

The Estate of Abraham Kugel, Chapter 7, 24-45034-nhl

BIDDING PROCEDURES

A. These terms and conditions of sale (the "Terms and Conditions of Sale") are being promulgated in connection with the United States Bankruptcy Court, Eastern District of New York (the "Bankruptcy Court") authorized auction sale (the "Sale") of the Debtor's [defined below] interest a decimal revenue interest: 0.00517500 and working interest 0.00718750 in the following:

(1) Legal Description: Kebo Oil & Gas, Inc. - Trull SWP No. 1 Well - 66.425 acres, more or less, out of the S. Perkins Survey, Abstract 371, Matagorda County, Texas, being a part o/o W/2 of SE/4 and SW/4 of Section 39 of the Texas Rice Development Co. Subdivision, recorded in Vol 14, Page 372 of the Deed Records of Matagorda County, Texas, limited to depths from surface down to 9,200' beneath the surface also known as "subject land"; and

(2) Legal Description; Kebo Oil & Gas, Inc. - Trull SWP No. 2 Well-Tract No. 1 being 103.75 acres, more or less o/o the S. Perkins Survey, Abstract 371 and the J. Lowry Survey, Abstract 349, Matagorda County, Texas, being a part of the 400 acres described in certain Warranty Deed dated July 1, 1930 from WC. Tackett, et ux to B.W.Trull, recorded in Vol 94, Page 292 of the Deed Records of Matagorda County, Texas. Tract No. 2 being 2.525 acres, more or less, out of the S. Perkins Survey, Abstract 371 and the J. Lowry Survey, Abstract 349, Matagorda County, Texas, being a 30 foot wide tract of land encompassing a dirt road, running from CR 324 to the boundary line of the above described 103.75 acre tract of land and a part of a 320 acre tract described in Warranty Deed dated November 28, 1938 from Walter M. Mitchell, et al to B.W. Trull, recorded in Vol 140, Page 284 of the Deed Records of Matagorda County, Texas.

The seller of the Assets is David J. Doyaga, Sr., Chapter 7 Trustee (the "Trustee" and/or the "Seller") for the Estate of Abraham Kugel (the "Debtor"), a debtor in a Chapter 7 case currently pending in the Bankruptcy Court under the caption and case number set forth above; The Trustee's retained attorneys are Rosen, Tsionis & Pizzo, PLLC ("RTP"), 38 New Street, Huntington, New York 11743; Telephone (631) 423-8527; email: npizzo@ajrlawny.com; and website: www.ajrlawny.com.

B. Sale will take place at a date and time to be determined by the Trustee in consultation with RTP. The Trustee reserves his right to

conduct the auction online or by video/telephone conferencing. Under no circumstances shall the Sale take place earlier than thirty (30) days from the date of entry of the Order authorizing the Trustee to conduct the Sale.

