EXHIBIT C

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IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

In re: RENEWABLE ENERGY DEVELOPMENT CORPORATION, Debtor.	**OBJECTION BY TONY HALL AND ELLIS-HALL CONSULTANTS, LLC TO TRUSTEE'S SECOND MOTION FOR ORDER (A) AUTHORIZING THE SALE OF THE DEBTOR'S BLUE MOUNTAIN WIND ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS, AND (B) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND EXPIRED LEASES** Bankruptcy Case No. 11-38145 (WTT) Chapter 7 [**Filed Electronically]**

Mr. Tony Hall ("**Mr. Hall**") and Ellis-Hall Consultants, LLC ("**EHC**")

(collectively the "**Objecting Parties**"), by and through their counsel, Michael Emery and Mark

L. McCarty of RICHARDS BRANDT MILLER NELSON, herby object to the Trustee's Motion and in support thereof state the following:

I. Additional Facts and Circumstances

The following are various facts and circumstances, relevant to this Objection, which either do not appear in the Court's written record or, if present, are inadequately presented or explained.

1. On January 5, 2012, the Trustee filed his Application to appoint himself and his law firm, PARSONS KINGHORN HARRIS, P.C. ("**PKH**") as his counsel in this case. [Doc. 6] in both the Application (paragraph 8) and in the attached Declaration of the Trustee (paragraph 4), the Trustee states that neither he nor his firm hold or represent an interest adverse to the estate and are disinterested persons under Section 101(13) of the Bankruptcy Code. ("**Code**")

2. As of January 5, 2012, PKH was representing Kimberly Ceruti ("**Ms. Ceruti**"), EHC and Mr. Hall in a matter in which all three such persons had been named as defendants, but only Ms. Ceruti had been served. PKH held in trust, a retainer in the event Mr. Hall and EHC were served. As of the dated of this Objection, PKH still represents Ms. Ceruti. PKH represented EHC on a variety of matters, including but not limited to Wind Farm Development issues. At all relevant times, Ms. Ceruti served as an Executive Director of EHC and spoke with the firm regarding these and other personal concerns involved in litigation. As a result of the foregoing, the Trustee and PKH acquired significant information about Mr. Hall and EHC.

3. On or before January 5, 2012 (the same day the Trustee's Application to Appoint Counsel), the Trustee began calling EHC, in earnest, to secure experienced advice about wind farm projects, how to market and sell the same and, at some point, to see if EHC might want to bid on certain assets of the Estate.

4. On January 12, 2012 Mr. Hall, as a representative of EHC, signed a Non-Disclosure Agreement ("**NDA**"). The Trustee mistakenly identifies the date this agreement was signed as December 1, 2012 (which is impossible because this date has not occurred December 30, 2011) because he failed to remember that some persons write dates beginning with the day, then the month, then the year. At no time did the Trustee advise Mr. Hall or EHC that the NDA presented a conflict of interest nor did he advise Mr. Hall that he and EHC should secure separate legal counsel. Mr. Hall executed the NDA without analyzing the same, believing it was presented to him by his own lawyer.

5. On January 13, 2012, Ms. Ceruti, as a representative of EHC, signed a similar NDA believing it was presented to her by her own lawyer. Mr. Hoffman has personally has personally appeared on behalf of Ms. Ceruti both in Federal and State Court. At this time Ms. Xerti executed the NDA, she had engaged in conversations with Mr. Hoffman regarding litigation he currently represented her on. At no time was Ms. Ceruti alerted to conflicts or advised to get separate counsel.

6. Prior to the present case, Ms. Ceruti did present a request to PKH to perform certain services in another Wind Farm Development concern, unrelated to this matter. At this time, PKH identified a potential conflict, so the Firm prepared an extensive letter

describing the same and thoroughly discussed the contents of the letter with Ms. Ceruti both on the telephone and at the law offices of PKH.

