

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
	)	
EMERALD OIL, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 16-10704 (KG)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	Re: Docket No. <u>572, 629, 657</u>

**ORDER (A) APPROVING BIDDING PROCEDURES AND BID PROTECTIONS IN CONNECTION WITH THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, (B) APPROVING THE FORM AND MANNER OF NOTICE THEREOF, (C) SCHEDULING AN AUCTION AND A SALE HEARING, (D) APPROVING PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF CONTRACTS, AND (E) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”), (a) authorizing and approving the bidding procedures attached hereto as **Exhibit 1** (the “Bidding Procedures”), (b) approving the Breakup Fee in connection with the sale of certain assets of the Debtors (the “Assets”), (c) approving the form and manner of notice of the Auction and the Sale Hearing with respect to the Debtors’ Assets, and (d) scheduling an Auction and a Sale Hearing; it appearing that the relief requested is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); venue being

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Emerald Oil, Inc. (9000); Emerald DB, LLC (2933); Emerald NWB, LLC (7528); Emerald WB LLC (8929); and EOX Marketing, LLC (4887). The location of the Debtors' service address is: 200 Columbine Street, Suite 500, Denver, Colorado 80206.

2 Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion or the Bidding Procedures, as applicable.

proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; notice of the Motion having been adequate and appropriate under the circumstances; and after due deliberation and sufficient cause appearing therefor, **THE COURT FINDS THAT:**

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this district and in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

C. The bases for the relief requested in the Motion are: (i) sections 105, 363, 365, 503, and 507 of the Bankruptcy Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”); (ii) Rules 2002(a)(2), 6004, 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”); and (iii) Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

D. Notice of the Motion has been given to: (i) the Office of the United States Trustee for the District of Delaware; (ii) proposed co-counsel to the Committee; (iii) the administrative agent under the Debtors' prepetition credit facility; (iv) counsel to the administrative agent under the Debtors' prepetition credit facility; (v) the indenture trustee for the Debtors' 2.00% convertible senior notes due 2019; (vi) the agent under the Debtors' debtor-in-possession credit facility; (vii) counsel to the agent under the Debtors' debtor-in-possession

credit facility; (viii) the United States Attorney's Office for the District of Delaware; (ix) the Internal Revenue Service; (x) the Environmental Protection Agency; (xi) the office of the attorneys general for the states in which the Debtors operate; (xii) the Securities and Exchange Commission; (xiii) counsel to the Stalking Horse Bidder; (xiv) all parties who have expressed a written interest in some or all of the Assets; (xv) all known holders of liens, encumbrances, and other claims secured by the Assets; (xvi) the United States Bureau of Land Management; (xviii) each governmental agency that is an interested party with respect to the Sale and transactions proposed thereunder; and (xvii) any party that has requested notice pursuant to Bankruptcy Rule 2002.

E. The Debtors have articulated good and sufficient reasons for this Court to: (i) approve the Bidding Procedures; (ii) schedule the Auction and Sale Hearing and approve the manner of notice of the Auction and Sale Hearing; (iii) approve the procedures for the assumption and assignment of the Contracts, including notice of proposed cure amounts; and (iv) grant the Breakup Fee as provided in the Stalking Horse Purchase Agreement and in this Order.

F. The Breakup Fee: (i) shall, if triggered, be deemed an actual and necessary cost and expense of preserving the Debtors' estates, within the meaning of sections 503(b) and 507(a)(2) of the Bankruptcy Code; (ii) is commensurate to the real and substantial benefit conferred upon the Debtors' estates by the Stalking Horse Bidder; (iii) is reasonable and appropriate, including in light of the size and nature of the proposed Sale and comparable transactions, the commitments that have been made, and the efforts that have been and will be expended by the Stalking Horse Bidder, notwithstanding that the proposed Sale is subject to

better and higher offers; and (iv) was necessary to induce the Stalking Horse Bidder to pursue the Sale and to be bound by the Stalking Horse Purchase Agreement.

G. The Breakup Fee and the Minimum Overbid (together, the “Bid Protections”) were a material inducement to, and express condition of, the Stalking Horse Bidder’s willingness to submit a bid through execution of the Stalking Horse Purchase Agreement that will serve as a minimum or floor bid on which the Debtors, their creditors, suppliers, vendors, and other bidders may rely. The Stalking Horse Bidder has provided a material benefit to the Debtors and their creditors by increasing the likelihood that, given the circumstances, the best possible price for the Assets will be received. Accordingly, the Bidding Procedures and the Bid Protections are reasonable and appropriate and represent the best method for maximizing value for the benefit of the Debtors’ estates.

H. The Bidding Procedures and the Stalking Horse Purchase Agreement were negotiated by the parties at arms’ length and in good faith by the Debtors and the Stalking Horse Bidder.

I. *Assumption and Assignment Procedures.* The Motion, this Order, and the assumption and assignment procedures set forth herein are reasonably calculated to provide counterparties to any Contracts to be assumed by the Debtors and assigned to the Successful Bidder with proper notice of the intended assumption and assignment of their Contracts, the procedures in connection therewith, and any cure amounts relating thereto.

J. *Sale Notice.* The sale notice, substantially in the form attached hereto as Exhibit 2 (the “Sale Notice”), is reasonably calculated to provide interested parties with timely and proper notice of the proposed sale, including, without limitation: (i) the date, time, and place of the Auction (if one is held); (ii) the Bidding Procedures; (iii) the deadline for filing objections

to the Sale and entry of the Sale Order, and the date, time, and place of the Sale Hearing; (iv) reasonably specific identification of the Assets to be sold; (v) instructions for promptly obtaining copies of the Stalking Horse Purchase Agreement; (vi) a description of the Sale as being free and clear of liens, claims, encumbrances, and other interests (except as set forth in the applicable Purchase Agreement), with all such liens, claims, encumbrances, and other interests attaching with the same validity and priority to the Sale proceeds; (vii) notice of the proposed assumption and assignment of Contracts to the Stalking Horse Bidder pursuant to the Stalking Horse Purchase Agreement (or to another Successful Bidder arising from the Auction, if any), and no other or further notice of the sale shall be required.

**IT IS HEREBY ORDERED THAT:**

1. The Motion is granted as provided herein.
2. All objections to the relief requested in the Motion that have not been withdrawn, waived, or settled as announced to the Court at the hearing on the Motion or by stipulation filed with the Court, are overruled.