- C. Information regarding the Trustee's sale of the Assets can be obtained by contacting the Trustee's counsel at the telephone number and address set forth in paragraph "A" above.
- D. The Trustee has entered into a stalking horse agreement (the "Stalking Horse Offer"). The terms of the Stalking Horse Offer are as follows: (i) Purchase price is \$6,200.00; (ii) All Cash; and (iii) No Contingencies. The Trustee may use the Stalking Horse Offer as the reserve sale price at the Sale in the event that no bidder(s) bid at the Sale. The Trustee may use his discretion, to determine the opening bid at the Sale.
- E. In order to be permitted to bid on the Assets, at least two (2) days prior to the commencement of the Sale, and as a condition to be able to bid at the Sale, each prospective bidder must: (i) register with RTP; (ii) deliver to RTP the original signed Terms and Conditions of Sale; and (iii) tender a bank check in the amount of \$1,500.00 (the "Qualifying Deposit") made payable to "David J. Doyaga, Sr., as Trustee", which amount shall serve as a good faith deposit against payment of the purchase price by such bidder in the event that such bidder is determined to have made the highest or best bid (the "Successful Bidder").
- F. Within forty-eight (48) hours after conclusion of the Sale, the Successful Bidder of the Assets shall deliver to the Trustee a bank check which amount must be equal to ten (10%) percent of the successful bid, minus the Qualifying Deposit (together with the Qualifying Deposit, the "Deposit"). The Successful Bidder for the Assets must execute, and thereby agree to be bound by: (i) these Terms and Conditions of Sale; and (ii) a Memorandum of Sale/Contract of Sale/Asset Purchase Agreement. At the conclusion of the Sale, the Trustee, or his representative, will return the Qualifying Deposits to all other bidders. The Trustee, however, shall retain the Qualifying Deposit of the second highest bidder (the "Second Bidder").
- G. The Successful Bidder, or its assigns, must close on the Assets (the "Closing") on a date ("Closing Date") that is not more than fourteen (14) calendar days after the entry of a Bankruptcy Court Order confirming the Sale. **TIME BEING OF THE ESSENCE AS TO THE SUCCESSFUL BIDDER, OR ITS ASSIGNS**, although

such Closing Date may be extended solely by the Trustee, in his discretion. The Closing shall take place at a location that is to be determined by the Trustee.

- H. The Bankruptcy Court, prior to the Closing, may enter an Order confirming the Sale.
- I. The Successful Bidder, or its assigns, shall pay all of its expenses as purchaser, including but not limited to its broker's commissions and the Seller shall pay all of its expenses. The Successful Bidder, or its assigns, acknowledges that he, she, or it, will be responsible for any incidental expenses, and for the completion of any transfer forms, if applicable.
- J. In connection with the Closing and Closing Date, the Successful Bidder, or its assigns, is hereby given notice that Time is of the Essence against the Successful Bidder, or its assigns, and the failure of the Successful Bidder, or its assigns, to close for any reason whatsoever (except as otherwise provided below) including his, her, or its, failure to pay the balance of the Purchase Price on the Closing Date, will result in the Seller retaining the Deposit as liquidated damages and the termination of the Successful Bidder, or its assigns, right to acquire the Assets under these Terms and Conditions of Sale. The Successful Bidder, or its assigns, shall be obligated to close on the Assets and there is no contingency of any kind or nature that will permit the Successful Bidder, or its assigns, to cancel or avoid his, her, or its, obligation under these Terms and Conditions of Sale. Further, the Successful Bidder, or its assigns, must demonstrate, to the satisfaction of the Trustee or the Bankruptcy Court, as the case may be, evidence of his, her, or its, ability to conclude the transaction upon these Terms and Conditions of Sale, without delay. The Trustee reserves the right to reject any bidder/offeror, who the Trustee, in his sole discretion, believes is not financially capable of consummating the purchase of the Assets. Expenses incurred by the Successful Bidder, or its assigns, or any competing bidder concerning the performance of any due diligence, such as obtaining due diligence reports, shall be the sole financial responsibility of such bidder and under no circumstances shall the Trustee, or the Debtor's estate, or the Trustee's professionals, be liable or responsible for, or pay, such expenses.
- K. In the event that the Successful Bidder for the Assets, or its assigns, fails to tender the balance of the Purchase Price on the Closing Date, or otherwise perform his, her, or its, obligations under these Terms and Conditions of Sale, the Trustee, at his sole option, shall

immediately negotiate the Qualifying Deposit of the Second Bidder and shall be further authorized to sell the Assets to the Second Bidder, or its assigns, without any further notice or approval of the Bankruptcy Court, without giving credit to the Second Bidder for the Deposit forfeited by the Successful Bidder, and upon such other terms and conditions as the Trustee deems appropriate. Should the Second Bidder, or its assigns, fail to close on the Assets within twenty (20) days of receiving from the Trustee, notice, **TIME BEING OF THE ESSENCE**, (at the address set forth on the bidder registration form) that said Second Bidder is now deemed the Successful Bidder, then the **Sellers shall be: (a) authorized to keep the Qualifying Deposit of the Second Bidder as liquidated damages; and (b) authorized but not obligated to sell the Assets to the next highest bidder**, without any further notice or approval of the Court.

