

**EXHIBIT A**

*[Proposed Bidding Procedures Order]*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

<b>In re</b>	§	
<b>XTREME POWER INC.,</b>	§	<b>CASE NO. 14-10096</b>
<b>XTREME POWER SYSTEMS, LLC, and</b>	§	<b>CASE NO. 14-10095</b>
<b>XTREME POWER GROVE, LLC</b>	§	<b>CASE NO. 14-10097</b>
<b>Jointly Administered Debtors.</b>	§	<b>CHAPTER 11</b>
	§	<b>(Jointly Administered Under</b>
	§	<b>CASE NO. 14-10096)</b>

**ORDER (A)(I) APPROVING BIDDING PROCEDURES IN CONNECTION WITH THE SALE BY PUBLIC AUCTION OF EQUIPMENT OF XTREME POWER GROVE, LLC, LOCATED IN GROVE, OKLAHOMA; (II) SCHEDULING A HEARING TO CONSIDER THE SALE OF THE XP OWNED EQUIPMENT; AND (III) APPROVING FORM AND MANNER OF NOTICE THEREOF; (B) AUTHORIZING AND APPROVING THE SALE OF THE XP OWNED EQUIPMENT FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS**

Came on for hearing on September 25, 2014, the Motion by Debtors and Debtors in Possession for Orders (A)(I) Approving Bidding Procedures in Connection with the Sale by Public Auction of Equipment Of Xtreme Power Grove, LLC, Located In Grove, Oklahoma; (II) Scheduling a Hearing to Consider the Sale of the XP Owned Equipment; and (III) Approving the Form and Manner of Notice Thereof; (B) Authorizing and Approving the Sale of the XP Owned

Equipment Free and Clear of Liens, Claims, Encumbrances and Interests (the “Motion”);<sup>1</sup> the Court having reviewed the Motion and the testimony, and having heard the statements of counsel and any other evidence adduced with respect to the Motion at a hearing before the Court to consider the relief requested therein with respect to a Bidding Procedure Order (the “Hearing”); the Court having found that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) venue is proper in this district pursuant to 28 U.S.C. § 1409, (c) this is a core proceeding pursuant to 28 U.S.C. § 157(b), and (d) notice of the Motion and the Hearing was sufficient under the circumstances; after due deliberation the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates and their creditors; and good and sufficient cause having been shown;

IT IS HEREBY FURTHER FOUND AND DETERMINED THAT:

A. In the sound exercise of their business judgment, the Debtors have determined to sell by Public Auction all the equipment (the “XP Owned Equipment”) of Xtreme Power Grove, LLC, that is located In Grove, Oklahoma.

B. The Court finds that under the facts and circumstances of these Chapter 11 Cases, good cause exists for the relief requested in the Motion.

C. The Debtors have further demonstrated that the process for the marketing and sale of the XP Owned Equipment in accordance with the Bidding Procedures set forth in Annex 1 hereto (1) provides an appropriate process and timetable for the Debtors to utilize in pursuing the auction sale of the XP Owned Equipment, (2) will promote the Debtors’ efforts to maximize the value of their estates, and (3) are in the best interests of the Debtors’ and their estates, creditors and other stakeholders.

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings given to them in the Motion.

D. A prompt public auction sale of the XP Owned Equipment, as requested in the Motion and as conducted according to the Bidding Procedures set forth in Annex 1, will maximize the value of the Debtors' estates and is in the best interests of creditors.

E. The Bidding Procedures are reasonably designed to maximize the value to be obtained from an auction sale of the XP Owned Equipment.

F. The Debtors have articulated good and sufficient reasons for, and the best interests of their estates will be served by, this Court granting the relief requested in the Motion for a Bidding Procedures Order, including approval of (1) a sale of the XP Owned Equipment to the highest cash bidder(s); (2) the Bidding Procedures; and (3) the form and manner of serving this Order and the Publication Notice.