**I. Important Dates and Deadlines.**

Event	Date
Potential Bidder Documents Due	September 26, 2016
Bid Deadline	September 27, 2016
Notification of Qualified Bidders	September 28, 2016
Auction	September 29, 2016
Sale Objection Deadline	September 30, 2016
Contract Objections Due	The earlier of September 30, 2016 or 7 days from service of the Contract Notice
Sale Hearing	September 30, 2016

3. **Notice of Successful Bidder.** The Debtors shall file a notice identifying the Successful Bidder by September 29, 2016 at 11:59 p.m. (prevailing Eastern Time) or as soon as practicable if the Auction is extended.

4. **Sale Hearing.** The Sale Hearing shall commence on ~~or before~~ September <sup>30</sup>~~29~~, 2016, at 2:00 p.m. (prevailing Eastern Time) before the Honorable Kevin Gross, at the Court, 824 North Market Street, 6th Floor, Courtroom No. 3, Wilmington, Delaware 19801. Upon entry of this Order, the Debtors are authorized to perform any obligations of the Debtors set forth in the Stalking Horse Purchase Agreement or other applicable Purchase Agreement that are intended to be performed prior to the Sale Hearing or entry of the Sale Order. The Sale Hearing may be adjourned by announcement in open Court or on the Court's calendar without any further notice required.

5. **Sale Objection Deadline.** Objections, if any, to the Sale must be made on or before the earlier of September 30, 2016, at 10:00 a.m. (prevailing Eastern Time) or the Sale Hearing (the "Sale Objection Deadline"). Objections must: (a) be in writing; (b) conform to the applicable provisions of the Bankruptcy Rules and the Local Rules; (c) state with particularity the legal and factual basis for the objection and the specific grounds therefor; and (d) be filed with the Court and served so as to be *actually received* no later than the Sale Objection Deadline by the following parties (the "Notice Parties"):

Counsel to the Debtors	Co-Counsel to the Debtors
Kirkland & Ellis LLP 300 North LaSalle Chicago, Illinois 60654 Attn.: Ryan Blaine Bennett, Steve Toth, Travis M. Bayer, and Timothy R. Bow	Pachulski Stang Ziehl & Jones LLP 919 North Market Street, 17th Floor, P.O. Box 8705 Wilmington, Delaware 19899 Attn.: Laura Davis Jones and Colin R. Robinson

Proposed Co-Counsel to the Committee	The United States Trustee
<p>Akin Gump Strauss Hauer &amp; Feld LLP One Bryant Park, Bank of America Tower New York, New York 10036 Attn.: David H. Botter and Sarah Link Schultz</p> <p>Whiteford, Taylor &amp; Preston LLC The Renaissance Centre 405 North King Street, Suite 500 Wilmington, DE 19801 Attn.: Christopher M. Samis and L. Katherine Good</p>	<p>Office of the United States Trustee for the District of Delaware 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 Attn: Hannah McCollum, Esq.</p>
Counsel To the Agent Under the Debtors' Prepetition Credit Facility	Counsel to the Stalking Horse Bidder
<p>Weil, Gotshal &amp; Manges LLP 767 Fifth Avenue New York, New York 10153 Attn.: Joseph H. Smolinsky &amp; David N. Griffiths</p>	<p>Sheppard Mullin Richter &amp; Hampton LLP 333 South Hope Street, 43rd Floor Los Angeles, California 90071 Attn.: Theodore A. Cohen</p>

6. A party's failure to timely file or make an objection in accordance with this Order shall forever bar the assertion of any objection to the Motion, entry of the Sale Order, and/or consummation of the Sale with the Successful Bidder pursuant to the applicable Purchase Agreement, including the assumption and assignment of the Contracts to the Successful Bidder pursuant to the applicable Purchase Agreement, and shall be deemed to constitute any such party's consent to entry of the Sale Order and consummation of the Sale and all transactions related thereto, including, without limitation, such assumption and assignment. All rights to the extent they exist are reserved for a party to later seek relief from the Court, and the Debtors and all other parties reserve all defenses.

7. **Bid Deadline.** The deadline by which all Bids for the Debtors' Assets must be *actually received* by the parties specified in the Bidding Procedures is 5:00 p.m. (prevailing Eastern Time), on September 27, 2016 (the "Bid Deadline").

8. **Auction.** September 29, 2016 at 10:00 a.m. (prevailing Eastern Time), is the date and time the Auction, if one is needed. Such Auction will be held at the offices of counsel to the

Debtors: Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022-4611, or such later time on such day or other place as the Debtors shall notify all Qualified Bidders who have submitted Qualified Bids. The Auction shall be transcribed by a court reporter. As set forth more fully in the Bidding Procedures, only Qualified Bidders shall be permitted to participate at the Auction, however, any party in interest may attend the Auction.

**II. Auction, Bidding Procedures, and Related Relief.**

9. The Bidding Procedures, substantially in the form attached hereto as Exhibit 1, are hereby approved in their entirety, and the Bidding Procedures shall govern the submission, receipt, and analysis of all Bids relating to the proposed sale of the Assets. Any party desiring to bid on the Assets shall comply with the Bidding Procedures and this Order. The Debtors are authorized to take any and all actions necessary to implement the Bidding Procedures.

10. The Stalking Horse Bidder is deemed a Qualified Bidder, and the Stalking Horse Bid as set forth in the Stalking Horse Purchase Agreement is deemed a Qualified Bid.

11. If the Debtors do not receive any Qualified Bids (other than the Stalking Horse Bid) and there is a written waiver of the Credit Bid Right (as defined in the Bidding Procedures): (a) the Debtors will not hold the Auction; (b) the Stalking Horse Bidder will be deemed the Successful Bidder for the Assets; and (c) the Debtors shall be authorized to seek approval of the Stalking Horse Purchase Agreement at the Sale Hearing.

12. If the Debtors receive one or more Qualified Bids from Qualified Bidders (other than the Stalking Horse Bidder), or if the Agent indicates that it intends to exercise its Credit Bid Right, then the Debtors shall conduct the Auction in accordance with the Bidding Procedures.

13. Pursuant to Local Rule 6004-1(c)(ii): (a) each bidder participating at the Auction shall be required to confirm that it has not engaged in any collusion with respect to the bidding or



the Sale, as set forth in the Bidding Procedures; (b) the Auction shall be conducted openly; and (c) the Auction shall be transcribed or videotaped.

