



ENTERED
02/11/2014

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	Case No. 13-37200
	§	
GOLDKING HOLDINGS, LLC, <i>et al.</i> , ¹	§	
	§	Chapter 11
Debtors,	§	(Jointly Administered)
	§	
	§	

ORDER (I) SCHEDULING A HEARING ON THE APPROVAL OF THE SALE OF ALL OR SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, AND THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (II) APPROVING CERTAIN BIDDING PROCEDURES, ASSUMPTION AND ASSIGNMENT PROCEDURES, AND THE FORM AND MANNER OF NOTICE THEREOF, AND (III) GRANTING RELATED RELIEF
[Relates to Docket No. 276]

Upon consideration of the motion (the "Motion") of Goldking Holdings, LLC, Goldking Onshore Operating, LLC, and Goldking Resources, LLC (collectively, the "Debtors") for the entry of: (a) an order, (i) scheduling a hearing (the "Sale Hearing") on approval of the proposed sale (the "Sale") of all or substantially all of the assets of the Debtors' assets (collectively, the "Assets"), free and clear of all liens, claims, encumbrances, and other interests other than those permitted by the PSA (collectively, the "Encumbrances"), to the Prevailing Bidder,² and authorizing the assumption and assignment of certain executory contracts and unexpired leases (each, an "Assumed Contract," and collectively, the "Assumed Contracts") in connection therewith; (ii) authorizing and approving certain proposed bidding procedures for the Sale (collectively, the "Bidding Procedures," a copy of which is attached hereto as Exhibit 1), certain

¹ The Debtors, together with the last four digits of each Debtor's federal tax identification number, are: Goldking Holdings, LLC (2614); Goldking Onshore Operating, LLC (2653); and Goldking Resources, LLC (2682). The mailing address for the Debtors is 777 Walker Street, Suite 2500, Houston, TX 77002.

² Capitalized terms used but not yet defined herein shall have the meanings ascribed to such terms below. Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Bidding Procedures.

proposed assumption and assignment procedures for the Assumed Contracts (collectively, the “Assumption and Assignment Procedures”), and the form and manner of notice thereof; and (iii) granting related relief; and (b) an order, substantially in the form attached to the Motion as Exhibit B (the “Sale Order”), (i) authorizing and approving the Debtors’ entry into an Purchase Sale Agreement for the Assets, substantially in the form filed with the Court on February 7, 2014 (the “PSA”), with the Prevailing Bidder; (ii) authorizing and approving the Sale, free and clear of all Encumbrances; (iii) authorizing and approving the assumption and assignment of the Assumed Contracts in connection therewith; and (iv) granting related relief; and it appearing that the relief requested in the Motion and provided for herein is in the best interest of the Debtors, their estates, and creditors; and after due deliberation and sufficient cause appearing therefor, it is hereby **FOUND AND DETERMINED THAT**.³

A. This Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order.

B. Venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

C. The statutory and legal predicates for the relief requested in the Motion and provided for herein are sections 105(a), 363, and 365 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”), Rules 2002, 6004, 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Southern District of Texas (the “Local Rules”).

³ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact to the fullest extent of the law. *See* Fed. R. Bankr. P. 7052.

D. In the Motion and at the hearing on the Motion (the “Bidding Procedures Hearing”), the Debtors demonstrated that good and sufficient notice of the relief granted by this Order has been given and no further notice is required. A reasonable opportunity to object or be heard regarding the relief granted by this Order has been afforded to those parties entitled to notice pursuant to Bankruptcy Rule 2002 and all other interested parties.

E. The proposed Notice of Sale, Bidding Procedures, Auction and Sale Hearing (“Sale Notice”), attached to the Motion as Exhibit C, as modified or amended herein, is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of this Order, the Bidding Procedures, the Auction, the Sale, and the Sale Hearing, and any and all objection deadlines related thereto, and no other or further notice is required of the foregoing.

F. The Bidding Procedures are fair, reasonable, and appropriate and are designed to maximize recovery with respect to the Sale.

G. The Assumption and Assignment Procedures provided for herein and the Assumption Notice are reasonable and appropriate and consistent with the provisions of section 365 of the Bankruptcy Code and Bankruptcy Rule 6006. The Assumption and Assignment Procedures and the Assumption Notice have been tailored to provide an adequate opportunity for all Counterparties to assert any Contract Objections.

H. Entry of this Order is in the best interests of the Debtors, their estates and creditors and all other interested parties; and therefore:

IT IS HEREBY ORDERED THAT:

1. Those portions of the Motion seeking approval of (a) the Assumption and Assignment Procedures, (b) the Bidding Procedures, (c) the date, time and place of the Sale

Hearing, and (d) the noticing and objection procedures related to each of the foregoing, including, without limitation, the Sale Notice, and the Assumption Notice, are hereby GRANTED.

2. Any objections to the Motion or the relief granted by this Order that have not been withdrawn, waived or settled, and all reservations of rights included therein, are hereby overruled and denied on the merits.

3. The PSA is hereby approved and is appropriate and reasonably calculated to enable the Debtors and other parties in interest to easily compare and contrast the differing terms of any bids presented at the Auction.