G. The Debtors have articulated good and sufficient reasons for, and the best interests of their estates will be served by, this Court scheduling one or more Sale Hearings to consider granting the other relief requested in the Motion, including approval of the sale and the transfer of the XP Owned Equipment, either in individual units or in lots, to the Prevailing Bidder(s) free and clear of all liens, claims, interests and encumbrances pursuant to section 363(f) of the Bankruptcy Code.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED with respect to the request for a Bidding Procedures Order.

2. The Bidding Procedures, as set forth in Annex 1 attached hereto and incorporated herein, are hereby approved in their entirety and shall govern the auction and all bidding and other activities relating to the sale of the XP Owned Equipment. The Debtors are authorized to take any and all actions necessary or appropriate to implement the Bidding

Procedures. It is the intent of the Court that the Bidding Procedures are authorized and approved in their entirety as an order of this Court.

3. As further described in the Bidding Procedures, the deadline for submitting a Qualified Bid (as such term is defined in the Bidding Procedures) shall be **November 7, 2014 at 4:00 p.m.** prevailing Central time (the "Bid Deadline").

4. The Court shall conduct the Sale Hearing at \_\_\_ a.m./p.m. prevailing Central time **on November \_\_\_, 2014**, or such other date and time that the Court may direct, at which hearing the Court will consider (a) approval of the Sale to the Prevailing Bidder(s).

5. Objections, if any, to the approval of the sale of XP Owned Equipment to the Prevailing Bidder(s) (the "Sale Motion") including, but not limited to, the sale of the XP Owned Equipment free and clear of Claims pursuant to section 363(f) of the Bankruptcy Code shall be (a) be in writing; (b) clearly specify the grounds for the objection; (c) conform to the Bankruptcy Rules and the Local Rules; and (d) be filed with the Court and served so as to be received by the following parties by email (collectively, the "Objection Notice Parties") by no later than 12 Noon (Central time) on **November \_\_\_, 2014** (the "Objection Deadline"): (1) counsel for the Debtors Nathaniel Peter Holzer: pholzer@jhwclaw.com, (2) counsel for the Committee: Eric Taub: erict@hts-law.com; and (3) counsel for the U.S. Trustee, Deborah A. Bynum: Deborah.A.Bynum@usdoj.gov.

6. 23. Any person objecting to the Sale Motion that has not filed an objection by the Objection Deadline shall not be heard at the Prevailing Bidder Sale Hearing and shall be barred from objecting to the Sale Motion.

7. All parties in interest shall receive or be deemed to have received good and sufficient notice of all remaining relief sought in the Motion, including but not limited to the Sale Hearing.

8. The Sale Objection Deadline, and the proposed sale of the XP Owned Equipment if, by September 26, 2014, the Debtors serve this Order by first class mail, postage prepaid upon: (a) counsel to any official committees appointed in these Chapter 11 Cases; (b) any party that expressed in writing to the Debtors or their professional advisors an interest in acquiring the XP Owned Equipment; (c) all parties who are known to assert liens upon the XP Owned Equipment, if any; (d) the Internal Revenue Service and applicable state and local taxing authorities; (e) all applicable state attorneys general, local environmental enforcement agencies and local regulatory authorities; (f) the U.S. Trustee; (g) the U.S. Environmental Protection Agency and similar state agencies; (h) the United States Attorney's Office; and (i) all entities that have requested notice in these Chapter 11 Cases under Bankruptcy Rule 2002.

9. The failure of any objecting person or entity to timely file and serve a Sale Objection as set forth herein shall be a bar to the assertion of any objection to the consummation and performance of any sale contemplated by the Sale Order, including the transfer free and clear of all Claims asserted against each item of the XP Owned Equipment transferred as part of such sale.

10. Notwithstanding anything to the contrary herein, the Debtors, in the exercise of their sole discretion, shall retain the right under the Bidding Procedures to modify the Bidding Procedures, including without limitation any deadlines thereunder, if such modification is determined by the Debtors to be in the best interests of the estates and to

enhance the likelihood of the sale process to maximize the sale value of the XP Owned Equipment.

11. The stay provided for in Bankruptcy Rule 6004(h) is waived and this Order shall be effective immediately upon its entry.

