

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

Case No. 16-31189

Tracy John Clement,

Chapter 11

Debtor.

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**NOTICE OF HEARING AND MOTION FOR ENTRY OF ORDERS (I) APPROVING  
SALE PROCEDURES AND (II) AUTHORIZING THE SALE OF ABSOLUTE ENERGY,  
L.L.C. UNITS FREE AND CLEAR OF LIENS, ENCUMBRANCES, AND OTHER  
INTERESTS**

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TO: The parties specified in Fed. R. Bankr. P. 6004 and Local Rule 2002-1(b).

1. The chapter 11 trustee, Phillip L. Kunkel (the “**Trustee**”), by and through his undersigned attorneys, moves the Court for the relief requested below and gives notice of a hearing.

2. The Court will hold a hearing on this Motion at **9:30 a.m. on February 21, 2018**, in Courtroom 7 West, United States Courthouse, 300 South Fourth Street, Minneapolis, Minnesota.

3. Any response to this Motion must be filed and served not later than **Friday, February 16, 2018**, which is five days before the time set for the hearing (including Saturdays, Sundays, and holidays). **UNLESS A RESPONSE OPPOSING THIS MOTION IS TIMELY FILED, THE COURT MAY GRANT THIS MOTION WITHOUT A HEARING.**

4. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334, Fed. R. Bankr. P. 5005, and Local Rule 1070-1. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M), (N) and (O). Venue is proper in the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The voluntary petition for relief in this case was filed on April 11, 2016 (the “**Petition Date**”). This case is now pending in the Court.

6. This Motion arises under 11 U.S.C. §§ 363(b) and 363(f), Fed. R. Bankr. P. 6004, and Local Rule 6004-1. This Motion is filed under Fed. R. Bankr. P. 9013 and 9014 and Local Rules 9013-1 through 9013-3.

7. The Trustee requests an order of the Court (i) granting an expedited hearing on this Motion, (ii) approving the sale procedures set forth in this Motion by which the Trustee, through Steffes Group, Inc. (“**Steffes**”), the auctioneer retained by the Trustee, will offer and sell at auction (the “**Auction**”) twenty-three (23) membership capital units (collectively, the “**Units**”) of Absolute Energy, L.L.C., an Iowa limited liability company (“**Absolute**”), and (iii) authorizing the sale of the Units to one or more purchasers free and clear of all liens, encumbrances, and other interests.

8. The liquidation of the Debtor’s nonexempt real property and personal property has been the objective of the creditors, including the Official Committee of Unsecured Creditors (the “**Committee**”), throughout the pendency of this case. Following his appointment and based upon his investigation, the Trustee likewise has concluded that the liquidation of the Debtor’s non-exempt assets, including the Units, is in the best interest of the Debtor’s estate and creditors.

### **BACKGROUND**

9. On the Petition Date, the Debtor filed a voluntary petition under chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”) in this Court (the “**Bankruptcy Court**”).

10. On May 3, 2016, the Office of the United States Trustee appointed the Committee.

11. By order dated September 19, 2017, the appointment of the Trustee as the chapter 11 trustee for the Debtor was approved by this Court [Doc. No. 518].

12. Each of the Units constitutes a membership interest in Absolute and entitles the holder thereof (the “**Unit Holder**”) to the rights and obligations set forth in the Operating Agreement and other organizational documents of Absolute as in effect from time to time (collectively, the “**Absolute Organizational Documents**”). A transfer or assignment of a Unit by the Unit Holder is subject to certain restrictions and requirements as set forth in the Absolute Organizational Documents (collectively, the “**Unit Transfer Requirements**”). The Trustee intends that the proposed sale procedures set forth in this Motion comply with all applicable Unit Transfer Requirements, except as Absolute may otherwise agree.<sup>1</sup>

13. The Debtor is the current Unit Holder of record of the Units and the Units are property of the bankruptcy estate. The Trustee anticipates receiving all distributions allocated to the Units for fiscal year 2017 prior to the effective date of the sale(s) of any of the Units and all such distributions shall remain property of the bankruptcy estate notwithstanding the subsequent sale(s) of any of the Units.

14. The Trustee seeks authority to sell the Units free and clear of all liens, encumbrances, and other interests under sections 363(b) and 363(f) of the Bankruptcy Code, but subject to all of the terms and conditions of the Absolute Organizational Documents, including the Unit Transfer Requirements.