14. The Agent shall be deemed to be a Qualified Bidder and is not required to make any Deposit. The Agent shall have its Credit Bid Right. Upon exercise of the Credit Bid Right and notwithstanding anything herein, the Agent's consultation rights shall be suspended. In addition, upon such exercise of the Credit Bid Right, the Agent shall not be required to take title to or ownership of, or have any obligation in connection with (in each case, legal, equitable, or otherwise), or be deemed to have taken title to or ownership of, or have any obligation in connection with (in each case, legal, equitable, or otherwise), any individual asset, portion of the assets, or all of the assets, and the Agent shall have the right to designate any person or entity in its sole and absolute discretion that shall take title to the individual asset, portion of the assets, or all of the assets that are subject to the Credit Bid Right. Except for the holders of any Prior Liens, no other person may credit bid unless the entire amount of the Lenders' claims (including all prepetition and debtor in possession financing claims) will be indefeasibly paid in full in cash on the closing of the proposed sale. The rights of any valid Prior Lien holders with respect to the Prior Liens are reserved should the Agent or any other credit bidder exercise its credit bid right. In the event the Agent exercises the Credit Bid Right, and the amount of the credit bid of the Agent exceeds the total amount of the highest bids for the assets subject to the Credit Bid Right, such credit bid will be deemed the highest and best bid and such credit bid will be accepted by the Debtors and be presented for approval to the Bankruptcy Court. The Agent will not be a Backup Bidder unless the Agent consents in writing otherwise.

15. Subject to the terms of the Bidding Procedures and the prior paragraph of this Order, in the event of a competing Qualified Bid, the Stalking Horse Bidder will be entitled, but

not obligated, to submit overbids and will be entitled in any such overbids to credit bid: (a) all or a portion of the value of the secured portion of its claims (if any) within the meaning of section 363(k) of the Bankruptcy Code; and (b) the value of the Breakup Fee.

16. Any credit bid made by a Successful Bidder must include a cash component sufficient to pay the Breakup Fee.

17. So long as acceptable to the Agent in its reasonable discretion, the Debtors may (a) determine which Qualified Bid is the highest or otherwise best offer; (b) reject at any time before entry of an Order of the Bankruptcy Court approving the Successful Bid, any Bid (other than the Stalking Horse 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; and (c) at or before the conclusion of the Auction, may impose such other terms and conditions upon Qualified Bidders (except the Stalking Horse Bidder) as the Debtors determines to be in the best interests of the Debtors' estates in these cases.

18. No person or entity, other than the Stalking Horse Bidder, shall be entitled to any expense reimbursement, break-up fees, "topping," termination, or other similar fee or payment, and by submitting a bid, such person or entity is deemed to have waived their right to request or to file with this court any request for expense reimbursement or any fee of any nature, whether by virtue of section 503(b) of the Bankruptcy Code or otherwise.

### **III. Breakup Fee.**

19. The Breakup Fee is approved on the terms set forth in the Stalking Horse Purchase Agreement. The Debtors are authorized to pay any and all such amounts owing to the Stalking Horse Bidder on account of the Breakup Fee in accordance with the terms of the

Stalking Horse Purchase Agreement without further action or order by the Court and as and when due and payable under the Stalking Horse Purchase Agreement.

20. The Breakup Fee (if payable under the Stalking Horse Purchase Agreement in accordance with its terms and the terms of this Order, and until such Breakup Fee is paid) shall be an allowed administrative expense claim in the Debtors' chapter 11 cases pursuant to sections 503(b)(1) and 507(a)(2).

#### **IV. Assumption and Assignment Procedures.**

21. The following procedures regarding the assumption and assignment of the Contracts in connection with the Sale are approved to the extent set forth herein, and shall govern the assumption and assignment of all Contracts proposed to be assumed by the Debtors pursuant to section 365(b) of the Bankruptcy Code and assigned to the Stalking Horse Bidder (or other Successful Bidder following the Auction, if any) pursuant to section 365(f) of the Bankruptcy Code under the Stalking Horse Purchase Agreement or other applicable Purchase Agreement.

22. *Notices for Contracts.* By September 29, 2016 at 11:59 p.m. (prevailing Eastern Time), or as soon as reasonably practicable if the Auction is extended, the Debtors shall serve on all non-Debtor counterparties to any Contract (the "Contract Notice Parties") that may be assumed by the Debtors and assigned to the Successful Bidder a "Contract Notice," substantially in the form attached hereto as **Exhibit 3**, that identifies, to the extent applicable: (a) the Contract that may be assumed and assigned; (b) the name of the non-Debtor counterparty to such Contract; (c) the Debtors' asserted cure amount for such Contract if it becomes assumed and assigned; (d) the deadlines by which any such Contract counterparty must file an objection (each, a "Contract Objection") to the proposed cure amount, assumption and assignment, or adequate assurance; (e) identifying the Stalking Horse Bidder; and (f) providing Contract

counterparties with the Stalking Horse Bidder's assurance of future performance; *provided* that the presence of a Contract on a Contract Notice does not constitute an admission that such Contract is an executory contract or unexpired lease; *provided, further*, that the presence of a Contract on the Contract Notice or Assumption Notice shall not prevent the Debtors from subsequently withdrawing such request for assumption or rejecting such Contract at any time before such Contract is actually assumed and assigned pursuant to an Order of the Court. Such Contract Notice shall be without prejudice to the Stalking Horse Bidder's rights under Section 1.1(b)(vii) of the Stalking Horse Purchase Agreement to subsequently exclude such items from assumption and assignment or add additional items. As soon as practicable after the Bid Deadline, the Debtors shall file with the Court and serve on the Contract Notice Parties who are parties to a Contract to be assumed and assigned a further notice substantially in the form attached hereto as **Exhibit 4** (the "Assumption Notice") identifying all Qualified Bidders each of whom will be permitted to participate in the Auction, stating which Contracts may be assumed and assigned, and providing such parties with the Qualified Bidders' assurance of future performance. To the extent the Debtors subsequently identify prior to the Sale Hearing any additional Contracts to be assumed by the Debtors and assigned to the Successful Bidder, the Debtors shall serve on any counterparty to such Contract the Contract Notice and/or Assumption Notice, as applicable, along with the Successful Bidder's assurance of future performance, as soon as practicable. Unless otherwise set forth herein, such counterparty shall have seven (7) days from service of the Contract Notice and/or Assumption Notice, as applicable, to file an objection to the proposed cure amount or assumption and assignment of its Contract in accordance with the procedures set forth herein.