- L. The Assets are being sold and delivered **“AS IS”, “WHERE IS”, “WITH ALL FAULTS”**, without any representations, covenants, guarantees or warranties of any kind or nature whatsoever, and free and clear of all monetary liens, claims and encumbrances of whatever kind or nature, such liens, claims, interests and encumbrances, if any, to attach to the proceeds of Sale in such order and priority as they existed immediately prior to the Sale Date. By delivering their respective Qualifying Deposits, all bidders acknowledge that they have had the opportunity to review and perform due diligence on the Assets, the state of title thereof and laws, rules and regulations applicable thereto, and the form of the Trustee’s bill of sale that the Trustee will execute to convey the Assets, and will rely solely thereon and on their own independent investigations and inspections of the Assets in making their bids. All bidders acknowledge that they have conducted their own due diligence in connection with the Assets, and are not relying on any information provided by the Trustee, RTP or the Trustee’s retained professionals.
- M. The Trustee shall convey the Assets by delivery of a bill of sale and execution of those documents deemed customary and necessary in connection with such sale.
- N. Nothing contained in these Terms and Conditions of Sale shall supersede or alter any provisions of Title 11, United States Code (the “Bankruptcy Code”) and/or of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) or otherwise interfere with the jurisdiction of the Bankruptcy Court. To the extent of any conflict between the Bankruptcy Code and/or the Bankruptcy Rules and these Terms and Conditions of Sale, the Bankruptcy Code and/or the

Bankruptcy Rules shall govern. All of the terms and conditions set forth in these Terms and Conditions of Sale are subject to modification as may be directed by the Trustee, or by the Bankruptcy Court. The Trustee reserves the right to modify these Terms and Conditions of Sale at the Sale, or thereafter, to maintain consistency with the provisions of the Bankruptcy Code, Bankruptcy Rules, and/or orders of the Bankruptcy Court.

- O. Neither the Trustee, RTP, the Trustee's retained professionals, nor the Debtor's estate, are liable or responsible for the payment of fees of any broker or agent that has not been retained by an order of the Bankruptcy Court.
- P. These Terms and Conditions of Sale will be read into the record, or specifically incorporated by reference at the Sale of the Assets. By making a bid for the Assets, all bidders shall be deemed to have acknowledged having read, and understand, these Terms and Conditions of Sale and have agreed to be bound by them.
- Q. The Trustee shall be a party to the Sale of the Assets exclusively in his capacity as Trustee in bankruptcy and not as an individual. If the Trustee is unable to deliver title to the Assets in accordance with these Terms and Conditions of Sale for any reason whatsoever, his only obligation will be to refund the Deposit to the Successful Bidder (or Second Bidder) and upon such refund the Successful Bidder (or Second Bidder) will have no recourse or claim against the Trustee, the Trustee's retained professionals, or the Debtor's estate.
- R. The Trustee reserves his right to withdraw the Assets from the Sale, either prior or subsequent to the auction, for any reason whatsoever, without notice, as he deems necessary or appropriate.
- S. The Sale of the Assets are subject to confirmation by the Bankruptcy Court. The Trustee or the Trustee's attorney shall notify the Successful Bidder whether the Sale is confirmed. Any disputes concerning the Sale shall be determined by the Bankruptcy Court. By participating in the Sale, all bidders consent to the jurisdiction of the Bankruptcy Court to determine such disputes arising in the Debtor's pending case.
- T. **By making a bid for the Assets, all bidders shall be deemed to have acknowledged having read, and understand, these Terms and Conditions of Sale and have agreed to be bound by them.**