15. The Trustee believes that the Units are not subject to any valid, perfected or enforceable lien as that term is defined in section 101(37) of the Bankruptcy Code, other than an

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<sup>1</sup> Absolute has agreed that any obligation of a transferor set forth in the Unit Transfer Requirements or otherwise to indemnify and hold Absolute harmless for any damages, loss, cost, or liability arising out of or resulting from the transfer of membership capital units from the transferor to the transferee is waived by Absolute with respect to the Trustee’s sales of the Units. Absolute also has agreed that it will expedite the review and approval process for potential bidders that are not currently Unit Holders so as to conform to the sale timeline set forth in this Motion.

“adequate protection” lien granted in favor of CUSB Bank pursuant to that certain *Order Approving Stipulation Regarding Adequate Protection* [Doc. No. 258]. That *Order* specifically provides that “[s]uch lien shall not attach to the proceeds of the Ethanol Units, including distributions.” *Id.* at paragraph 1. The Trustee further believes that no person or entity other than the bankruptcy estate holds or asserts any right or interest, including any right of first refusal or option to purchase, in or to any of the Units other than as may otherwise be set forth in the Absolute Organizational Documents.

### SALE PROCEDURES

16. In order to maximize the sale proceeds to be realized from the sale(s) of the Units, the Trustee requests that this Court approve the following sale procedures (collectively, the “**Sale Procedures**”).

- a. **Sale Notice.** On or before February 23, 2018, the Trustee will provide notice, in the form attached as *Exhibit A* and as approved by the Bankruptcy Court (the “**Sale Notice**”), of the Sale Procedures (i) to the Debtor, (ii) to the Committee, (iii) to all parties that have filed notices of appearance in this case, (iv) to CUSB Bank, (v) to all existing Unit Holders,<sup>2</sup> (vi) to Absolute, and (vii) to any other party known to the Trustee to have expressed an interest in purchasing any of the Units. Steffes will post the Sale Notice on its website. The Trustee may, in his sole discretion, cause Steffes to publish the Sale Notice in such regional newspapers or other publications as the Trustee and Steffes shall determine.
- b. **Qualified Bidders.** Each person or entity wishing to participate in the Auction must be a qualified bidder (a “**Qualified Bidder**”). The Trustee, in consultation with Steffes and Absolute, will determine whether each person or entity that has registered with Steffes to participate in the Auction as provided under subparagraphs c or d below is a Qualified Bidder and Steffes will notify such person or entity of the Trustee’s decision not later than March 13, 2018. Any disputes regarding whether a person or entity is a Qualified Bidder shall be resolved by the Bankruptcy Court. Qualified Bidders that are not existing Unit Holders as of March 12, 2018 will be entitled to obtain Absolute’s most current audited

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<sup>2</sup> Absolute has agreed to provide to the Trustee and Steffes the names and contact information of the existing Unit Holders subject to the terms of a Nondisclosure Agreement.

financial information directly from Absolute after executing a nondisclosure agreement satisfactory to Absolute.

- c. **Existing Unit Holders.** In order for any person or entity that is an existing Unit Holder as of March 12, 2018 to be a Qualified Bidder, it must, by no later than March 12, 2018:
  - i. provide written confirmation to Steffes that it is an existing Unit Holder as of March 12, 2018; and
  - ii. register with Steffes at its website at <https://steffesgroup.com/Home/Auctions> to participate in the Auction.
- d. **Not Existing Unit Holders.** In order for any person or entity that is **not** an existing Unit Holder as of March 12, 2018 to be a Qualified Bidder, it must, by no later than March 12, 2018:
  - i. Provide written confirmation to Steffes that it has been approved by Absolute to acquire not less than four (4) of the Units at the Auction; and
  - ii. register with Steffes at its website at <https://steffesgroup.com/Home/Auctions> to participate in the Auction.
- e. **Auction.** The Auction will be an online auction only. The Auction will be conducted by Steffes at its website at <https://steffesgroup.com/Home/Auctions>. The Auction will commence on March 14, 2018, and will continue until March 23, 2018. Only Qualified Bidders will be eligible to participate in the Auction.
- f. **Auction Process.** The Auction will be conducted subject to the terms and conditions set forth in *Exhibit B* attached to this Motion. Each bid submitted shall include, in addition to the amount of the purchase price for the Unit(s) subject to the bid, (i) a transfer fee payable to the bankruptcy estate in the amount of Three Hundred and 00/100 Dollars (\$300.00) per Unit subject to the bid, and (ii) a buyer's premium payable to Steffes in the amount of Five Percent (5.0%) of the purchase price for the Unit(s) subject to the bid. Any Qualified Bidder that is not an existing Unit Holder as of March 12, 2018 must bid on not less than four (4) of the Units with each bid submitted. All bidding will be conducted at the Auction and no bids may be tendered or accepted after the Auction has concluded. At the conclusion of the Auction, the Trustee, in consultation with Steffes, will identify the highest and best bid or bids (the "**Successful Bid(s)**") submitted by one or more of the Qualified Bidder(s) (the "**Successful Bidder(s)**"). The Trustee will retain full discretion and right to determine which bid or combination of bids constitutes the highest or otherwise best bid or bids based on all of the circumstances, and which bid or combination of bids, if any, should be selected as the Successful Bid(s), all of which are subject to final approval by the Bankruptcy Court.