23. ***Objections to Assumption of Contracts.*** Any non-Debtor counterparty to a Contract who objects to the cure or assignment of their Contracts (the “Objecting Party”) shall file Contract Objections pursuant to the following procedures:

- ***Contract Objection.*** All Contract Objections to the cure amounts listed in the Contract Notice, the Debtors’ ability to assign a Contract, or adequate assurance of future performance solely by the Stalking Horse Bidder shall be filed with the Court on or before the earlier of seven (7) days from service of such Contract Objection, September 30, 2016 at 10:00 a.m. (prevailing Eastern Time), or the Sale Hearing.
- ***Supplemental Adequate Assurance Objection.*** All Contract Objections to adequate assurance of future performance of Contracts by any Successful Bidder other than the Stalking Horse Bidder shall be filed with the Court at or prior to the Sale Hearing; *provided* that for parties identified on any supplemental Assumption Notice issued by the Debtors after the initial Assumption Notice, such parties shall have seven (7) days from service of such notice to file such Contract Objection.
- ***No Objection.*** If no Objection is received in accordance with the deadlines set forth above, such counterparty: (a) shall be deemed to have consented to the cure amounts and assumption and assignment of its Contract to the Successful Bidder; (b) shall be forever barred, estopped, and enjoined from asserting any additional cure amount under the Contracts; and (c) shall be forever barred from objecting to the assignment of the Contracts to the Successful Bidder or the adequacy of the Successful Bidder’s assurance of future performance.
- ***Resolution Period.*** If any timely filed Contract Objection cannot be resolved by the Successful Bidder and the Objecting Party, the Court shall resolve such Contract Objection prior to assumption and assignment of such designated Contract, and upon entry of an order by the Court resolving such Contract Objection, the assignment, if approved by the Court, shall be deemed effective as of the date such Objecting Party receives the Assumption Notice. To the extent that any Contract Objection cannot be resolved by the parties, such Contract shall be assumed and assigned only upon satisfactory resolution of the Contract Objection, to be determined in the Stalking Horse Bidder’s or other Successful Bidder’s reasonable discretion, and until such time as the Contract Objection can be resolved, the Contract shall be conditionally assumed and assigned pending a resolution of the Contract Objection after notice and a hearing.
- ***Form of Objections.*** Contract Objections must: (a) be in writing; (b) state with specificity the nature of such objection and alleged cure amount,

including applicable and appropriate documentation in support of such alleged cure amount; and (c) comply with the Bankruptcy Rules and the Local Rules.

**V. Sale Hearing Notice.**

24. The Sale Notice is hereby approved. On or within three (3) business days following entry of this Order, the Debtors shall cause the Sale Notice to be served on: (a) the United States Trustee for the District of Delaware (the "U.S. Trustee"); (b) proposed co-counsel to the Committee; (c) counsel to the Stalking Horse Bidder; (d) counterparties to the Contracts (the "Contract Counterparties"); (e) all parties who have expressed a written interest in some or all of the Assets; (f) all parties who are known or reasonably believed, after reasonable inquiry, to have asserted any lien, encumbrance, claim, or interest in the Assets; (g) the Internal Revenue Service; (h) all applicable state and local taxing authorities; (i) each governmental agency that is an interested party with respect to the Sale and transactions proposed thereunder; and (j) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002.

25. The Debtors are authorized to publish an abbreviated version of the Sale Notice in *The USA Today (National Edition)*, *The Denver Post*, and *The DailyDAC*, at least ten (10) days prior to the Auction.

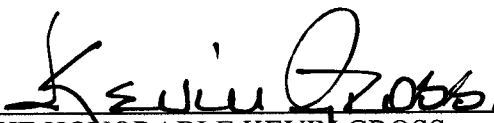
**VI. Miscellaneous.**

26. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

27. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

28. This Court exclusive retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated August 30 2016  
Wilmington, Delaware

  
\_\_\_\_\_  
THE HONORABLE KEVIN GROSS  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit 1**

**Bidding Procedures**



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

	)	
In re:	)	Chapter 11
	)	
EMERALD OIL, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 16-10704 (KG)
	)	
Debtors.	)	(Jointly Administered)
	)	

## BIDDING PROCEDURES FOR THE SALE OF CERTAIN OF THE DEBTORS' ASSETS

On May 25, 2016, the Debtors entered into an asset purchase agreement (the “Stalking Horse Purchase Agreement”) with New Emerald Holdings, LLC (the “Stalking Horse Bidder”) pursuant to which the Stalking Horse Bidder proposes to purchase, acquire, and take assignment and delivery of, free and clear of all liens, claims, encumbrances, and other interests (except as otherwise provided in the Stalking Horse Purchase Agreement), substantially all of the assets of the Debtors (the “Assets”).

On [ ], 2016, the United States Bankruptcy Court for the District of Delaware (the “Court”) entered an order approving these bidding procedures (these “Bidding Procedures,” and such order, the “Bidding Procedures Order”),<sup>2</sup> in the Debtors’ jointly-administered chapter 11 cases (the “Chapter 11 Cases”). The Bankruptcy Court will have jurisdiction with respect to any dispute that may arise with respect to these Bidding Procedures.

These Bidding Procedures set forth the process by which the Debtors are authorized to conduct an auction for the sale (the “Sale”) of the Assets.

The Debtors selected the Stalking Horse Bid (as defined below) after a closed bidding process (the “Stalking Horse Bidding Process”). After announcing the Stalking Horse Bid, the Debtors will conduct a round of open bidding (the “Open Bidding Process”) culminating in an auction intended to obtain a higher or otherwise best bid for the Transaction (the “Auction”).

## I. Submissions to the Debtors.

All submissions to the Debtors required to be made under these Bidding Procedures must be directed to each the following persons unless otherwise provided (collectively, the “Debtors’ Representatives”):

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Emerald Oil, Inc. (9000); Emerald DB, LLC (2933); Emerald NWB, LLC (7528); Emerald WB LLC (8929); and EOX Marketing, LLC (4887). The location of the Debtors' service address is: 200 Columbine Street, Suite 500, Denver, Colorado 80206.