7. On or about January 13, 2012, at the Trustee's request, Ms. Ceruti examined the Option/Lease Agreements and advised the Trustee that there were serious problems with some of the Option/Leases Agreements because the Option Payment or any consideration had not been made to some landowners and the Debtor had not performed other obligations. These issues were discussed a number of times and, in response, the Trustee advised Ms. Ceruti that he knew very little about the Debtor's business, and that as Trustee, he was only selling what he had with no representation as to title.

8. Subsequent to January 13, 2012, the Trustee advised EHC that he had no bids for the assets and he asked EHC if it would make a bid. EHC agreed. After a few days the Trustee demanded that the bid be in writing and that a deposit be made. Not knowing the process, Ms. Ceruti asked the Trustee for the terminology she should use, and thereafter prepared a bid letter, dated January 24, whereby EHC offered to purchase "each and every asset" for the sum of $3,000. EHC thereafter deposited $3,000 with the Trustee. In connection with complaint by Ms. Ceruti about missing information, the Trustee advised Ms. Ceruti that she was responsible for due diligence.

9. On January 10, 2012 the Trustee filed his Motion for Order Approving a Bid Procedure and Authorizing the Sale of substantially all of the Debtor's Assets. On January 30, 2012, the Court made a Minute Entry authorizing and approving the sale of assets to Sustainable Power Group, LLC ("**sPower**") and The Asset Purchase Agreement between sPower

and the Trustee. By this agreement, sPower eventually purchased all of the Debtor's assets except for those specifically identified as "Excluded." The relevant excluded assets are the Debtor's equity interest in Blue Mountain Wind, LLC and twelve of the Debtor's Option/Lease Agreements which are the subject of the Trustees' present sale motion.

10. The Asset Purchase Agreement with sPower expressly included six Option/Lease Agreements adjacent to the twelve Option/Lease expressly excluded. There appears to be no defect with respect to the six (6) Option/Lease Agreements purchased by sPower and the there are no assertions before this Court that such Option/Lease Agreements were not property of the Estate.

11. On January 13, 2012, while in Mr. Hoffman's office, Ms. Ceruti offered to purchase some of the other assets including the six (6) leases from the Estate. Mr. Hoffman advised her that the assets had already been sold and were part of another deal.

12. On or about January 30, 2012, Ms. Ceruti expressed its dismay that the six (6) Option/Lease Agreements were sold to sPower because she had already expressed an interest in purchasing such Agreements. In response, the Trustee advised Ms. Ceruti to forget about such Agreements because the sale was "done", and if she or EHC wanted them so badly they could purchase them from sPower.

13. On or about February 23, 2012, EHC purchased from sPower the six Option Lease/Agreements that sPower acquired from the Bankruptcy Estate.

14. Unbeknownst to EHC, Cedar City Wind Holdings, LLC ("**CCWH**") first learned about the potential to buy assets from the REDCO Bankruptcy Estate on January 9,

2012. Thereafter, CCWH, through its parent company Champlin/GEI Wind Management, Inc. ("**Champlin**") conducted significant due diligence and discovered additional facts as follows:

(a) On its preliminary evaluation, Champlin did not believe the "**Project**" was viable.

(b) Champlin got access to Debtor's data room form which contained limited information about the project.

(c) Champlin received information from an unhappy unsecured creditor of REDCO.

(d) Champlin conducted their own due diligence by making contact with existing leaseholders and other landowners in the surrounding area from which additional Agreements were necessary to make the project viable.

(e) Blue Mountain Wind is being sold with no representation and warranties of the completeness of the assets.

(f) The Lease Agreements may not be in good standing.

(g) REDCO insiders purchased solar and wind assets, were knowledgeable as to the value of such assets, and they chose not to purchase the Blue Mountain Wind Assets as offered by the Trustee.

15. As a result of its due diligence, Champlin, on or about February 7, presented a proposal to its Board of Directors, advising them of these concerns and others.

16. On February 17, 2012, CCWH and the Trustee entered into an Asset Purchase Agreement which is presently before the Court (as amended).

17. The Asset Purchase Agreement with CCWH expressly requires the Trustee to cooperate and assist the Buyer [CCWH] in acquiring the six (6) Option/Lease Agreements which were sold to Sustainable Power Group, LLC ("sPower").