- g. **Auction Report.** The Trustee will file a report (the “**Auction Report**”) with the Bankruptcy Court on or before March 26, 2018. The Auction Report will set forth, among other things, the name(s) of the Successful Bidder(s), the purchase price(s) for the Units set forth in the Successful Bid(s) and the number of Units subject to the Successful Bid(s).
- h. **Sale Hearing.** The Bankruptcy Court will hold a hearing on March 29, 2018, at 10:30 a.m., to consider approving the Successful Bid(s) and authorizing the Trustee to consummate the sale(s) of all or a portion of the Units to the Successful Bidder(s) in accordance with the terms of the Successful Bid(s) (the “**Sale Hearing**”). Any objection on any basis that any party has to the conduct of the Auction, the Successful Bid(s), the Successful Bidder(s) or the Auction Report must be in writing and must be filed with the Bankruptcy Court no later than 5:00 p.m. prevailing Central Time on the date that is two (2) business days prior to the date of the Sale Hearing (the “**Objection Deadline**”), and must be served on the Trustee’s counsel so as to be received by no later than the Objection Deadline. Any objection must be in writing and set forth with particularity the grounds for such objection or other statements of position and otherwise comply with the Federal Rules of Bankruptcy Procedure and the Local Rules.

#### **SALE**

17. At the Sale Hearing, the Trustee will request that this Court approve the Successful Bidder(s) and the Successful Bid(s) and authorize the Trustee to consummate the sale of all or a portion of the Units free and clear of all liens, encumbrances, and other interests except as set forth in this Motion under sections 363(b) and 363(f) of the Bankruptcy Code to the Successful Bidder(s) in accordance with the terms of the Successful Bid(s).

18. If testimony is required, the following parties may be called to testify at the hearing on this Motion and/or at the Sale Hearing: Randy Kath, Steffes Group, Inc., 24400 Minnesota Highway 22 South, Litchfield, MN 55355, and Phillip L. Kunkel, Trustee, 1010 West St. Germain, Suite 500, St. Cloud, MN 56301.

#### **RELIEF REQUESTED**

WHEREFORE, the Trustee respectfully moves this Court for the following relief:

- A. the entry of an order approving the Sale Procedures set forth in this Motion;

B. the entry of an order scheduling the Sale Hearing before this Court for March 29, 2018, at 10:30 a.m.;

C. following the Sale Hearing, the entry of an order authorizing the Trustee to sell free and clear of all liens, encumbrances, and other interests except as set forth in this Motion all or a portion of the Units to the Successful Bidder(s) in accordance with the terms of the Successful Bid(s) and waiving the fourteen (14) day stay of the order otherwise required under Fed. R. Bankr. P. 6004(h) to make the order effective immediately; and

D. for such other and further relief as the Court deems just and equitable.

Dated: February 6, 2018

**GRAY, PLANT, MOOTY,  
MOOTY & BENNETT, P.A.**

/s/ Phillip Bohl

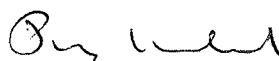
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*Attorneys for Phillip L. Kunkel, as Trustee*

**VERIFICATION**

I, Phillip L. Kunkel, state that I am the appointed chapter 11 trustee of the Tracy J. Clement bankruptcy estate, and declare under penalty of perjury that the facts and exhibits set forth in the foregoing Motion are true and correct, according to the best of my knowledge, information and belief.