4. Except as expressly provided herein, nothing herein shall be construed as a determination of the rights of any party in interest in these chapter 11 cases, including, without limitation, the Debtors and their estates and the Lender.

5. The Bidding Procedures with updated dates and non-material modifications are hereby approved. The failure to specifically include or reference any particular provision of the Bidding Procedures in the Motion or this Order shall not diminish or otherwise impair the effectiveness of such procedures, it being this Court's intent that the Bidding Procedures are approved in their entirety, as if fully set forth in this Order. The Debtors are hereby authorized to conduct a sale by auction of the Assets pursuant to the terms of the Bidding Procedures and this Order.

6. The Debtors, in consultation with the Lender, shall have the right to withhold or limit access to any due diligence information that the Debtors determine is business-sensitive or otherwise not appropriate for disclosure to a Qualifying Bidder. Notwithstanding any limitations provided for in such information, including, without limitation, any non-disclosure,

confidentiality or similar provisions, the Debtors and their estates shall be authorized to provide due diligence information to Qualifying Bidders provided that such Qualifying Bidders have delivered an executed confidentiality agreement in form and substance acceptable to the Debtors. The Debtors and their estates are not responsible for, and shall have no liability with respect to, any information obtained by, or provided to, any Qualifying Bidders in connection with the Bidding Procedures and the Sale provided that the information was provided in accordance with this Order.

7. For all purposes under the Bidding Procedures: (i) the Lender shall be considered a Qualifying Bidder and (ii) in determining whether the Potential Bidders constitute Qualified Bidders, the Debtors may consider a combination of bids for the Assets.

8. The Bidding Procedures shall apply to the Potential Bidders, the Qualifying Bidders, and the conduct of the Sale and the Auction.

9. The following "Assumption and Assignment Procedures" are hereby approved:

- (a) Within five (5) business days after the entry of the Bidding Procedures Order (the "Assumption Notice Deadline"), the Debtors shall file with the Court and serve on each counterparty (each, a "Counterparty," and collectively, the "Counterparties") to an Assumed Contract a notice (the "Assumption Notice"), substantially in the form attached to the Motion as Exhibit D as modified or amended herein.
- (b) The Assumption Notice shall include, without limitation, the cure amount (each, a "Cure Amount"), if any, that the Debtors believe is required to be paid to the applicable Counterparty under section 365(b)(1)(A) and (B) of the Bankruptcy Code for each of the Assumed Contracts. If a Counterparty objects to the Cure Amount for its Assumed Contract, the Counterparty must file with the Court and serve on the Contract Objection Notice Parties (as defined below) a written objection (a "Contract Objection").
- (c) Any Contract Objection shall: (i) be in writing; (ii) comply with the Bankruptcy Rules and the Local Rules; (iii) be filed with the Clerk of the Court, 515 Rusk Street, Houston, TX 77002, together with proof of service, on or before 4:00 p.m. (CST) on **March 7, 2014** (the "Contract Objection Deadline"); (iv) be served, so as to be actually received on or before the Contract Objection Deadline, upon the Contract Objection Notice Parties; and (v) state with specificity the grounds for

such objection, including, without limitation, the fully liquidated cure amount and the legal and factual bases for any unliquidated cure amount that the Counterparty believes is required to be paid under section 365(b)(1)(A) and (B) of the Bankruptcy Code for the Assumed Contract, along with the specific nature and dates of any alleged defaults, the pecuniary losses, if any, resulting therefrom, and the conditions giving rise thereto.

- (d) The "Contract Objection Notice Parties" are as follows: (i) the Debtors, Goldking Holdings, LLC, 777 Walker Street, Suite 2500, Houston, TX 77002 (Attn: Eddie Hebert); (ii) counsel to the Debtors, Haynes and Boone, LLP, 1221 McKinney Street, Suite 2100, Houston, Texas 77002 (Attn: Patrick L. Hughes and Christopher Castillo); (iii) investment advisor for the Debtors, E-Spectrum Advisors LLC, 5850 San Felipe Street, Suite 500, Houston, Texas 77057 (Attn: Coy Gallatin); (iv) Brinkman Portillo Ronk, PC, 4333 Park Terrace Drive, Ste. 205, Westlake Village, CA 91361 (Attn: Daren Brinkman); and (v) counsel to the Lender, Porter Hedges LLP, 1000 Main Street, 36th Floor, Houston, Texas 77002 (Attn: John F. Higgins and Whitney Ables).
- (e) If, after the Assumption Notice Deadline, additional executory contracts or unexpired leases of the Debtors are determined to be Assumed Contracts, as soon as practicable thereafter and in no event less than **two (2)** business days before the date of the Sale Hearing, the Debtors shall file with the Court and serve, by overnight delivery, on the Counterparties an Assumption Notice, and such Counterparties shall file any Contract Objections not later than (a) the Contract Objection Deadline in the event that such Assumption Notice was filed and served within five (5) days of the Assumption Notice Deadline and (b) **two (2) hours** prior to the commencement of the Sale Hearing in the event that such Assumption Notice was filed and served more than five (5) days after the Assumption Notice Deadline.
- (f) No less than **one (1)** business day before the date of the Sale Hearing, the Debtors shall file with the Court and serve, by overnight delivery and electronic mail (if possible), a notice identifying such Prevailing Bidder, and the Counterparties shall file any Contract Objections solely on the basis of adequate assurance of future performance not later than two (2) hours prior to the commencement of the Sale Hearing.
- (g) At the Sale Hearing, the Debtors will seek Court approval of their assumption and assignment to the Prevailing Bidder of only those Assumed Contracts that have been selected by the Prevailing Bidder, to be assumed and assigned (each, a "Selected Assumed Contract," and collectively, the "Selected Assumed Contracts"). The Debtors and their estates reserve any and all rights with respect to any Assumed Contracts that are not ultimately designated as Selected Assumed Contracts.
- (h) If no Contract Objection is timely received with respect to a Selected Assumed Contract: (i) the Counterparty to such Selected Assumed Contract shall be