12. The Court shall retain jurisdiction over any matter or disputes arising from or relating to the interpretation, implementation or enforcement of this Order.

**IT IS SO ORDERED.**

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**ANNEX 1**

*[Bidding Procedures]*



## COURT ORDERED BIDDING PROCEDURES

By motion dated September 10, 2014 (the “**Bid Procedures Motion**”), Xtreme Power Inc.; Xtreme Power Grove, LLC; and Xtreme Power Systems, LLC, as debtors and debtors in possession (collectively, the “**Debtors**”) sought approval of, among other things, the procedures through which they will solicit bids (“**Bids**”) to determine the highest or otherwise best offer for the sale of all items of equipment (the “**XP Owned Equipment**”) of Xtreme Power Grove, LLC, that is located In Grove, Oklahoma, at a public auction (the “**Auction**”) under the provisions of title 11 of the United States Code (the “**Bankruptcy Code**”). Pursuant to the Bid Procedures Motion, the Debtors sought and the Court has granted authority to establish these procedures to sell the XP Owned Equipment as individual units, or in lots, free and clear of liens, claims, encumbrances, and interests to the person or persons that the Debtors determine to have made the highest and best offer in accordance with the Bidding Procedures set forth below (the “**Prevailing Bidder**”).

On September 25, 2014, the United States Bankruptcy Court for the Western District of Texas (the “**Court**”) entered an order (the “**Bidding Procedures Order**”) <sup>2</sup> that, among other things, authorized the Debtors to determine the highest or otherwise best bid for the Equipment through the process and procedures set forth below (the “**Bidding Procedures**”).

### *Participation Requirements and Due Diligence*

1. In order to participate in the Auction, or otherwise be considered for any purpose hereunder, a person interested in purchasing the XP Owned Equipment (a “**Potential Bidder**”) must first deliver the following materials to the Debtors and their advisors and counsel:
  - (a) An executed confidentiality agreement in form and substance satisfactory to the Debtors and their counsel (the “**Confidentiality Agreement**”). Without limiting the foregoing sentence, the Confidentiality Agreement will provide that all non-public information about the Debtors received by a Potential Bidder, or if the bidder is qualified, a Qualified Bidder (as defined below), will be kept strictly confidential and used only in connection with analyzing a purchase of the XP Owned Equipment.

The Confidentiality Agreement will provide that each Potential Bidder, whether deemed a Qualified Bidder (as defined below) or not, (i) consents to the jurisdiction of this Bankruptcy Court to determine matters concerning the sale, their Bid and otherwise with respect to the process, (ii) waives any right to any other venue; (iii) affirmatively acknowledges their obligation to not engage in collusive bidding; and (iv) affirmatively acknowledges they will not disclose to any person (other than the Debtors and its advisors) that they are making a bid, which part or parts of the XP Owned Equipment on which they are bidding, or the amount of their bid.

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<sup>2</sup> Capitalized terms not otherwise defined in these Bidding Procedures shall have the meanings ascribed to them in the Bidding Procedures Order or Sale Motion, as applicable.

- (b) The Debtors shall provide to each Potential Bidder a copy of these Bidding Procedures, a list of the XP Owned Equipment, and a form bill of sale.
- 2. Any Potential Bidder wishing to conduct due diligence on the XP Owned Equipment shall be granted access to the Grove Facility during normal business hours as soon as reasonably practicable following execution of the Confidentiality Agreement. Potential Bidders interested in conducting due diligence should contact Matthew Jacobs, Gordian Group LLC, 950 Third Avenue, NY, NY 10022 (212.486.3600). All due diligence must be completed before the Bid Deadline (as defined below). No condition(s) allowing or regarding further due diligence will be accepted or authorized after the Bid Deadline. Potential Bidders are required to exercise their own discretion before relying on any information regarding the XP Owned Equipment provided by the Debtors. Neither the Debtors nor their representatives are responsible for, and will bear no liability with respect to, any information obtained by Potential Bidders pursuant hereto.
- 3. The Debtors shall: (i) receive and evaluate any Bids from Potential Bidders; (ii) request information from Potential Bidders, engage in discussions with Potential Bidders, and take such other actions to determine whether any Bid constitutes a Qualified Bid (as defined below); and (iii) take any other actions contemplated under these Bidding Procedures.