Dated: February 6, 2018

  
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Phillip L. Kunkel, Chapter 11 Trustee



*EXHIBIT A*

*SALE NOTICE*

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

Case No. 16-31189

Tracy John Clement,

Chapter 11

Debtor.

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**NOTICE OF AUCTION OF MEMBERSHIP UNITS OF ABSOLUTE ENERGY, L.L.C.**

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PLEASE TAKE NOTICE THAT:

Twenty-Three (23) membership units of Absolute Energy, L.L.C. (collectively, the “**Units**”) will be sold through an online auction conducted by Steffes Group, Inc. (the “**Auction**”).

The Auction will commence on March 14, 2018, and will conclude on March 23, 2018.

**March 12, 2018** is the deadline to qualify to participate in the Auction.

Information concerning the Auction, the terms and conditions of the Auction, and the requirements for participation in the Auction is available at the Steffes Group, Inc. website at <https://steffesgroup.com/Home/Auctions>.

Parties that have qualified to participate in the Auction that are not currently members of Absolute Energy, L.L.C., may obtain financial and other information concerning Absolute Energy, L.L.C. directly from Absolute Energy, L.L.C. after entering into a nondisclosure agreement acceptable to Absolute Energy, L.L.C.

The Auction of the Units has been authorized by the United States Bankruptcy Court for the District of Minnesota pursuant to its *Order Approving Sale Procedures for the Sale of Absolute Energy, L.L.C. Units Free And Clear Of Liens, Encumbrances, And Other Interests*, entered in the above-captioned chapter 11 bankruptcy case, a copy of which is available at the Steffes Group, Inc. website.

*EXHIBIT B*

*AUCTION TERMS AND CONDITIONS*

GP:4813-9171-5675 v5

## Terms & Conditions

By accepting the terms and conditions of this auction you acknowledge you are entering into a legal and binding contract. You agree to abide by all terms and conditions and you acknowledge receipt of all explanations and information made available by Steffes Group, Inc., also referred to as Steffes Group or Company.

### Payment

When paying within the stated time and with our acceptable payment methods:

- **A 5% buyer's premium applies to each membership unit of Absolute Energy, L.L.C. purchased.**
- **A \$300 transfer fee applies to each membership unit of Absolute Energy, L.L.C. purchased.**

You agree to make payment for all online purchases in U.S. funds within 2 business days of receipt of invoice by one of the acceptable forms of payment unless approval of financing arrangements is made with Steffes Group. To issue a check by fax, simply write a check as you normally would and fax a copy to us. All NSF checks will be charged a \$30 fee. Checks by mail are not an accepted form of payment. Any other form of payment, other than the listed acceptable payment methods are subject to an additional 3% buyer's fee on the full amount of the purchase. No items will be released until full payment clears our office.

Acceptable forms of payment:

- Bank Wire Transfer; please call for wire instructions to be emailed to you.
- Check delivered to our office that held the auction
- Check By Phone

West Fargo, Sioux Falls, Grand Forks 701-237-9173

Litchfield 320-693-9371

Mt. Pleasant, Ames 319-385-2000

- Check By Fax

West Fargo, Sioux Falls, Grand Forks 701-237-0976

Litchfield 320-693-9373

Mt. Pleasant, Ames 319-385-4709

### Agents for Sellers

Steffes Group, Inc. and its Employees act merely as agents for sellers. All auctions are with reserve unless specifically stated otherwise. Auctions are with undisclosed reserves unless advertised otherwise as "Absolute." Auctioneers, at their discretion, may place a reserve bid on behalf of the seller. All final bids are subject to the seller's confirmation and approval by the United States Bankruptcy Court for the District of Minnesota. Only the top bidder will be

contacted as to the status of his/her bid. While the information we provide on item(s) is deemed correct, no warranties are expressed or implied as to any items being sold, and you agree to purchase and accept the item in an as-is condition. Information on items is obtained by us from the sellers and you hereby agree to hold harmless Steffes Group and our Employees for any errors or omissions regarding the item(s) being sold. Information relating to the membership units of Absolute Energy, L.L.C. may only be obtained directly from Absolute Energy, L.L.C. All items are sold As-Is-Where-Is unless specific factory or seller issued warranties are listed in the item description.