18. On February 28, 2012, the Trustee filed its Motion to Sell the Blue Mountain Wind Assets.

19. At some point, after February 17, 2012, the Trustee discovered that sPower had sold the Option/Lease Agreements it purchased from the Estate to EHC. Thereafter, the Trustee contacted his firm's client, EHC and requested that EHC sell or transfer such agreements back. EHC refused. The Objecting Parties have no information as to when CCWH learned that EHC owned such leases.

20. On March 2, 2012, the Trustee filed a Supplemental Affidavit with the Court in which he states that he learned of an "additional connection" between PKH and a potential party in interest in this case that is not identified. The Trustee further assets that he does not believe this connection constitutes a conflict of interest or makes PKH not disinterested persons.

21. The Supplemental Affidavit does not advise the Court that the "connection" is the past and present representation of Ms. Ceruti, Mr. Hall and EHC as clients of the Firm. It does not advise the Court that Mr. Hoffman personally represented, and continued to represent Ms. Ceruti. It does not advise the Court that on October 25, 2011, after personally appearing on behalf of Ms. Ceruti in an unrelated bankruptcy matter, Mr. Hoffman had discussion with Mr. Hall regarding wind farm development and EHC. It also does not advise

that EHC had purchased from sPower the six (6) Option/Lease Agreements, that CCWH desires and that the Trustee has agreed to cooperate and assist CCWH in "getting the Option/Lease Agreements back, from EHC, and that EHC, a client of the Trustee and his Firm has refused to sell them back.

22. Upon information and belief, Mr. J. Michael "Mike" Adams ("**Mr. Adams**"), was a former shareholder in REDCO, a land owner of one (1) of the Option/Lease Agreements purchased by EHC from sPower and, the father of Mr. Joseph Adams, and another land owner of one (1) of the Option/Lease Agreements purchased by EHC from sPower. Mr. Adams is a former REDCO employee and current sPower employee and the person who was involved in the sale of the six (6) Option/Lease Agreements to EHC. On or about March 16, 2012, Mr. Adams contacted some land owners, including one or more of the landowners whose Option/Lease Agreement was sold to sPower, and represented to such Landowners that the REDCO Option/Lease Agreements leases were not valid. On the same afternoon in Monticello, San Juan County, Utah after EHC had purchased the six (6) Option Lease/Agreements from sPower in Salt Lake County, Utah, Mr. Adams sold/transferred title to his land, encumbered by the Option/Lease Agreement to another party.

23. The Asset Purchase Agreement with CCWH was subject to higher and better offers. Another bidder showed interest and an auction was scheduled to occur just prior to the hearing on the sale scheduled for March 22, 2012.

24. CCWH learned that the bidder was a former disgruntle employee of Champlin that had confidential and proprietary information from both Champlin and the Debtor.

On March 16, 2012, Champlin filed a Complaint and Motion for Restraining Order in U.S. District Court, District of Oregon, Case No.: 3:12–cv-00489-AC against Darin Huseby ("**Huseby**"), the former employee proposing to bid at the auction scheduled by the Trustee. No Restraining Order was entered and Huseby was allowed to bid.

25. CCWH was the highest bidder at $210,000, and on March 22, 2012, this Court approved the sale to CCWH, and failed to close on the sale at the price of $210,000.

26. On or about March 23, 2012, the Trustee sent a letter to his clients, EHC and Tony Hall asserting that it had violated the automatic stay which would support a claim by the Trustee for sanctions and substantial damages.

27. Tony Hall and EHC, through other counsel, advised the Trustee, among other things, that they had been advised that the Option/Lease Agreements at issue were void for lack of consideration and/or automatically terminated because REDCO had failed, among other things to make the option consideration payment required for the agreements. They also reminded the Trustee of several conversations he had with Ms. Ceruti regarding these Option/Lease Agreements and his advice and instructions about these Option/Lease Agreements. Citing similar cases, such counsel told the Trustee that the Option/Lease Agreements were not property of the Estate.