2 All capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Bidding Procedures Order.

- A. **Debtors.** Emerald Oil, Inc., 200 Columbine Street, Suite 500, Denver, Colorado 80206, Attn.: Wade Stubblefield.
- B. **Counsel.** Counsel to the Debtors, Kirkland & Ellis LLP, 300 North LaSalle, Chicago, Illinois 60654, Attn.: Ryan Blaine Bennett (ryan.bennett@kirkland.com), Steve Toth (steve.toth@kirkland.com), Travis M. Bayer (travis.bayer@kirkland.com), and Timothy R. Bow (timothy.bow@kirkland.com); and Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, P.O. Box 8705, Wilmington, Delaware 19899, Attn.: Laura Davis Jones (ljones@pszjlaw.com) and Colin R. Robinson (crobinson@pszjlaw.com); and
- C. **Financial Advisor.** Financial advisor to the Debtors, Intrepid Partners, LLC ("Intrepid"), Attn.: Matthew Hart (hart@intrepidfp.com) and R. Adam Miller (miller@intrepidfp.com).

The Debtors' Representatives shall reasonably promptly send all such submissions to the Agent (as defined below) and the Committee Representatives (as defined below).

## II. Participation Requirements.

### A. Potential Bidders.

To participate in the bidding process or otherwise be considered for any purpose under these Bidding Procedures, a person or entity (other than the Agent exercising its Credit Bid Right (as defined below)) interested in consummating the Transaction (a "Potential Bidder") must deliver or have previously delivered, if determined to be necessary by the Debtors in their sole discretion by no later than September 26, 2016:

1. an executed confidentiality agreement on terms acceptable to the Debtors (a "Confidentiality Agreement"); and
2. preliminary proof by the Potential Bidder of its financial capacity to close a proposed transaction, which may include financial statements of, or verified financial commitments obtained by, the Potential Bidder (or, if the Potential Bidder is an entity formed for the purpose of acquiring the Assets, the party that will bear liability for a breach), the adequacy of which will be assessed by the Debtors and their advisors in their sole discretion.

### B. Notice of Acceptable Bidder.

The Debtors' advisors will notify each Potential Bidder whether such Potential Bidder has submitted adequate documentation so that such Potential Bidder may submit a Bid (each, an "Acceptable Bidder"); *provided* that the Debtors shall consult with the official committee of unsecured creditors (the "Committee") in the event they determine that a

Potential Bidder does not constitute an Acceptable Bidder. Notwithstanding anything herein to the contrary, the Debtors reserve the right to work with Potential Bidders to aggregate partial Bids into a consolidated Acceptable Bid prior to the Acceptable Bid Deadline. The Stalking Horse Bidder and the Agent exercising its Credit Bid Right shall each be deemed an Acceptable Bidder and a Qualified Bidder at all times.

### **III. Obtaining Due Diligence Access.**

Only Acceptable Bidders shall be eligible to receive due diligence information and access to the Debtors' electronic data room and to additional non-public information regarding the Debtors. *Other than the Agent exercising its Credit Bid Right, no Acceptable Bidder will be permitted to conduct any due diligence without entry into a Confidentiality Agreement.* The Debtors will provide to each Acceptable Bidder reasonable due diligence information, as requested by such Acceptable Bidder in writing, as soon as reasonably practicable after such request, and the Debtors shall post substantially all written due diligence provided to any Acceptable Bidder to the Debtors' electronic data room. The due diligence period will end on the Bid Deadline (as defined herein) and subsequent to the Bid Deadline the Debtors shall have no obligation to furnish any due diligence information.

In connection with the provision of due diligence information to Acceptable Bidders, the Debtors shall not furnish any confidential information relating to the Assets, liabilities of the Debtors, or the Sale to any person except to an Acceptable Bidder or to such Acceptable Bidder's duly authorized representatives to the extent provided in the applicable Confidentiality Agreement.

The Debtors and their advisors shall coordinate all reasonable requests from Acceptable Bidders for additional information and due diligence access; *provided* that the Debtors may decline to provide such information to Acceptable Bidders who, at such time and in the Debtors' reasonable business judgment, have not established, or who have raised doubt, that such Acceptable Bidder intends in good faith to, or has the capacity to, consummate the Sale.

**All due diligence requests must be directed to Intrepid Partners, LLC, Attn.: Matthew Hart (hart@intrepidfp.com) and R. Adam Miller (miller@intrepidfp.com).**

#### **A. Communications with Qualified Bidders.**

Notwithstanding anything to the contrary in these Bidding Procedures, all substantive direct communications with Qualified Bidders shall be through the Debtors' Representatives.

#### **B. Due Diligence from Qualified Bidders.**

Each Qualified Bidder shall comply with all reasonable requests for additional information and due diligence access requested by the Debtors or their advisors regarding the ability of such Qualified Bidder to consummate its contemplated transaction. Failure by a Qualified Bidder to comply with such reasonable requests for additional information and due diligence access may be a basis for the Debtors to determine that such bidder is no longer a Qualified Bidder or that a bid made by such bidder is not a Qualified Bid.

#### IV. Committee Access and Information.

The Debtors and the Debtors' Representatives shall regularly consult with, and make the same information that is provided to Acceptable Bidders and the Debtors available to Wells Fargo Bank, N.A., as Agent, and Cortland Capital Market Services LLC as Successor Agent (collectively, the "Agent")<sup>3</sup> on behalf of a syndicate of financial institutions comprised of certain of the pre-petition lenders (the "Lenders") and representatives of the Committee, including but not limited to the Committee's professionals (the "Committee Representatives").

The Debtors and their advisors and representatives will reasonably and promptly consult with the Agent and the Committee Representatives with respect to negotiations with Acceptable Bidders and Qualified Bidders, the terms and conditions of draft agreements with Acceptable Bidders and Qualified Bidders, and the progress of the Open Bidding Process and the Auction.

The Debtors shall also reasonably provide the Agent and the Committee Representatives with relevant information the Debtors receive relating to any Bidders or Bids, including, but not limited to, information regarding the identity of all Potential Bidders, Acceptable Bidders, and Qualified Bidders (as defined below), the terms and conditions of any Bid, the structure (including, without limitation, the proposed tax structure) and form of consideration of any Bid, other information related to the Bid Requirements, and any other information necessary for the Agent and the Committee Representatives to evaluate the Bids (such information, the "Bid Information").

