Auctioneer reserves the right to re-auction the item in dispute. Auctioneer shall regulate all matters relating to the conduct of the auction and his decision shall be final and binding on all bidders. Auctioneer shall be entitled to make changes in (the composition of) the lots or to withdraw them, up until the last moment before the sale, refuse bids without having to state the reasons, in which case the previous bidders shall be bound to their bids, and to correct himself. Auctioneer reserves the right to sell subject to reserve and to purchase for its own account or of others, whether by verbal or written proxy, all subject to prior sale. All sales shall be concluded on the fall of the hammer or as indicated by Auctioneer and no Buyer may thereafter revoke his bid.
- 7.** Any announcements made on the day of the auction take precedence over catalogue or other previously announced or documented information, but do not alter in any way the basic terms and conditions of sale. Great American Group reserves the right to correct any mistakes or typographical errors made by itself or on its behalf in any of its announcements or documents.
- 8.** No checkout will be permitted during the auction sale. All invoices must be paid in full before merchandise will be released from the premises. Unless Auctioneer determines otherwise at its sole discretion, checkout will begin on the day following the auction sale. Quantities must be checked before removal of purchases. No allowances will be made for claims or shortages once items are removed from the Auction premises. Unless Auctioneer determines otherwise at its sole discretion, no item, no matter how small or how far the purchaser has to travel, may be removed until the close of the auction sale. Where available, documents of transfer, including motor vehicle ownership documents, will be provided within 7 days following the auction or as soon thereafter as such documents are available. Great American Group makes no warranties that such documents will be available. Any available titles shall not pass to Buyer until full payment is received.
- 9.** All property must be paid for and picked up in the time frames announced by Auctioneer at time of sale. If not, the merchandise will be deemed abandoned and Buyer will lose any right, title or interest Buyer may have acquired and the merchandise shall revert and repossess to Auctioneer without further notice to Buyer and Buyer's deposit will be forfeited. No purchaser may assign, transfer, or dispose of his rights in any article purchased before he has paid the purchase price in full. No reselling will be allowed from the premises.

10. If any applicable conditions are not complied with by Buyer, then, in addition to any other remedies available to Auctioneer, including and without limitation, the right to hold Buyer liable for the total purchase price, Auctioneer may, at its option, (a) cancel the sale, retaining all payments made by Buyer, including any deposit made, as liquidated damages and/or (b) resell the merchandise at public auction in which event Buyer will be liable for the cost of removing and reselling the abandoned merchandise, for any deficiency between Buyer's original purchase price and subsequent resale price, Auctioneer's commission, interest rates (a minimum of 1.5% per month or 18% per annum), legal fees, moving and storage (a minimum of \$2.00/sq.ft. per month) and all other expenses related to the disposal or reselling of the abandoned property. In addition, Auctioneer may retain any merchandise purchased at auction by a defaulting Buyer as collateral security for Buyer's obligations to Auctioneer.

11. Buyer is solely responsible to provide any personnel, equipment or material needed to pick up purchases and shall assume all responsibility for the removal of any item of property purchased at the sale and any and all risks associated with such removal including, without limitations, the responsibility for providing **LICENSED AND BONDED** professionals to ensure proper water, gas and/or power disconnection, disassembly, removal and loading, and full financial responsibility for any damage or liability to persons or property resulting from any negligent act or omission of Buyer or Buyer's employees, agents and/or representatives during pick-up and removal.

12. Buyer agrees that in the event purchased merchandise contains any environmental hazards, toxic waste or other type of hazardous material in any form whatsoever, Buyer shall provide evidence that Buyer or its representatives are licensed for such removal and shall comply with all applicable local, state and/or federal rules, laws and regulations. Auctioneer, its agents or representatives will not be responsible for its containment, storage or removal.

13. Persons in attendance during inspection, sale or removal of merchandise assume all risks of damage or loss to persons, property, or merchandise and shall exercise proper precautions at all times for the protection of persons and property and shall comply with all safety and health requirements as directed by Auctioneer, and local, state and federal regulations. Auctioneer, its agents, its employees and representatives shall not be liable by reason of any defect in or about the condition of the premises on which the auction is held. Buyer specifically releases Auctioneer, its agents and representatives from all liability thereof.