### **Inspection**

You acknowledge that you have the right and responsibility to inspect the item(s) personally, or to have a third party representative inspect the item(s) for you. That by bidding on an item you have agreed to accept that item in its present condition at its present location and with the description provided whether accurate or not.

### **Auction Close**

Timed-online auctions will begin to close on the date and time listed. Lots will remain open until no bids have been placed within the last 4 minutes. Timed-online auctions normally close at a rate of 3 lots every 2 minutes.

Please note that some lots can be tied together and will be set to close simultaneously. This will be indicated in those lots by a paper clip symbol. Please hover your mouse over the symbol to see what lots are tied together. The paper clip symbol means that each lot tied will stay in extension until there are no more bids on any of the lots that are tied.

Steffes Group reserves the right to close multiple lots per minute at its discretion. You agree that Steffes Group, its employees, and its sellers are not responsible for lost, stolen or damaged items and will not reimburse or discount items for any type of loss. Buyers are responsible for any costs incurred to transfer ownership of record of any membership unit of Absolute Energy, L.L.C. purchased.

### **Buyer Default**

When using our online auction services you are making a firm commitment to purchase said item(s) and are entering into a legal and binding contract. Bids may not be cancelled or retracted for any reason.

Non-paying bidders or fraudulent bidding will subject you to legal recourse and possible criminal charges including any fraud and/or interstate commerce violations.

### **Internet Risk**

You acknowledge that the internet may be an unreliable and error-prone network. Steffes Group will not guarantee that bids placed online will always be transmitted to or received by the auctioneer in a timely fashion. You agree to hold Steffes Group, Inc. and its employees harmless for any interruptions in online bidding. At the sole discretion of the Company, the auction may be suspended, postponed, or cancelled if internet service is unstable or disrupts the online portion of any event that is simulcast as an Internet Auction.

Further, the auctioneer has the sole discretion to accept or refuse any bid. Steffes Group retains the right, at our sole discretion, to add, delete, or change some or all of our online services and the terms and conditions governing their online auctions at any time without notice.

### **Abandonment Policy**

Steffes Group provides this [Abandonment Policy](#) to inform you of our policies and procedures regarding any purchased item(s)/property that has not been removed by a buyer in a timely manner. Upon winning the bid for an item(s), after paying for item(s) purchased, a buyer is obligated to remove the item(s) from the auction site within a timely manner.

Disposition of property may include a variety of approaches based upon the buyer's purchase price of the property as follows:

1) For those items with a final selling price of \$5,000 or less, the Company will determine the appropriate disposition approach which may include:

- Removing and disposing as the Company sees fit.
- Allowing seller to retain or scrap.
- Sell the item(s), whereby the Company will remit the sales proceeds to the buyer, less selling and advertising expenses, storage costs, plus 20% administrative fee.

2) For those items with a final selling price of greater than \$5,000, Steffes Group may remove the item from the selling location and resolve as follows:

- The Company may reimburse the seller on the buyer's behalf for storage fees of \$25 per day, with the total amount not to exceed \$1,500.
- Sell the item(s), whereby the Company will remit the sales proceeds to the buyer, less selling and advertising expenses and storage costs, plus 20% administrative fee.

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Case No. 16-31189

Tracy John Clement,

Chapter 11

Debtor.

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**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR ENTRY OF ORDERS  
(I) APPROVING SALE PROCEDURES AND (II) AUTHORIZING THE SALE OF  
ABSOLUTE ENERGY, L.L.C. UNITS FREE AND CLEAR OF LIENS,  
ENCUMBRANCES, AND OTHER INTERESTS**

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The chapter 11 trustee, Phillip L. Kunkel (the “Trustee”), by and through his undersigned attorneys, submits this memorandum of law in support of his *Motion For Entry of Orders (I) Approving Sale Procedures And (II) Authorizing the Sale of Absolute Energy, L.L.C. Units Free And Clear of Liens, Encumbrances, and Other Interests* (the “Motion”).

**FACTS**

The facts in support of this Memorandum of Law are set forth in the Motion. All capitalized terms that are not defined in this Memorandum of Law have the meanings ascribed to them in the Motion.