deemed to have consented to the assumption by the Debtors and assignment to the Prevailing Bidder, of the Selected Assumed Contract, and be forever barred from asserting any objection with regard to such assumption and assignment (including, without limitation, with respect to adequate assurance of future performance by the Prevailing Bidder); (ii) any and all defaults under the Selected Assumed Contract and any and all pecuniary losses related thereto shall be deemed cured and compensated pursuant to section 365(b)(1)(A) and (B) of the Bankruptcy Code; and (iii) the Cure Amount for such Selected Assumed Contract shall be controlling, notwithstanding anything to the contrary in such Selected Assumed Contract, or any other related document, and the Counterparty shall be deemed to have consented to the Cure Amount and shall be forever barred from asserting any other claims related to such Selected Assumed Contract against the Debtors and their estates or the Prevailing Bidder, or the property of any of them, that existed prior to the entry of the Sale Order.

- (i) To the extent that the parties are unable to consensually resolve any Contract Objection prior to the commencement of the Sale Hearing, including, without limitation, any dispute with respect to the cure amount required to be paid to the applicable Counterparty under section 365(b)(1)(A) and (B) of the Bankruptcy Code (any such dispute, a "Cure Dispute"), such Contract Objection will be adjudicated at the Sale Hearing or at such other date and time as may be fixed by the Court; provided, however, that if the Contract Objection relates solely to a Cure Dispute, the Selected Assumed Contract may be assumed by the Debtors and assigned to the Prevailing Bidder, provided that the cure amount that the Counterparty asserts is required to be paid under section 365(b)(1)(A) and (B) of the Bankruptcy Code (or such lower amount as agreed to by the Counterparty) is deposited in a segregated account by the Debtors pending the Court's adjudication of the Cure Dispute or the parties' consensual resolution of the Cure Dispute.
- (j) Notwithstanding anything to the contrary herein, if after the Sale Hearing or the entry of the Sale Order additional executory contracts or unexpired leases of the Debtors are determined to be Assumed Contracts, as soon as practicable thereafter, the Debtors shall file with the Court and serve, by overnight delivery, on the Counterparties an Assumption Notice, and such Counterparties shall file any Contract Objections not later than fourteen (14) days thereafter. If no Contract Objection is timely received, the Debtors shall be authorized to assume and assign such Assumed Contracts to the Prevailing Bidder, without further notice to creditors or other parties in interest and without the need for further order of the Court, and such assumption and assignment shall be subject to the terms of the Sale Order.

10. The Debtors' decision to assume and assign the Assumed Contracts to the Prevailing Bidder is subject to this Court's approval and the closing of the Sale. Accordingly, absent this Court's approval and the closing of the Sale, the Assumed Contracts shall not be

deemed assumed or assumed and assigned, and shall in all respects be subject to further administration by the Debtors and their estates under the Bankruptcy Code in connection with these chapter 11 cases.

11. The Assumption and Assignment Procedures are appropriate and fair to all Counterparties and comply in all respects with the Bankruptcy Code, the Bankruptcy Rules and the Local Rules. The Assumption Notice is: (i) reasonably calculated to (a) provide sufficient, effective notice to all Counterparties and any other affected parties of the Debtors' intent to assume and assign to the Prevailing Bidder some or all of the Assumed Contracts and (b) afford the Counterparties the opportunity to exercise any rights affected by the Motion and the relief granted by this Order pursuant to Bankruptcy Rules 2002(a)(2), 6004 and 6006; and (ii) hereby approved.

12. The inclusion of a contract, lease or other agreement on an Assumption Notice shall not constitute or be deemed a determination or admission by the Debtors and their estates or any other party in interest that such contract, lease or other agreement is, in fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code, and any and all rights with respect thereto shall be reserved.

13. The Sale Notice, the Assumption Notice, the Bidding Procedures, the Auction, the Sale Hearing, and the Assumption and Assignment Procedures and the objection periods associated with each of the foregoing are reasonably calculated to provide notice to any affected party and afford the affected party the opportunity to exercise any rights affected by the Motion as it relates to the Bidding Procedures, Auction, the Sale, the Sale Hearing, and the assumption and assignment to the Prevailing Bidder of the Assumed Contracts pursuant to Bankruptcy Rules 2002(a)(2), 6004 and 6006, and such notice and objection periods are hereby approved.