***Submission of Bids***

- 4. Any Potential Bidder interested in purchasing any item or items of the XP Owned Equipment must submit a sealed, highest and best Bid prior to 4:00 p.m. prevailing Central time on November 7, 2014 (the “Bid Deadline”). In order for such Bid to be considered, however, it must be a “Qualified Bid.”
- 5. The Debtors and their advisors will determine if a Bid is a Qualified Bid based on the requirements herein. A Potential Bidder will be deemed to be a “Qualified Bidder” if the Debtors, in their sole discretion, determine that such Potential Bidder submitted a Qualified Bid.
- 6. A Bid will be considered a “Qualified Bid” only if the Bid is for the purchase and sale any item or items of the XP Owned Equipment and fulfills the following requirements on or prior to the Bid Deadline (capitalized terms used in this section are defined later in the Bidding Procedures):
  - (a) Provides that the Qualified Bidder’s Bid shall remain open and irrevocable until the earlier of (X) thirty (30) days following the date of entry of a Prevailing Bidder(s) Sale Order(s); or (Y) the date of the last closing of the sale or sales of the XP Owned Equipment pursuant to the Prevailing Bidder(s) Sale Order(s) (the “Bid Expiration Date”);
  - (b) Provides that the Qualified Bidder is obligated to perform as a Back-Up Bidder (as defined below) in the event such Qualified Bidder is not the Prevailing Bidder;

- (c) Is submitted along with a cash deposit for the full amount of the Bid (or such other form or amount of deposit as may be agreed to by the Debtors in their absolute discretion) with such deposit to be held in the Debtors' DIP account;
  - (d) Provides written evidence that the Qualified Bidder has obtained authorization and approval from its board of directors (or comparable governing body) with respect to the submission of its Bid or a representation that no such authorization or approval is required;
  - (e) Includes an acknowledgement that the Bidder will accept the form of the Debtors proposed bill of sale;
  - (f) Does not contain any contingencies to closing of the proposed transaction (excluding required Bankruptcy Court approval);
  - (g) Expressly acknowledges and represents that the Qualified Bidder: (A) has had an opportunity to conduct any and all due diligence regarding the XP Owned Equipment and the proposed transaction prior to making its Bid, (B) has relied solely upon its own independent review, investigation and/or inspection of any documents and the XP Owned Equipment in making its Bid or that of any of its legal, financial or other advisors, and (C) 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 XP Owned Equipment or the proposed transaction, or the completeness or accuracy of any information provided in connection therewith;
  - (h) Includes proof the Potential Bidder has or will have liability insurance coverage in place to cover any damage to the Grove Facility caused by the Bidders removal of the XP Owned Equipment it has purchased.
  - (i) Contains an acknowledgment that the winning bidder must remove the item or items that are the subject of its Prevailing Bid within 10 days of closing or make other arrangements with the owner of the Grove Facility.
  - (j) Contains other information reasonably requested by the Debtors.
7. A Qualified Bidder that desires to make a Bid must deliver written electronic copies of its Bid on or prior to the Bid Deadline to the following representatives of the Debtors: (1) Peter S. Kaufman and David L. Herman, Gordian Group LLC, 950 Third Avenue, NY, NY 10022; (2) Nathaniel Peter Holzer, Jordan, Hyden, Womble, Culbreth & Holzer P.C., 500 N. Shoreline Blvd, Suite 900, Corpus Christi, Texas 78471.
8. Each Bidder's Bid should be its highest and best Bid.
9. After the Bid Deadline, the Debtors, in their sole discretion shall determine which Qualified Bid or Bids represents the then-highest or otherwise best bid(s) (the "Initial Highest Bid" and the entity submitting such Bid, the "Initial Highest Bidder(s)"). The Debtors may, in their absolute discretion, accept any such Qualified Bids with no further

rounds of bidding, or may conduct such further rounds of bidding for any or all the items of XP Owned Equipment that they and their advisors deem appropriate, either by open bidding or additional rounds of sealed bidding.