**DISCUSSION**

**A. This Court Should Approve the Sale of the Units Free and Clear of Liens, Encumbrances, and Other Interests.**

Section 363 of the Bankruptcy Code provides that the Trustee “after notice and a hearing may use, sell or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1); *In re Hanson Industries*, 90 B.R. 405 (Bankr. D. Minn. 1988). Section 363(f) allows the Trustee to sell property “free and clear of any interest in such property

of an entity other than the estate,” if one of five criteria is met. *Lindsey v. Ipock*, 732 F.2d 619, 622 (8th Cir. 1984). Section 363(f) provides:

- (f) The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—
  - (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
  - (2) such entity consents;
  - (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
  - (4) such interest is in bona fide dispute; or
  - (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

Courts consider the amount of the liens, if any, as well as whether the estate has any equity in the property in approving sales. *In re Riverside Inv. Partnership*, 674 F.2d 634, 640 (7th Cir. 1982). The failure to object to a proposed sale could be construed as consent to the sale. *Veltman v. Whetzal*, 93 F.3d 517, 521-522 (8th Cir. 1996).

Here, at least one of the five criteria set forth in section 363(f) exists. Based on the Trustee’s investigation, there are no known no liens on or other interests in the Units that are valid, perfected or enforceable, other than an “adequate protection” lien granted in favor of CUSB Bank pursuant to that certain *Order Approving Stipulation Regarding Adequate Protection* [Doc. No. 258]. That *Order* specifically provides that “[s]uch lien shall not attach to the proceeds of the Ethanol Units, including distributions.” *Id.* at paragraph 1. If any party asserts any other lien or other interest on or in any of the Units, the Trustee will establish that one



of more of the section 363(f) criteria is met with respect to such lien or other interest. If no objections are filed, consent also will be established.

The Trustee believes that it is in the best interest of the bankruptcy estate and the creditors that the Units be sold.

**B. This Court Should Approve the Sale Procedures as Set Forth in the Motion.**

The Trustee further believes that, in order to maximize the bankruptcy estate's recovery, the Sale Procedures set forth in the Motion should be approved. The Sale Procedures provide that the Trustee will provide notice of the proposed sale of the Units to a broad spectrum of potential purchasers, including all existing members of Absolute. The Units then will be sold by Steffes, the auctioneers retained by the Trustee, through an online auction process. The Trustee has concluded, based on discussions with Steffes and with Absolute, that this sale process likely will produce the most favorable recovery for the bankruptcy estate.

**C. This Court Should Schedule a Date and Time for the Sale Hearing.**

The Court also should schedule a date and time for the Sale Hearing in order to resolve any objections to the conduct of the Auction or the proposed sale or sales of the Units to the Successful Bidder(s) and approve such sale or sales. Scheduling the Sale Hearing in conjunction with approving the Sale Procedures will ensure that all parties in interest entitled to notice of the Objection Deadline and the Sale Hearing will receive such notice in a timely fashion.

**CONCLUSION**

Because the sale of the Units is in the best interest of the estate and because the Sale Procedures should maximize the bankruptcy estate's recovery, the Trustee respectfully requests that this Court enter an order approving the Sale Procedures. The Trustee further requests that, following the Sale Hearing, this Court enter an order authorizing the Trustee to sell all or a

portion of the Units free and clear of liens, encumbrances, and other interests to the Successful Bidder(s) in accordance with the terms of the Successful Bid(s), and that the fourteen (14) day stay otherwise required under Fed. R. Bankr. P. 6004(h) be waived, such that the Trustee may move as expediently as possible to consummate the sale.

Dated: February 6, 2018

**GRAY, PLANT, MOOTY,  
MOOTY & BENNETT, P.A.**

/s/ Philip Bohl

Phillip Bohl (#0139191)

Abigail M. McGibbon (#0393263)

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*Attorneys for Phillip L. Kunkel, as Trustee*

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re

Court File No. 16-31189

Tracy John Clement,

Chapter 11 Case

Debtor.

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**CERTIFICATE OF SERVICE**

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I, Phillip Bohl, hereby certify that on the 6<sup>th</sup> day of February, 2018, I caused a true and correct copy of the foregoing ***NOTICE OF HEARING AND MOTION FOR ENTRY OF ORDERS (I) APPROVING SALE PROCEDURES AND (II) AUTHORIZING THE SALE OF ABSOLUTE ENERGY, L.L.C. UNITS FREE AND CLEAR OF LIENS, ENCUMBRANCES, AND OTHER INTERESTS, MEMORANDUM OF LAW AND PROPOSED ORDER*** to be served on the following parties in the manner indicated below by United States Mail and on the parties receiving service through the Electronic Case Filing (ECF) system via electronic mail in this proceeding.