28. In response to this assertion, the Trustee, on or about March 27, 2012 engaged separate counsel who sent a letter unequivocally asserting that the Option/Lease Agreements were property of the Estate. In this Application to appoint special counsel, the

Trustee finally states that EHC is a client of PKH and that a dispute with EHC has arisen over the sale order.

29. The correspondence described in paragraphs 22, 23 and 24 above represent the first time the Trustee claimed title to their Agreements which repudiated his original statements to Ms. Ceruti that he only sold what he had with no representation or warranty as to title.

30. On April 4, 2012 the Trustee filed his Application for an Order to Show Cause, and [present counsel filed its Emergency Objection to the Trustee's Application on April 5, 2012. In such Objection, counsel argued that the Lease/Option agreement was not property of the Estate and that resolution of such required an Adversary opinion.

31. At the hearing on the Order to Show Cause, the Court ruled that the Order on the Trustee's Application were stricken and withdrawn.

32. CCWH refused to close on the Asset Purchase Agreement claiming that it believed that it would be actually acquiring the Option/Lease Agreements enforceable against all others, despite the very clear language in the Asset Purchase Agreement denying any kind of warranty, including title.

33. The Trustee claims to disagree with CCWH's position but to resolve their differences, by reducing the price to $105,000, by agreeing to assign the Trustee's interest in the NDA's executed by Mr. Hall and Ms. Ceruti, both as representatives of EHC, and by providing some additional agreement with sPower as a party respecting information.

Based on the foregoing, the Objecting Parties set for their objections below.

II. Objection 1

The relief the Trustee requests from this Court is inconsistent with the provisions of the Asset Purchase Agreement, as amended and therefore such relief should be denied absent further clarification and explanation. In his Motion, the Trustee requests an order (i) authorizing the sale of the Blue Mountain Wind Assets, free and clear of liens, claims, encumbrances, and interests, (ii) authorizing the assumption and assignment of exectutory contracts in connection with the Blue Mountain Assets, (iii) and such other relief as the Court deems just and proper (see pg. 15 of the Trustee's Second Motion.) In the first Amendment to the Asset Purchase Agreement, Section 1.3 adds a new Section 1.05 to the original Asset Purchase Agreement. In this new Section 1.05, CCWH acknowledges that certain of the interfering parties (which by definition include Mr. Hall and EHC) claim that certain assets to be purchased are not property of the Estate, but Seller (the Trustee) is agreeing to sell his interest in the assets pursuant to a Final Order with the understanding that the Buyer shall be entitled to enforce such Order against the Interfering Parties, which include Mr. Hall, EHC and some the Landowners.

Accordingly, in his Motion it seems the Trustee is not asking directly that the contested assets be determined to be property of the Estate under Code 541, but in the Agreement, as amended he seeks an Order allowing the Buyer to enforce the Order against parties which would not be subject thereto unless the contested Assets are determined to be property of the Estate. If the Trustee and the Buyer are seeking an Order under Section 541, they must proceed by an Adversary Proceeding. *See also* Contingent Objection 4 below for the reasons the Lease/Option Agreements are not property of the Estate.

III. Objection 2

The NDA's executed by Mr. Hall and Ms. Ceruti, as agents of EHC are simply unenforceable. It is axiomatic that a lawyer, who is also such lawyer's client, cannot enter into an enforceable agreement with another client of the same lawyer, and then pursue enforcement of such contract without having obtained, prior to the execution of such agreement, a written waiver from the second client which fully explains all existing and potential contracts. Courts routinely refuse to enforce contracts which are against public policy. *See e.g.* Scolinos v. Kolts, 37 Cal.App.4th 635, 639-40(2d Dist. 1995); *In re Tampa Chain Co., Inc.*, 35 B.R. 568 578-579 (S.D.N.Y. 1983); and *Feaster v. First Fed. Sav. Bank of Kansas, Wellington, Kansas*, 723 F. Supp. 1413, 1416 (D.Kan.1989).