14. Within five (5) business days of entry of this Order, the Debtors shall serve the Sale Notice by first class mail, postage prepaid, upon: (a) the Office of the United States Trustee for the Southern District of Texas; (b) counsel to the Lender; (c) the Debtors' known creditors and their shareholders; (d) all counterparties to the Assumed Contracts; (e) all entities with recorded claims, liens, interests or encumbrances against the Debtors' right, title and interest in the Assets and any other entities reasonably known to have asserted any such claim, liens, interests or encumbrances; (f) all entities reasonably known to have expressed an interest in a transaction with respect to the Assets during the past year; (g) the Internal Revenue Service; (h) the Office of the United States Attorney for the Southern District of Texas; (i) the United States Securities and Exchange Commission; (j) all taxing authorities or recording offices with a reasonably known interest in the relief requested in this Motion; (k) the United States Environmental Protection Agency and environmental protection agencies for the states of Texas and Louisiana; and (l) all parties that, as of the filing of the Sale Notice, have requested notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002 (collectively, the "Sale Notice Parties").

15. Any objections to the Sale or the relief requested in connection with the Sale (a "Sale Objection"), other than a Contract Objection, which shall be governed by the Assumption and Assignment Procedures, must: (a) be in writing; (b) comply with the Bankruptcy Rules and the Local Rules; (c) set forth the specific basis for the Sale Objection; (d) be filed with the Clerk of this Court, 515 Rusk Street, Houston, TX 77002, together with proof of service, **on or before 4:00 p.m. (CST) on March 14, 2014** (the "Sale Objection Deadline"); and (e) be served, so as to be actually received on or before the Sale Objection Deadline, upon (i) counsel to the Debtors, Haynes and Boone, LLP, 1221 McKinney Street, Suite 2100, Houston, Texas 77002 (Attn:

Patrick Hughes and Christopher Castillo); (ii) counsel to the Lender, Porter Hedges LLP, 1000 Main Street, 36th Floor, Houston, Texas 77002 (Attn: John Higgins and Whitney Ables); and (iii) Brinkman Portillo Ronk, PC, 4333 Park Terrace Drive, Ste. 205, Westlake Village, CA 91361 (Attn: Daren Brinkman). If a Sale Objection is not filed and served on or before the Sale Objection Deadline in accordance with the foregoing requirements, the objecting party shall be barred from objecting to the Sale and shall not be heard at the Sale Hearing, and this Court may enter the Sale Order without further notice to such party.

16. Failure to file a Sale Objection on or before the Sale Objection Deadline shall be deemed to be “consent” for purposes of section 363(f) of the Bankruptcy Code.

17. Pursuant to section 363(k) of the Bankruptcy Code, Wayzata Opportunities Fund II, L.P. (the “Lender”) shall be entitled to credit bid all or a portion of the obligations then outstanding under the Credit Documents (as defined in that certain Final Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364 and 507 (1) Approving Post-Petition Financing, (2) Authorizing Use of Cash Collateral, (3) Granting Liens and Providing Superpriority Administrative Expense Status, (4) Granting Adequate Protection and (5) Modifying Automatic Stay [Docket No. 198].

18. If no timely Qualifying Bids are submitted on or before the Bid Deadline, the Debtors shall not hold an Auction and shall not request approval of a sale of the Assets at the Sale Hearing. In the event that the Debtors timely receive one or more Qualifying Bids, the Debtors shall conduct the Auction. Following the Auction, the Debtors, in consultation with the Lender, will determine which Qualifying Bid is the highest and best bid for the Assets, which will be determined by considering, among other things: (i) the number, type and nature of any changes to the PSA requested by each bidder; (ii) the extent to which such modifications are

likely to delay closing of the Sale and the cost to the Debtors and their estates of such modifications or delay; (iii) the total consideration to be received by the Debtors and their estates; (iv) the likelihood of the bidder's ability to close a transaction and the timing thereof; and (v) the benefit to the Debtors' estates.

19. The Sale Hearing shall be held in this Court on **March 17, 2014 at 2:00 p.m. (CST)**, unless otherwise determined by this Court. The Sale Hearing may be adjourned by the Debtors from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing or by filing a notice on the docket of the Debtors' chapter 11 cases.

20. The Debtors are authorized to conduct the Sale without the necessity of complying with any state or local bulk transfer laws or requirements.

21. Notwithstanding any other provision in this Order or the Bidding Procedures, nothing contained in this Order or the Bidding Procedures shall relieve any purchaser from complying with all applicable rules and regulations of the Railroad Commission of Texas.

22. In the event that there is a conflict between this Order or the Bidding Procedures, on the one hand, and the Motion, the PSA, a Modified PSA, on the other hand, this Order and the Bidding Procedures shall control and govern.

23. This Order shall be effective immediately upon entry, and any stay of orders provided for in Bankruptcy Rules 6004(h) or 6006(d) or any other provision of the Bankruptcy Code, the Bankruptcy Rules or the Local Rules is expressly waived. The Debtors are not subject to any stay in the implementation, enforcement or realization of the relief granted in this Order, and may, in their sole discretion and without further delay, take any action and perform any act authorized or approved under this Order.

24. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of the Order.

25. Notwithstanding anything herein to the contrary, the Official Committee of Unsecured Creditors may file a pleading prior to the sale hearing objecting to the bidding process if it, during the course of its investigation, determines that an impropriety in the process exists.