#### V. Due Diligence from Acceptable Bidders and Confidentiality.

If an Acceptable Bidder proposes to use its own or an affiliate's securities as all or part of the financial consideration in its Bid or otherwise makes a Bid that would make relevant the Debtor's or their creditors' need for information from the Bidder concerning the Bidder, the Acceptable Bidder shall comply with all reasonable requests for information from the Debtors and their advisors and representatives regarding the Acceptable Bidder (the "Bidder Due Diligence Information," and together with any Bid Information shared during the Stalking Horse Bidding Process, the "Bidder Confidential Information"). The Acceptable Bidder may request that the Debtors enter into a confidentiality agreement, if the Debtors have not done so, with respect to the Bidder Due Diligence Information satisfactory to the Debtors and the Acceptable Bidder. Failure by an Acceptable Bidder to comply with reasonable requests for information may be a basis for the Debtors and their advisors and representatives to determine that such bidder no longer qualifies as an Acceptable Bidder.

The Debtors and each of their respective advisors and representatives and the Committee Representatives shall be obligated to maintain in confidence any Bidder Confidential Information in accordance with any applicable confidentiality agreement, except as otherwise set forth in these Bidding Procedures. Each recipient of Bidder Confidential Information agrees to use, and to instruct their advisors and representatives to use, such Bidder Confidential

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<sup>3</sup> The term "Agent" shall include the representatives and professionals of the Agent as to all information and consultation rights.

Information only in connection with the evaluation of Bids during the Bidding Process or otherwise in connection with the Chapter 11 Cases or in accordance with the terms of any applicable confidentiality agreement.

Notwithstanding the foregoing and the provisions contained in any applicable confidentiality agreement, the Debtors and the Debtors' Representatives, the Agent, and the Committee Representatives may disclose Bidder Confidential Information, as applicable: (a) with the prior written consent of such Bidder and the Debtors; (b) to the Committee Representatives (who may share such information with members of the Committee pursuant to the terms of the Committee's bylaws); (c) to the applicable Bidder; (d) in accordance with the Open Bidding Process as set forth in sections VI and VII of these Bidding Procedures; (e) to the Lenders; and (f) as otherwise required or allowed by any applicable confidentiality agreement with respect to a particular Bidder or other agreement, law, court or other governmental order, or regulation, including, as appropriate, to regulatory agencies.

## **VI. Bid Requirements.**

Any proposal, solicitation, or offer (each, a "Bid") shall be in cash, or by credit bid in the case of the Agent exercising its Credit Bid Right, must be submitted by an Acceptable Bidder, and must be submitted on or before the Bid Deadline, in writing and determined by the Debtors, in their reasonable business judgment, and in consultation with the Agent and the Committee Representatives, to have satisfied the following requirements (collectively, the "Bid Requirements").

### **A. Consideration and Structure.**

1. ***Total Consideration.*** The Bid must identify the form and amount of the total consideration to be provided to the Debtors in cash (or credit bid in the case of the Agent exercising the Credit Bid Right) (the "Bid Value").
2. ***Consolidated Bids.*** Bids must identify whether or not the Acceptable Bidder is willing to aggregate its Bid into an acceptable consolidated Acceptable Bid with other Potential Bidders as set forth in Section II(b), above.
3. ***Minimum Bid.*** The aggregate cash (or credit bid in the case of the Agent exercising the Credit Bid Right) consideration proposed by each Bid must equal to, or exceed, the sum of (i) the Bid Value set forth in the Stalking Horse Bid, including any Breakup Fee; plus (ii) the Overbid Increment.
4. ***Deposit.*** Each Bid, including the Bid of the Stalking Horse Bidder (the "Stalking Horse Bid"), but excluding the Bid of the Agent if exercising its Credit Bid Right, must be accompanied by a cash deposit in the amount equal to 5% of the aggregate cash purchase price of the Bid to be held in an interest-bearing escrow account to be identified and established by the Debtors (the "Deposit").
5. ***Same or Better Terms.*** Except as otherwise provided herein, each Bid must, in the Debtors' business judgment and in consultation with the

Agent and the Committee Representatives, be on terms the same as or better than the terms of the Stalking Horse Purchase Agreement. Each Bid must include duly executed, non-contingent transaction documents necessary to effectuate the transactions contemplated in the Bid (the "Bid Documents"). The Bid Documents shall include a schedule of Assumed Contracts (pursuant to the Stalking Horse Purchase Agreement) to the extent applicable to the Bid, and a copy of the Stalking Horse Purchase Agreement clearly marked to show all changes requested by the Acceptable Bidder (including those related to the Purchase Price and Assets to be acquired by such Acceptable Bidder), as well as all other material documents integral to such Bid.

6. **Sources of Financing.** The Bid must indicate the source of cash consideration (if applicable), including proposed funding commitments and confirm that such consideration is not subject to any contingencies. The Bid should include a detailed sources and uses schedule.
7. **Structure.** The Bid must identify the structure proposed for undertaking the Transaction, including the specific assets of the Debtors, the proposed steps to accomplish such acquisition, and any financial, legal, or tax considerations upon which the Bid's proposed structure relies.
8. **Tax Structure.** The Bid must specify with particularity its tax structure, including whether it is intended to be structured in a tax-free manner or if any incremental tax liabilities will be incurred by the Debtors under the Bid.
9. **Assumption.** The Bid must specify which, if any, of the obligations of the Debtors the Bidder proposes to assume.

**B. Other Requirements.**

1. **Binding and Irrevocable.** The Bid must by its terms remain binding and irrevocable until three months after the date of selection of the Successful Bid; *provided* that if the Bid is not selected as the Successful Bid or Backup Bid, the Bid may be revoked after approval of such Successful Bid by the Bankruptcy Court.
2. **Regulatory Approvals and Covenants.** Each Bid must describe in detail (a) the efforts that each party must utilize in connection with seeking and obtaining all regulatory approvals required to complete the Sale and (b) any limitations on the Bidder's obligation to take all actions necessary or advisable to obtain such regulatory approvals.
3. **Employees.** The Bid must detail the treatment of the employees of the Debtors and their subsidiaries.