***Due Diligence From Potential Bidders or Qualified Bidders***

10. Each Potential Bidder shall comply with all reasonable requests for additional information and/or additional assurances by the Debtors or their advisors. Failure by a Potential Bidder to comply with requests for such additional information and/or assurances may be a basis for the Debtors to determine that a Potential Bidder is not a Qualified Bidder. Similarly, each Qualified Bidder shall comply with all reasonable requests for additional information and/or additional assurances by the Debtors or their advisors as the Auction progresses. Failure by a Qualified Bidder to comply with requests for additional information and/or additional assurances may be a basis for the Debtors to determine that the Qualified Bidder may no longer participate in the Auction. Finally, failure of any Potential Bidder or Qualified Bidder to cooperate with the Debtors in the conduct of the bidding and the auction shall be grounds for the Debtors, in their sole discretion, to determine that the Potential Bidder or Qualified Bidder may no longer participate in the Auction.

***“As Is, Where Is”***

11. The sale of the XP Owned Equipment shall be on an “as is, where is” basis and without representations or warranties of any kind, nature or description by the Debtors, their agents or estates or any other party. All of the Debtors’ right, title and interest in and to the XP Owned Equipment shall be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interests therein (collectively, the “Claims”) to the extent permitted by section 363(f) of the Bankruptcy Code, with such Claims to attach to the net proceeds of the sale of the XP Owned Equipment, with the same validity and priority as existed immediately prior to such sale.

***The Potential Auction***

12. If the Debtor determines to conduct further rounds of bidding, the only persons or entities who will be permitted to Bid at any subsequent rounds of bidding are Qualified Bidders (the “Auction Participants”).
13. The Debtors are authorized to conduct such further Auction procedures in any manner established at the discretion of the Debtors and their counsel and advisors, which rules may include (i) announcement to Auction Participants of the amount of the Initial Highest Bid, (ii) a determination of the amount of time between Qualified Bids, (iii) whether to adjourn the Auction at any time and from time to time, (iv) the conducting of multiple rounds of open or sealed bidding with notice only to the parties entitled to attend the Auction, and (v) to declare that the Auction has ended when no further Bids are timely made or otherwise.
14. The Debtors may, in their absolute discretion, determine how, when, and or where the Auction may continue and may determine whether additional bids must be made in

particular higher increments of an amount or amounts they determine in their sole discretion and announce to all Auction Participants (the “Minimum Bid Increment”).

15. The Debtors shall determine, in their sole discretion, whether a Qualified Bid by a Qualified Bidder at the Auction matches or is higher and better than the prior Qualified Bid.
16. At the conclusion of the bidding: (i) the Debtors shall, in their sole discretion, select (X) the Prevailing Bid(s) and (Y) the second highest or best offers for the XP Owned Equipment (the “Back-Up Bid(s)”); (ii) the Debtors shall notify the Prevailing Bidder that such person’s offer has been determined by the Debtors to be the Prevailing Bid and will be contingent only on Bankruptcy Court approval, and shall notify the person that made the Back-Up Bid (the “Back-Up Bidder”) that such person’s offer has been determined by the Debtors to be a Back-Up Bid and will be contingent only on the failure of the Prevailing Bid to close as set forth below and Bankruptcy Court approval; and (iii) the Debtors shall file a notice with the Bankruptcy Court announcing the Prevailing Bidder(s).
17. The cash Deposit (or other security) of the Prevailing Bidder or the Back-Up Bidder, as the case may be, shall be applied by the Debtors against the purchase price to be paid by the Prevailing Bidder or the Back-Up Bidder, as applicable, at the closing of the relevant transaction approved by the Bankruptcy Court. The Prevailing Bidder’s Deposit (or other security) shall be held by the Debtors and shall be forfeited to the Debtors if the Prevailing Bidder breaches its obligations to close in accordance with the Prevailing Bid.
18. The Debtors shall not be deemed to have finally accepted any Qualified Bid unless and until such Qualified Bid and the Debtors’ acceptance thereof have been authorized by order of the Bankruptcy Court following the conclusion of the Prevailing Bidder Sale Hearing.