Dated: February 10, 2014
Houston, Texas



DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

Bidding Procedures

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	Case No. 13-37200
	§	
GOLDKING HOLDINGS, LLC, <i>et al.</i> , ¹	§	
	§	Chapter 11
Debtors,	§	(Jointly Administered)
	§	
	§	

BIDDING PROCEDURES

Set forth below are the procedures (collectively, the “Bidding Procedures”)² to be employed by Goldking Holdings, LLC, Goldking Onshore Operating, LLC, and Goldking Resources, LLC (each, a “Debtor,” and collectively, the “Debtors”) in connection with the proposed sale (the “Sale”) of all or substantially all of the assets of the Debtors’ assets (collectively, the “Assets”), free and clear of all liens, claims, encumbrances, and other interests other than those permitted by the PSA (collectively, the “Encumbrances”), to the Prevailing Bidder pursuant to an Purchase Sale Agreement, substantially in the form attached hereto as Exhibit A (the “PSA”).

For purposes of these Bidding Procedures, the “Court” shall mean the United States Bankruptcy Court for the Southern District of Texas.

ANY PARTY INTERESTED IN BIDDING ON THE ASSETS SHOULD CONTACT E-SPECTRUM ADVISORS LLC, 5850 SAN FELIPE STREET, SUITE 500, HOUSTON, TEXAS 77057, (713) 706-6382, ATTN: COY GALLATIN.

1. Assets to be Sold

The Debtors shall offer for sale the Assets, provided that the Debtors determine that the aggregate consideration offered by any bid, or combination of bids for the Assets, satisfies the requirements set forth in these Bidding Procedures. Potential Bidders may bid on all or any number or combination of the Assets.

¹ The Debtors, together with the last four digits of each Debtor’s federal tax identification number, are: Goldking Holdings, LLC (2614); Goldking Onshore Operating, LLC (2653); and Goldking Resources, LLC (2682). The mailing address for the Debtors is 777 Walker Street, Suite 2500, Houston, TX 77002.

² Capitalized terms used but not yet defined herein shall have the meanings ascribed to such terms below. Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in that certain Order (I) Scheduling a Hearing on the Approval of the Sale of All or Substantially All of the Debtors’ Assets, and the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (II) Approving Certain Bidding Procedures, Assumption and Assignment Procedures, and the Form and Manner of Notice Thereof, and (III) Granting Related Relief [Docket No. ____] (the “Bidding Procedures Order”).

2. Participation Requirements

Any person or entity that wishes to participate in the bidding process for the Assets (each, a “Potential Bidder”) must first become a “Qualifying Bidder.” As a prerequisite to becoming a Qualifying Bidder (and thus being able to conduct due diligence), a Potential Bidder must:

- (a) deliver an executed confidentiality agreement in form and substance acceptable to the Debtors; and
- (b) be able, as determined by the Debtors, to (i) demonstrate the financial wherewithal to close the Sale if selected as the Prevailing Bidder and (ii) provide adequate assurance of future performance under any executory contracts and unexpired leases to be assumed by the Debtors and assigned to such bidder, pursuant to section 365 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”), in connection with the Sale.

Notwithstanding anything to the contrary herein and for the avoidance of doubt, for all purposes under the Bidding Procedures: (i) Wayzata Opportunities Fund II, L.P. (the “Lender”) shall be considered a Qualifying Bidder and (ii) in determining whether the Potential Bidders constitute Qualified Bidders, the Debtors may consider a combination of bids for the Assets.

3. Bankruptcy Court Jurisdiction

Any Potential Bidders and Qualifying Bidders shall (i) be deemed to have waived any right to a jury trial in connection with, and consented and submitted to the exclusive jurisdiction of the Court over, any actions or proceedings arising from or relating the Bidding Procedures, the Sale, the Auction and the construction and enforcement of the contemplated transaction documents of such parties, (ii) bring any such action or proceeding in the Court, and (iii) be deemed to have consented to the Court entering a final judgment determining any such action or proceeding and that such final judgment in any such action or proceeding, including all appeals, shall be conclusive and may be enforced in other jurisdictions (including any foreign jurisdictions) by suit on the judgment or in any other manner provided by applicable law.

4. Form of Agreement

Potential Bidders should reference the PSA in connection with their bids. As set forth below, Potential Bidders intending to submit bids must include with their bids a clean and duly executed Purchase Sale Agreement (a “Modified PSA”) and a redlined copy of the Modified PSA that reflects any variations from the PSA.

5. Due Diligence

The Debtors may afford to any Qualifying Bidder reasonable due diligence access and the time and opportunity to conduct reasonable due diligence. The due diligence period shall extend through and including the Bid Deadline. The Debtors, in consultation with the Lender, may, but shall not be obligated to furnish any due diligence information after the Bid Deadline. The Debtors will designate a representative to coordinate all reasonable requests from Qualifying Bidders for due diligence access.