4. **Conditions to Closing.** The Bid must identify with particularity each and every condition to Closing.
5. **No Financing, Approval, or Diligence Outs.** The Bid must not be conditioned on obtaining any of the following: (a) financing; (b) board of directors or other similar approval; or (c) the outcome or completion of a due diligence review by the Acceptable Bidder.
6. **Due Diligence Acknowledgement.** The Bid must include a written acknowledgement and representation that the Bidder: (a) has had an opportunity to conduct any and all due diligence regarding the Sale before making its offer; (b) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Sale in making its Bid; 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 Sale or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Bidder's proposed form of definitive agreement.
7. **No Collusion.** The Bidder must acknowledge in writing (a) that it has not engaged in any collusion with respect to any Bids or the Sale, specifying that it did not agree with any Bidders or Potential Bidders to control price; and (b) agree not to engage in any collusion with respect to any Bids, the Auction, or the Sale.
8. **Good Faith Offer.** The Bid must constitute a good faith, bona fide offer to consummate the Sale.
9. **Identification Information.** The Bidder must fully disclose the identity of each entity or person that will be consummating the Sale or otherwise participating in connection with such Bid, and the complete terms of any such participation, along with sufficient evidence that the Bidder and each such entity is legally empowered, by power of attorney or otherwise, to complete the Sale on the terms contemplated by the parties.
10. **Consent to Jurisdiction.** The Bidder must submit to the jurisdiction of the Bankruptcy Court and waive any right to a jury trial in connection with any disputes relating to Debtors' qualification of Bids, the Auction, the construction and enforcement of these Bidding Procedures, and the Sale documents and the Closing, as applicable.
11. **Disclaimer of Fees.** Each Bid (other than the Stalking Horse Bid) must disclaim any right to receive a fee analogous to a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation. For the avoidance of doubt, no Qualified Bidder (as defined herein) (other than the Stalking Horse Bidder) will be permitted to request, nor be granted by the Debtors, at any time, whether

as part of the Auction or otherwise, a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation, and by submitting its Bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis, including under section 503(b) of the Bankruptcy Code. This paragraph is not intended to limit the ability of the Agent and the Lenders to seek reimbursement of their fees and expenses pursuant to other orders of the Bankruptcy Court in these Chapter 11 Cases.

## VII. Open Bid Requirements.

The Debtors will only consider Bids during the Open Bidding Process from Acceptable Bidders that satisfy the Bid Requirements. Multiple Bids will be permitted during the Open Bidding Process. In addition, Acceptable Bidders during the Open Bidding Process must satisfy the following requirements (the "Open Bid Requirements").

- A. **Minimum Value.** The Bid must provide for Bid Value equal to at least: (i) the Bid Value set forth in the Stalking Horse Bid, including the Breakup Fee, plus (ii) the Overbid Increment (as defined below), plus (iii) any other amounts payable under the Stalking Horse Bid (the "Initial Minimum Overbid").
- B. **Documentation.** The Bid must include a marked version of the Stalking Horse Agreement.
- C. **No Other Bid Protections.** A Bid may not propose any bid protections.

Bids submitted during the Open Bidding Process and fulfilling all of the Bid Requirements and Open Bid Requirements may, at the Debtors' discretion, in consultation with the Agent and the Committee Representatives, be deemed to be "Qualified Bids," and those parties submitting Qualified Bids may, at the Debtors' discretion, in consultation with the Agent and the Committee Representatives, be deemed to be "Qualified Bidders." To be eligible to be selected as a Qualified Bidder, a Bidder must be an Acceptable Bidder and must submit a Bid that is **actually received** no later than **5:00 p.m. (prevailing Eastern Time) on September 27, 2016** (the "Bid Deadline") by each of the Debtors' Representatives. Acceptable Bidders that do not submit a Bid by the Bid Deadline will not be eligible to be selected as Qualified Bidders.

By no later than September 28, 2016 at 11:59 p.m. (prevailing Eastern Time), the Debtors shall determine which Acceptable Bidders are Qualified Bidders after consultation with the Agent and the Committee's Representatives, and will notify the Acceptable Bidders whether Bids submitted constitute Qualified Bids so as to enable such Qualified Bidders to bid at the Auction. Any Bid that is not deemed a Qualified Bid shall not be considered by the Debtors. The Stalking Horse Bid shall constitute a Qualified Bid.

## VIII. Auction.

If the Debtors receive a Qualified Bid, other than the Stalking Horse Bid, or if the Agent indicates that it intends to exercise its Credit Bid Right (as defined below) within five (5) business days after receiving from the Debtors the Bids and Qualified Bids and such other information as the Agent may reasonably request, the Debtors will conduct the Auction to



determine the Successful Bidder with respect to the Debtors' Assets. If the Debtors do not receive a Qualified Bid (other than the Stalking Horse Bid), the Debtors, in consultation with the Agent and the Committee Representatives, will not conduct the Auction and shall designate the Stalking Horse Bidder's Qualified Bid as the Successful Bid unless the Agent indicates that it intends to exercise its Credit Bid Right as set forth above.

No later than September 28, 2016 at 11:59 p.m. (prevailing Eastern Time), the Debtors will notify all Qualified Bidders of the highest or otherwise best Qualified Bid, as determined in the Debtors' reasonable business judgment, in consultation with the Agent and the Committee Representatives (the "Baseline Bid"), and provide copies of the Bid Documents supporting the Baseline Bid to all Qualified Bidders. The determination of which Qualified Bid constitutes the Baseline Bid and which Qualified Bid constitutes the Successful Bid shall take into account any factors the Debtors, in consultation with the Agent and the Committee Representatives, reasonably deem relevant to the value of the Qualified Bid to the Debtors' estates, including, among other things: (a) the number, type, and nature of any changes to the Stalking Horse Purchase Agreement requested by the Qualified Bidder, including the type and amount of Assets sought and Assumed Obligations to be assumed in the Bid; (b) the total cash or credit bid consideration, as applicable; (c) the likelihood of the Bidder's ability to close a transaction, the conditions thereto, and the timing thereof; (d) the net economic effect of any changes to the value to be received by the Debtors' estates from the transaction contemplated by the Bid Documents; and (e) the tax consequences of such Qualified Bid (collectively, the "Bid Assessment Criteria"); *provided* that the Debtors, with the Agent's written consent, may allow Qualified Bid's to include cash equivalents or other forms of value acceptable to the Agent.