<p><b><u>US TRUSTEE AND OTHER REQUIRED PARTIES</u></b></p>	<p>Howard County Treasurer Howard County Courthouse 137 N Elm Street Cresco IA 52136</p>	<p>Thomas J. Lallier Foley &amp; Mansfield, P.L.L.P. 250 Marquette Avenue, Suite 1200 Minneapolis, MN 55401 <a href="mailto:tlallier@foleymansfield.com">tlallier@foleymansfield.com</a> (Via ECF)</p>
<p>United States Trustee U.S. Trustee's Office 1015 US Courthouse 300 South Fourth Street Minneapolis, MN 55415 <a href="mailto:ustpreigion12.mn.ecf@usdoj.gov">ustpreigion12.mn.ecf@usdoj.gov</a> (Via ECF)</p>	<p>Mower County Treasurer 201 First Street NE, Ste 7 Austin MN 55912</p>	<p><b><u>OTHER INTERESTED PARTIES &amp; PARTIES REQUESTING NOTICE</u></b></p>
<p>U.S. Trustee Michael R. Fadlovich U.S. Trustee's Office 1015 US Courthouse 300 South Fourth Street Minneapolis, MN 55415 <a href="mailto:michaelladlovich@usdoj.gov">michaelladlovich@usdoj.gov</a> (Via ECF)</p>	<p>Olmsted County Treasurer Olmsted County Government Center 151 Fourth Street SE Rochester MN 55904</p>	<p>Nancy Clement 12915 County Rd 3 Spring Valley MN 55975</p>
<p>IRS District Counsel 380 Jackson St, Ste 650 St Paul, MN 55101-4804</p>	<p><b><u>DEBTOR</u></b></p>	<p>Jacob B. Sellers Winthrop &amp; Weinstine, P.A. 225 South Sixth Street, Suite 3500 Minneapolis, MN 55402 <a href="mailto:jsellers@winthrop.com">jsellers@winthrop.com</a> (Via ECF)</p>
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Dated: February 6, 2018

**GRAY, PLANT, MOOTY,  
MOOTY & BENNETT, P.A.**

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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

Case No. 16-31189

Tracy John Clement,

Chapter 11

Debtor.

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**ORDER APPROVING SALE PROCEDURES FOR THE SALE OF ABSOLUTE  
ENERGY, L.L.C. UNITS FREE AND CLEAR OF LIENS, ENCUMBRANCES, AND  
OTHER INTERESTS**

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This matter came before the court on the *Motion For Entry of Orders (I) Approving Sale Procedures And (III) Authorizing the Sale of Absolute Energy, L.L.C. Units Free And Clear of Liens, Encumbrances, and Other Interests* (the “**Motion**”) filed by the chapter 11 trustee, Phillip L. Kunkel (the “**Trustee**”). Based upon all of the files, record and proceedings herein,

**THE COURT HEREBY FINDS AND DETERMINES THAT:**

A. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. Adequate and sufficient notice to all creditors and interested parties to this case entitled to notice of the proposed entry of this Order has been given.

C. The Trustee has demonstrated that the proposed sale procedures for the sale of the membership units of Absolute Energy, L.L.C. that constitute property of the bankruptcy estate set forth in the Motion (as defined in the Motion, the “**Sale Procedures**”), based on the Trustee’s business judgment, are reasonable and are designed to maximize the recovery obtained by the bankruptcy estate.

D. The relief granted in this Order is in the best interest of the bankruptcy estate, all creditors and other interested parties to this case.

**IT IS HEREBY ORDERED THAT:**

1. The relief requested in the Motion is granted to the extent provided in this Order.
2. The Sale Procedures as set forth in the Motion are approved.
3. The hearing on the Motion with respect to the request to approve the sale or sales of the membership units of Absolute Energy, L.L.C. to the successful bidder or bidders at the auction for such membership units is scheduled before this Court for March 29, 2018, at 10:30 a.m.
4. The chapter 11 trustee is authorized to take such other actions and execute and deliver such additional documents or instruments as will be reasonably necessary to effectuate the Sale Procedures as set forth in the Motion.

Dated:

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Michael E. Ridgway  
United States Bankruptcy Judge

GP:4832-3429-0010 v3