The Debtors, in consultation with the Lender, reserve the right to withhold or limit access to any due diligence information that the Debtors determine is business-sensitive or otherwise not appropriate for disclosure to a Qualifying Bidder. Notwithstanding any limitations provided for in such information, including, without limitation, any non-disclosure, confidentiality or similar provisions, the Debtors and their estates shall be authorized to provide due diligence information to the Qualifying Bidders provided that such Qualifying Bidders have delivered an executed confidentiality agreement in form and substance acceptable to the Debtors. The Debtors and their estates are not responsible for, and shall have no liability with respect to, any information obtained by, or provided to, any Qualifying Bidders in connection with the Bidding Procedures and the Sale.

Each Qualifying Bidder shall be deemed to acknowledge and represent that it (i) has had an opportunity to conduct any and all due diligence regarding the Assets, (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and other information in making its Qualifying Bid, and (iii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets, or the completeness of any documents or other information provided in connection with the Bidding Procedures and the Sale.

6. Bid Requirements

To be deemed a “Qualifying Bid,” a bid must be received from a Qualifying Bidder on or before the Bid Deadline and satisfy each of the following requirements (each, a “Bid Requirement”):

- (a) be in writing;
- (b) fully disclose the identity of the Qualifying Bidder;
- (c) set forth the purchase price to be paid by such Qualifying Bidder;
- (d) not propose payment in any form other than cash (or in the case of the Lender, a credit bid and/or cash);
- (e) state the liabilities proposed to be paid or assumed by such Qualifying Bidder;
- (g) be accompanied by a Modified PSA and marked copy of the Modified PSA that reflects any variations from the PSA;
- (h) state that such Qualifying Bidder’s offer is irrevocable until two (2) business days after the closing of the Sale;
- (i) state that such Qualifying Bidder is financially capable of consummating the transactions contemplated by the Modified PSA and provide written evidence in support thereof;
- (j) contain such financial and other information to allow the Debtors to make a

reasonable determination as to the Qualifying Bidder's financial and other capabilities to close the transactions contemplated by the Modified PSA, including, without limitation, written evidence satisfactory to the Debtors, in consultation with the Lender, that the Qualifying Bidder has a commitment for financing or other evidence of the ability to close the transactions contemplated by the Modified PSA, with appropriate contact information for such financing sources and such financial and other information providing adequate assurance of future performance under any executory contracts and unexpired leases to be assumed pursuant to section 365 of the Bankruptcy Code, in a form requested by the Debtors, in consultation with the Lender, to allow the Debtors to serve such information on any counterparties to any contracts or leases being assumed and assigned in connection with the Sale that have requested, in writing, such information;

- (k) identify with particularity each and every executory contract and unexpired lease the assumption and assignment of which is a condition to close the transactions contemplated by the Modified PSA;
- (l) a commitment to close the transactions contemplated by the Modified PSA on or before April 3, 2014;
- (m) not request or entitle such Qualifying Bidder to any break-up fee, termination fee, expense reimbursement or similar type of fee or payment;
- (n) not contain any contingencies of any kind, including, without limitation, contingencies related to financing, internal approval or due diligence;
- (o) sets forth any regulatory and third-party approval required for the Qualifying Bidder to close the transactions contemplated by the Modified PSA, and the time period within which the Qualifying Bidder expects to receive such regulatory and third-party approvals (and in the case that receipt of any such regulatory or third-party approval is expected to take more than ten (10) days following execution and delivery of such Qualifying Bidder's Modified PSA, those actions the bidder will take to ensure receipt of such approval(s) as promptly as possible);
- (r) provides for the Qualifying Bidder to serve as a backup bidder (the "Second-Highest Bidder") if the Qualifying Bidder's bid is the next highest and best bid after the Prevailing Bid (the "Second-Highest Bid"), in accordance with the terms of the Modified PSA;
- (s) includes written evidence of authorization and approval from the Qualifying Bidder's board of directors (or comparable governing body) with respect to the submission, execution, and delivery of the Modified PSA;
- (t) provides a cash purchase deposit (the "Deposit") in an amount equal to ten percent (10%) of the purchase price provided for in the Modified PSA; and

- (u) provides for liquidated damages in the event of the Qualifying Bidder's breach of, or failure to perform under, the Modified PSA equal to the amount of the Deposit.

A bid from a Qualifying Bidder satisfying all of the above requirements, as determined by the Debtors, in consultation with the Lender, shall constitute a Qualifying Bid.

Each Qualifying Bidder submitting a bid shall be deemed to: (i) acknowledge and represent that it is bound by all of the terms and conditions of the Bidding Procedures; and (ii) have waived the right to pursue a substantial contribution claim under section 503 of the Bankruptcy Code related in any way to the submission of its bid, the Bidding Procedures, and the Sale.

7. Bid Deadline

A Qualifying Bidder that desires to make a bid shall deliver a written or electronic copy of its bid to (i) the Debtors, Goldking Holdings, LLC, 777 Walker Street, Suite 2500, Houston, TX 77002 (Attn: Eddie Hebert); (ii) counsel to the Debtors, Haynes and Boone, LLP, 1221 McKinney Street, Suite 2100, Houston, Texas 77002 (Attn: Patrick L. Hughes and Christopher Castillo); (iii) investment advisor for the Debtors, E-Spectrum Advisors LLC, 5850 San Felipe Street, Suite 500, Houston, Texas 77057 (Attn: Coy Gallatin); and (iv) counsel to the Lender, Porter Hedges LLP, 1000 Main Street, 36th Floor, Houston, Texas 77002 (Attn: John F. Higgins and Whitney Ables), in each case so as to be received on or before **March 5, 2014 at 5:00 p.m. (CST)** (the "Bid Deadline").