In this case, the Trustee called his and his Firm's clients who were experts about wind farming seeking help, and later solicited a bid. He presents the NDA's for signature with no written or oral explanation that, at that moment, he was acting against their interests, and that they should seek separate legal counsel before signing the document. The Trustee assumed, or should have assumed, that such NDA's would be executed, without analysis, because both Mr. Hall and Ms. Ceruti reasonably believed he was their counsel and would not act against their interest. George asked and they signed, simple as that. Public policy supports the maintenance of our judicial system, where two parties, each represented by competent counsel, resolve disputes. The system, as a whole, fails if one's own lawyer can secretly become your adversary.

IV. Objection 3

The Court should deny the Trustee's Second Motion because CCWH, and its parent company, Champlin, have not proceeded in good faith and, to a lesser extent, neither has the Trustee. Upon learning of this opportunity in January, Champlin conducted extensive due diligence and analysis. Through this analysis, Champlin knew the project as proposed was not viable without other property, knew that the data room did not contain a map of the parcels that had been secured and that the leases might not be in good standing. Champlin also knew that the Debtor's insiders, who presumably were knowledgeable, chose not to by the assets offered for sale by the Trustee.

By the time it was prepared to sign an Asset Purchase Agreement with the Trustee, Champlin knew that sPower purchased six (6) of the Option/Lease Agreements, Champlin wanted, but not a part of the sale, so it extracted a post-closing from the Trustee to assist and cooperate in getting them back. No information is provided as to how this could be accomplished by the Trustee. At the auction conducted by the Trustee, Champlin chose to be the highest bidder. Prior to closing, Champlin must have known that sPower no longer owned the six (6) leases and that the new owner [EHC] refused to sell or "give them back." Moreover, no later than March 16, 2012 Champlin hired Mr. Mike Adams, a former REDCO employee, who was also and a Landowner on one (1) of the six (6) Option/Lease Agreements purchased by sPower, father of Mr. Joseph Adams, Landowner of another one of the six (6) Option/Lease Agreements purchased by sPower, and either the cousin or brother of Rob Adams, a former REDCO employee and current employee of sPower, and who was clearly adverse to EHC.

There has been no opportunity to explore what, if any, relationship Mr. Adams has with Champlin, or why he is hostel to EHC.

With knowledge of the forgoing, Champlin refused to close for the stated reason that it believed the Trustee agreed to transfer the Blue Mountain Wind Assets "free and clear of liens and encumbrances, "which, in turn, required that such assets be deemed part of the Debtor's estate. This belief is not rational given its knowledge and the disclaimer in the Asset Purchase Agreement. Having refused to close at the bid price, Champlin makes another proposal, at half price, wherein more disclaimers about the status of the leases are included, and the Trustee includes the NDA's executed by EHC upon his advice and instruction. Without explaining why the Trustee thought he had real differences with Champlin that required resolution, he chose to include the NDA's which may be used to initiate legal action against Ms. Ceruti, Mr. Hall and EHC, the Trustee's clients. What Champlin wanted all along was the six (6) Option/Lease Agreements purchased by sPower and sold to EHC. When the Trustee could not deliver the leases, Champlin made an offer, at one half of the price, which included an agreement that could be used as leverage against EHC. In short, Champlin got involved to get leases that were not for sale. When the Trustee could not deliver, it settled for a lawsuit instead.

It goes without saying that the foregoing does not comport with good faith.

V. Contingent Objection 4

A) <u>Adversary Proceeding Required.</u>

The issue raised by the pending motion may include a determination that the Lease/Option Agreements are property of the Estate and therefore can be assumed, assigned and

sold by the Trustee in his attempt to sell what has been identifies ad the Blue Mountain Assets. Code Section 541 defines property of the Estate for all purposes. As such, the resolution of this issue is controlled by Rule 7001 (2). This rule defines adversary proceedings as a "proceeding to determine the validity, priority, or extent of a lien or other interest in property. . . .Whether the Debtor's Estate includes the Lease/Option Agreement requires a determination of the Debtors "interest" therein as of the Petition Date. As such, a dispute over the Debtor's "interest" must proceed by Adversary Proceedings which the Trustee initiated by filing his Complaint on May 28, 2012. This Court has routinely held that the determination of an "interest" in property requires an Adversary Proceeding. *See* cases attached as Exhibit A.