14. All risk loss shall pass to Buyer at the time of payment. If Auctioneer is unable to deliver an article sold to Buyer due to fire, theft, or any other reasons whatsoever, Auctioneer shall reimburse Buyer for all monies paid to Auctioneer in respect to the article and Auctioneer shall have no further liability to the purchaser arising from or relating to such loss, including without limitation any damages for loss of profits.

15. In no event shall Auctioneer's liability to Buyer exceed the purchase price actually paid. A Buyer's claim shall be limited to the amount paid for the merchandise, and shall not extend to any obligation; risk; liability; right; claim; remedy for loss of use, revenue or profit; liability of Buyer to any third party; personal injury; or any other direct, indirect, incidental or consequential damages. Auctioneer is acting as an agent only and is not responsible for the acts of its principles.

16. Buyer agrees to indemnify, defend and hold harmless Auctioneer and its agents and representatives, from any and all demands, claims, losses, damages and liabilities (including attorneys' fees) asserted against, resulting to or imposed upon Auctioneer resulting from the negligence of Buyer or his/her employees, agents and representatives, while in, at or about the auction premises during inspection, sale or removal of merchandise.

17. Great American Group shall have the right to make image and audio video recordings of the auction, to use said recordings at its own discretion, and if deemed appropriate to make this public. Participants give their permission by participating in the auction.

18. The bidder's account is nontransferable. All bids made by the holder of the account will be Buyer's responsibility. A successful bid at auction constitutes a legally binding contract of sale. Auctioneer reserves the right to refuse any applicant the privilege of bidding or attending the auction and may revoke such privilege of bidding or attending the auction AT ANY TIME.

19. This sales transaction shall be governed by and construed in accordance with the local laws of the State of California, USA. If any provision of these Terms and Conditions shall be held invalid, illegal, unenforceable or inoperative, the balance of Terms and Conditions shall remain in full force and affect as if such provisions had not been included. These Terms and Conditions with any amendments or modifications expressly made by Auctioneer at the time of the auction constitute all the terms and conditions with respect to the sale of articles at this auction. There are no representations, warranties, terms, conditions, undertakings or collateral agreements except as herein provided.

20. All Buyers acknowledge and accept by their bid at auction the Terms and Conditions of Sale printed on this registration card/bidder account.

ALL SALES ARE FINAL! NO REFUNDS OR EXCHANGES!

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF WYOMING**

In re:)
)
WESTERN BIOMASS ENERGY, LLC,) Case No. 12-21085
) CHAPTER 11
)
Debtor.)
)

**ORDER AUTHORIZING AND APPROVING AUCTION SALE OF SUBSTANTIALLY
ALL OF THE DEBTOR'S ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND
INTERESTS**

THIS MATTER having come before the Court on the Debtor's *Motion for Approval of Auction Sale of Personal Property* ("Sale Motion") filed herein on April 5, 2013, wherein the Debtor seeks authorization to sell free and clear of any interests and/or liens of any entity, if any, by auction sale to the highest bidder(s) certain personal property as more particularly described in the Sale Motion ("Assets"), it appearing that the relief requested in the Sale Motion is in the best interests of the Debtor, its estate, creditors and other parties in interests, the Court determines and concludes as follows:

IT IS HEREBY FOUND AND DETERMINED THAT:

- a. The Court has jurisdiction over the Sale Motion pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).
- b. The Debtor may sell the Assets, and all interests it has therein, free and clear of all claims and interest of any kind or nature whatsoever because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Sale Motion is granted in its entirety.

2. The Assets shall be sold free and clear of all claims and interests of any kind or nature whatsoever.

3. All sale proceeds, except the Consultant Fees of Great American as that term is defined in paragraph 4 of the Auction Agreement approved in accordance with the *Order for Debtor to Employ Great American Group, LLC as Financial Consultant and Liquidator*, shall be segregated in a separate Debtor-in-Possession account until further order of the Court.

4. Great American shall be entitled to immediate payment of its Consultant Fees once all sale proceeds are received from any bidder that submits a bid that is accepted.

5. The Debtor shall cause to be filed with the Court a final report pursuant to F.R.B.P. 6004 after the conclusion of the sale(s).

6. The Debtor shall be authorized to pay to any creditor with a valid and perfected lien on the Assets the amount of its claim to the extent the claim is not in dispute.

DATED this ____ day of _____, 2013.

BY THE COURT:

United States Bankruptcy Court Judge