8. Evaluation of Qualifying Bids

The Debtors, in consultation with the Lender, shall make a determination regarding whether a bid from a Qualifying Bidder is a Qualifying Bid, and shall notify all Qualifying Bidders whether their bids have been determined to be a Qualified Bid by no later than three (3) days prior to the Auction Date. In the event that a bid is determined not to be a Qualifying Bid, the Qualifying Bidder shall be notified by the Debtors and shall have one (1) day from the date of such notification to modify its bid.

The Debtors, in consultation with the Lender, reserve the right to negotiate and designate a lead or stalking horse bidder, in connection with the sale process. In the event a stalking horse bidder is designated and bid protections provided, this will be tendered for approval by the Court under a separate notice and motion. Depending upon the timing if this occurs, it may be necessary to modify the dates for the auction and closing of a sale.

Two (2) days day prior to the Auction Date, the Debtors, in consultation with the Lender, shall determine which of the Qualifying Bids, at such time, is the highest or best bid for purposes of constituting the opening bid of the Auction (the "Baseline Auction Bid"), and shall promptly notify all Qualifying Bidders with Qualifying Bids of the Baseline Auction Bid, along with a copy of the Modified PSA submitted with the Baseline Auction Bid.

9. No Qualifying Bids

If no timely Qualifying Bids are submitted on or before the Bid Deadline, the Debtors shall not hold an Auction and shall not request approval of a sale of the Assets at the Sale Hearing.

10. Auction

In the event that the Debtors timely receive one or more Qualifying Bids, the Debtors shall conduct an auction (the "Auction"). Following the Auction, the Debtors, in consultation with Lender, will determine which Qualifying Bid is the highest and best bid for the Assets, which will be determined by considering, among other things: (i) the number, type and nature of any changes to the PSA requested by each bidder; (ii) the extent to which such modifications are likely to delay closing of the Sale and the cost to the Debtors and their estates of such modifications or delay; (iii) the total consideration to be received by the Debtors and their estates; (iv) the likelihood of the bidder's ability to close a transaction and the timing thereof; and (v) the benefit to the Debtors' estates.

The Auction shall be governed by the following procedures:

- (a) the Auction shall be held at the offices of counsel to the Debtors, Haynes and Boone, LLP, 1221 McKinney Street, Suite 2100, Houston, Texas 77002, on **March 13, 2014, beginning at 10:00 a.m. (CST)** (the "Auction Date")
- (b) only Qualifying Bidders with Qualifying Bids (together, the "Auction Bidders") shall be entitled to make any subsequent bids at the Auction;
- (c) the Auction Bidders shall appear in person at the Auction, or through a duly authorized representative;
- (d) only the Debtors, the Auction Bidders, the Lender and the official committee of unsecured creditors in the Debtors' chapter 11 cases (if one has been appointed), together with the professional advisors to each of the foregoing parties, may attend the Auction;
- (e) the Debtors and their professional advisors shall direct and preside over the Auction, which shall be transcribed;
- (f) the Auction Bidders shall confirm that they have not engaged in any collusion with respect to the Bidding Procedures, the Auction or the Sale;
- (g) bidding shall commence at the amount of the Baseline Auction Bid, and the Auction Bidders may submit successive bids in increments of at least **\$100,000** higher than the Baseline Auction Bid and thereafter the then-highest and best bid, provided that: (a) each such successive bid must be a Qualifying Bid and (b) the Debtors shall retain the right to modify the bid increment requirements at the Auction;

- (h) the Auction may include individual negotiations with any of the Auction Bidders off the record, but all bids shall be made on the record and in the presence of all of the Auction Bidders;
- (i) all material terms of the bid that is deemed to be the highest and best bid for each round of bidding shall be fully disclosed to the Auction Bidders, and the Debtors shall use reasonable efforts to clarify any and all questions that the Auction Bidders may have regarding the Debtors' announcement of the then-current highest and best bid;
- (j) the Debtors and their professional advisors may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances (e.g., the amount of time allotted to make subsequent bids) for conducting the Auction, provided that such rules are (a) not inconsistent with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Southern District of Texas, or any applicable order of the Court entered in connection with these chapter 11 cases, including, without limitation, the Bidding Procedures Order, and (b) disclosed to the Auction Bidders;
- (k) Each Auction Bidder shall (a) be deemed to have waived any right to a jury trial in connection, and consented and submitted to the exclusive jurisdiction of the Court over, any actions or proceedings arising from or relating the Bidding Procedures, the Sale, the Auction and the construction and enforcement of the contemplated transaction documents of the Auction Bidders, (b) bring any such action or proceeding in the Court, and (c) be deemed to have consented to the Court entering a final judgment determining any such action or proceeding and that such final judgment in any such action or proceeding, including all appeals, shall be conclusive and may be enforced in other jurisdictions (including any foreign jurisdictions) by suit on the judgment or in any other manner provided by applicable law;
- (l) Pursuant to section 363(k) of the Bankruptcy Code, the Lender shall be entitled to credit bid all or a portion of the obligations then outstanding under the Credit Documents;
- (m) the Auction Bidders shall have the right to make additional modifications to the Modified PSA in conjunction with each Qualifying Bid submitted in each round of bidding during the Auction, provided that each Qualifying Bid shall constitute an irrevocable offer and shall be binding on the Auction Bidder submitting such bid until such party shall have submitted a subsequent Qualifying Bid at the Auction or the conclusion of the Sale Hearing, whichever occurs sooner, unless such bid is selected as the Prevailing Bid or the Second-Highest Bid, which shall remain binding as provided for herein;
- (m) the Debtors shall have the right to request any additional financial information that will allow the Debtors to make a reasonable determination as to an Auction