***Back-Up Bidder***

19. If for any reason the Prevailing Bidder fails to consummate the acquisition of the XP Owned Equipment in accordance with the Prevailing Bid, and in any event no later than ten (10) days from the entry of the Prevailing Bidder Sale Order, the Debtors are authorized to proceed with the sale of the XP Owned Equipment to the Back-Up Bidder in accordance with the Back-Up Bid without further order of the Bankruptcy Court. If for any reason the Back-Up Bidder fails to consummate the acquisition of the XP Owned Equipment in accordance with the Back-Up Bid, the Back-Up Bidder’s Deposit shall be forfeited to the Debtors.

***Deposit***

20. No later than the third (3rd) business day following the entry of the Prevailing Bidder Sale Order, the Debtors shall return to each Qualified Bidder(s), other than the Prevailing Bidder and the Back-Up Bidder, their respective Deposit(s). No later than the third (3rd) business day after the closing of the sale of the XP Owned Equipment to the Prevailing Bidder, the Debtors shall return the Back-Up Bidder’s Deposit to the Back-Up Bidder.

***Prevailing Bidder Sale Hearing and Objection Deadline***

2. The sale hearing to consider the relief requested in the Sale Motion (defined below) and to consider whether to approve the Prevailing Bid and the Back-Up Bid (the “Prevailing Bidder Sale Hearing”) shall be held before the Bankruptcy Court on **November \_\_\_\_\_**, 2014 at **[\_\_\_\_\_].m.**, prevailing Central time, at which time the Court will be requested to enter the “Prevailing Bidder(s) Sale Order(s).”
  
22. Objections, if any, to the approval of the sale of XP Owned Equipment to the Prevailing Bidder(s) (the “Sale Motion”) including, but not limited to, the sale of the XP Owned Equipment free and clear of Claims pursuant to section 363(f) of the Bankruptcy Code shall be (a) be in writing; (b) clearly specify the grounds for the objection; (c) conform to the Bankruptcy Rules and the Local Rules; and (d) be filed with the Court and served so as to be received by the following parties by email (collectively, the “Objection Notice Parties”) by no later than 12 Noon (Central time) on **November \_\_\_\_\_**, 2014 (the “Objection Deadline”): (1) counsel for the Debtors Nathaniel Peter Holzer: pholzer@jhwclaw.com, (2) counsel for the Committee: Eric Taub: erict@hts-law.com; and (3) counsel for the U.S. Trustee, Deborah A. Bynum: Deborah.A.Bynum@usdoj.gov.
  
23. Any person objecting to the Sale Motion that has not filed an objection by the Objection Deadline shall not be heard at the Prevailing Bidder Sale Hearing and shall be barred from objecting to the Sale Motion.

***Modifications***

24. The Debtors in their sole discretion, may adopt, implement, and/or waive such other, additional or existing procedures or requirements that serves to further an orderly Auction and bid process, including, but not limited to, the imposition of a requirement that all Qualified Bidders submit sealed Qualified Bids during the Auction, all without further notice except to those parties that would be entitled to attend at an Auction or participated in the Auction, as appropriate.
  
25. The Debtors, in their sole discretion may (a) determine which Qualified Bid, if any, is the Prevailing Bid, and (b) reject at any time before entry of the Prevailing Bidder Sale Order approving the Prevailing Bid, any Bid that, in the discretion of the Debtors is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code or the Bidding Procedures, or (iii) contrary to the best interests of the Debtors’ estates and their creditors. At or before the conclusion of the Auction, the Debtors in their sole discretion may impose such other terms and conditions upon Qualified Bidders as the Debtors determine to be in the best interests of the Debtors’ estates in this case.

**ANNEX 2**

*[BILL OF SALE]  
(to be provided)*