The Trustee has suggested that the case entitled in the matter of *C.W. Mining*: *C.O.P. Coal Development Company v. C.W. Mining*, 641 F.3d 1235 (Tenth Cir. 2011) concludes that an adversary proceeding is not necessary. In this case, the Tenth Circuit Court of Appeals upheld a Bankruptcy Court's decision that a Lease was property of the Estate, agreeing with the Bankruptcy Judge that the status of the Lease, based upon the written terms, was ambiguous and its status could be determined, as a matter of Law, by the Judge reviewing the plain language of the document. At no time was the issue could be decided in a contested matter or an adversary proceeding ever raised, argued, or decided by the Appellate Court. Moreover, an adversary proceeding was prosecuted to determine the effect of certain letters or the interpretation of the Lease. The result of this advisory proceeding of the Lease was that such letter had no legal effect. Accordingly, the bifurcated proceedings in the *C.W. Mining* case, which did not address

the need for an adversary proceeding, is not controlling here where that issue has been specifically raised.

B) <u>The Option/Lease Agreements were of no legal effect as of the Petition Date.</u>

Though a formal decision must be made by way of an adversary proceeding, the Trustee is well aware that the only fair reading of the Option Lease Agreements demonstrates that such agreements failed for lack of consideration. Specifically, the Debtor did not timely pay the $1,000 dollars identified as the consideration for each of the agreements. Accordingly, they are void for failure of consideration. The Trustee argues that the Debtor's failure to pay the $1,000 consideration is a Payment Default which under Section 19.1.2 of the Option Lease Agreement requires the Landowner to provide a notice of default and a cure period before the agreement can be terminated. The problem with the Trustee's position is that Section 19.1 defines "Payment Default" as the failure to pay when due those amounts set forth on Schedule D." Unfortunately for the Trustee, Schedule D expressly omits any reference to the initial consideration payment of $1,000. Accordingly, no notice and cure period is applicable and the options failed when the consideration payment was not made. Section 3.7 of each agreement provides that if REDCO fails to exercise the Option within the Option Term, which never began because of the failure to pay the Option, the right of REDCO as Optionee automatically terminates. While 30 days were given to make this payment, it is silly to think the Landowners intended to tie up their property for up to eight years with no payment.

What the Trustee fails to recognize is that the document relates to two separate time periods: The option term and the lease term. The lease term pursuant to Section 6.1.1

begins on the dated REDCO properly provides the Option Notice and lasts for fifty (50) years. Only after the exercise of the Option does the lease begin. Once exercised and the parties are into the lease term, all the other Section of the agreement, including Section 19 which can only be interpreted as applying to the lease term, come into play. Section 19, which requires notice prior to termination due to a payment default expressly omits the option payment from the definition of paymemt, thus making a notice requirement reasonable after REDCO has invested significant sums into the project.

The *C.W. Mining* case upon which the Trustee relies is simply not on point. The lease in that case had been going on for years and the lessee had invested significant sums into the project. Consequently, automatic termination without more from the Landlord was unreasonable. In this case, the relationship begins with an Option before the lease begins, and it is not reasonable to use Section 19 to interpret the agreement to grant an Option when no consideration is paid. Accordingly, by the petition date the Debtor had absolutely no interest in the Option/Lease Agreements and the same were not part of the Estate.

Wherefore, the Hall Parties respectfully request that this Court deny the Trustee's Application.

DATED this 13th day of June, 2012.

RICHARDS BRANDT MILLER NELSON

/s/ Michael N. Emery
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Attorneys for Ellis-Hall Consultants and Tony Hall

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 13, 2012 I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which sent notification of such filing to the following:

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and I hereby certify that on June 14, 2012 I will have mailed by United States Postal Service, the foregoing document to the following non-CM/ECF participants:

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