Bidder's financial and other capabilities to consummate the transactions contemplated by the Modified PSA as may be amended during the Auction, and any further information that the Debtors may believe is reasonably necessary to clarify and evaluate any bid made by an Auction Bidder during the Auction;

- (n) upon the conclusion of the Auction, the Debtors, in consultation with the Lender, shall determine, subject to Court approval, the offer or offers for the Assets that is or are the highest or best from among the Qualifying Bids submitted at the Auction (the "Prevailing Bid"). In making this decision, the Debtors, in consultation with the Lender, shall consider, without limitation, the amount of the purchase price, the likelihood of the bidder's ability to close a transaction and the timing thereof, the number, type and nature of any changes to the PSA requested by each bidder, and the benefit to the Debtors' estates. The bidder submitting such Prevailing Bid shall become the "Prevailing Bidder," and shall have such rights and responsibilities of the purchaser as set forth in the Modified PSA. The Debtors, in consultation with the Lender, may designate the Second-Highest Bid (and the corresponding Second-Highest Bidder) to purchase the Assets in the event that the Prevailing Bidder does not close the Sale; and
- (o) prior to the Sale Hearing, the Prevailing Bidder shall complete and execute all agreements, contracts, instruments and other documents evidencing and containing the terms and conditions upon which the Prevailing Bid was made.

THE PREVAILING BID AND ANY SECOND-HIGHEST BID SHALL CONSTITUTE AN IRREVOCABLE OFFER AND BE BINDING ON THE PREVAILING BIDDER AND THE SECOND-HIGHEST BIDDER, RESPECTIVELY, FROM THE TIME THE BID IS SUBMITTED UNTIL THE EARLIEST OF (A) TWO (2) BUSINESS DAYS AFTER THE SALE HAS CLOSED, OR (B) TWENTY-ONE (21) DAYS AFTER ENTRY OF THE SALE ORDER. EACH QUALIFYING BID (INCLUDING THE BID OF THE PROPOSED PURCHASER) THAT IS NOT THE PREVAILING BID OR THE SECOND-HIGHEST BID SHALL BE DEEMED WITHDRAWN AND TERMINATED AT THE CONCLUSION OF THE SALE HEARING.

11. Sale Hearing

The Prevailing Bid and any Second-Highest Bid will be subject to approval by the Court. The Sale Hearing to approve the Prevailing Bid and any Second-Highest Bid shall take place on **March 17, 2014 at 2:00 p.m. (CST)**. The Sale Hearing may be adjourned by the Debtors from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing or by filing a notice on the docket of the Debtors' chapter 11 cases.

12. Return of Deposits

All Deposits shall be returned to each bidder not selected by the Debtors as the Prevailing Bidder no later than five (5) business days following the closing of the Sale; the deposit of the

Prevailing Bidder or, if the Sale is closed with the Second-Highest Bidder, the deposit of the Second-Highest Bidder, shall be applied to the purchase price for the Sale. If the Prevailing Bidder (or, if the Sale is to be closed with the Second-Highest Bidder, then the Second-Highest Bidder) fails to consummate the Sale because of a breach or failure to perform on the part of such bidder, then, subject to the terms of the Modified PSA, the Debtors and their estates shall be entitled to retain the Deposit of the Prevailing Bidder (or, if the Sale is to be closed with the Second-Highest Bidder, then the Second-Highest Bidder) as part of the damages resulting to the Debtors and their estates for such breach or failure to perform.

13. Reservation of Rights

Notwithstanding any of the foregoing, the Debtors and their estates reserve the right to modify these Bidding Procedures at or prior to the Auction, including, without limitation, to extend the deadlines set forth herein, allow for bidding on only a portion of the Assets and not all of them, modify bidding increments, waive terms and conditions set forth herein with respect to any or all potential bidders (including, without limitation, the Bid Requirements), impose additional terms and conditions with respect to any or all potential bidders, adjourn or cancel the Auction at or prior to the Auction, and adjourn the Sale Hearing.

14. Backup Bidder

Notwithstanding any of the foregoing, in the event that the Prevailing Bidder fails to close the Sale prior to **April 3, 2014** (or such date as may be extended by the Debtors), the Second-Highest Bid will be deemed to be the Prevailing Bid, the Second-Highest Bidder will be deemed to be the Prevailing Bidder, and the Debtors will be authorized, but not directed, to close the Sale to the Second-Highest Bidder subject to the terms of the Second-Highest Bid without the need for further order of the Court and without the need for further notice to any interested parties.