The Auction shall take place at 10:00 a.m. (prevailing Eastern Time) on September 29, 2016, at the offices of Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022-4611, or such later date and time as selected by the Debtors. The Auction shall be conducted in a timely fashion according to the following procedures.

**A. The Debtors Shall Conduct the Auction.**

The Debtors and their professionals shall direct and preside over the Auction. At the start of the Auction, the Debtors shall describe the terms of the Baseline Bid. All incremental Bids made thereafter must be Overbids (as defined herein) and shall be made and received on an open basis, and all material terms of each Overbid shall be fully disclosed to all other Qualified Bidders. The Debtors shall maintain a written transcript of the Auction and of all Bids made and announced at the Auction, including the Baseline Bid, all Overbids, and the Successful Bid.

Any party in interest may attend the Auction, *provided that* only Qualified Bidders and their legal and financial advisors, the Agent, the Lenders, and the Committee and their legal and financial advisors shall be entitled to bid and participate in the Auction. Qualified Bidders shall appear at the Auction in person and may speak or bid themselves or through duly authorized representatives.

**B. Terms of Overbids.**

**“Overbid”** means any cash bid (or credit bid in the case of the Agent exercising its Credit Bid Right) made at the Auction by a Qualified Bidder subsequent to the Debtors’ announcement of the Baseline Bid. Each Overbid must comply with the following conditions.

1. ***Minimum Overbid Increment.*** Any Overbid following the Initial Minimum Overbid or following any subsequent Prevailing Highest Bid (as defined below) shall be in increments in cash (or credit bid in the case of the Agent exercising its Credit Bid Right) of \$500,000 (the ***“Overbid Increment”***).
2. ***Conclusion of Each Overbid Round.*** Upon the solicitation of each round of Overbids, the Debtors, following consultation with the Agent and the Committee Representatives, may announce a deadline (as the Debtors may, in their business judgment, extend from time to time, the ***“Overbid Round Deadline”***) by which time any Overbids must be submitted to the Debtors.
3. ***Overbid Alterations.*** Each Overbid must contain the Overbid Increment and may contain alterations, modifications, additions, or deletions of any terms of the Bid no less favorable to the Debtors’ estates, or the allocation of value to the Agent and Lenders, than any prior Qualified Bid or Overbid, as determined in the Debtors’ reasonable business judgment, following consultation with the Agent and the Committee Representatives, but shall otherwise comply with the terms of these Bidding Procedures.
4. ***Announcing Highest Bid.*** Subsequent to each Overbid Round Deadline, the Debtors shall announce whether the Debtors have identified, an Overbid as being higher or otherwise better than the Initial Minimum Overbid, in the initial Overbid round, or, in subsequent rounds, the Overbid previously designated by the Debtors as the prevailing highest or otherwise best Bid (the ***“Prevailing Highest Bid”***). The Debtors shall describe to all Qualified Bidders the material terms of any new Overbid designated by the Debtors as the Prevailing Highest Bid as well as the value attributable by the Debtors to such Prevailing Highest Bid based on, among other things, the Bid Assessment Criteria.

#### **C. Consideration of Overbids.**

The Debtors reserve the right, in their reasonable business judgment, and in consultation with the Agent and the Committee Representatives and the Stalking Horse Bidder and the Agent, to adjourn the Auction one or more times to, among other things (i) facilitate discussions between the Debtors and Qualified Bidders, (ii) allow Qualified Bidders to consider how they wish to proceed, and (iii) provide Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in their reasonable business judgment, may require, that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments to consummate the proposed transaction at the prevailing Overbid amount; *provided that* notice of any adjournments made prior to the start of the Auction shall be filed (a) with the Court 24 hours in advance of the Auction in the event of any day or location changes and (b) as soon as practical for any changes in the time of the Auction.

**D. Closing the Auction.**

1. The Auction shall continue until there is only one Qualified Bid that the Debtors determine, in their reasonable business judgment and in consultation with the Agent and the Committee Representatives, to be the highest or otherwise best Qualified Bid for the Assets. Such Qualified Bid shall be declared the "Successful Bid," and such Qualified Bidder, the "Successful Bidder" and at which point the Auction will be closed. The Auction shall not close unless and until all Qualified Bidders have been given a reasonable opportunity to submit an Overbid at the Auction to the then Prevailing Highest Bid. Such acceptance by the Debtors of the Successful Bid is conditioned upon approval by the Court of the Successful Bid.
2. For the avoidance of doubt, nothing in these Bidding Procedures shall prevent the Debtors from exercising their respective fiduciary duties under applicable law.
3. The Debtors shall not consider any Bids or Overbids submitted after the conclusion of the Auction, and any such Bids or Overbids shall be deemed untimely and shall under no circumstances constitute a Qualified Bid.
4. The Debtors shall file a notice identifying the Successful Bidder by September 29, 2016 at 11:59 p.m. (prevailing Eastern Time) or as soon as practicable if the Auction is extended.
5. As soon as reasonably practicable after closing the Auction, the Debtors shall cause the Bid Documents for the Successful Bid and Backup Bid (defined below) to be filed with the Court.

**E. No Collusion; Good-Faith *Bona Fide* Offer.**

Each Qualified Bidder participating at the Auction will be required to confirm on the record at the Auction that (i) it has not engaged in any collusion with respect to the Sale or bidding (including that it has no agreement with any other Bidder or Qualified Bidder to control the price), and (ii) its Qualified Bid is a good-faith *bona fide* offer and it intends to consummate the proposed transaction if selected as the Successful Bidder.

**IX. Backup Bidder.**

- A. Notwithstanding anything in these Bidding Procedures to the contrary, if an Auction is conducted, the Qualified Bidder with the next-highest or otherwise second-best Qualified Bid at the Auction for the Assets, as determined by the Debtors in the exercise of their reasonable business judgment and in consultation with the Agent and the Committee Representatives (the "Backup Bid"), shall be required to serve as a backup bidder (the "Backup Bidder"), and each Qualified Bidder shall agree and be deemed to agree to be the Backup Bidder if so designated by the Debtors.
- B. The identity of the Backup Bidder and the amount and material terms of the Qualified Bid of the Backup Bidder shall be announced by the Debtors, at the

conclusion of the Auction at the same time the Debtors announce the identity of the Successful Bidder. The Backup Bidder shall be required to keep its Qualified Bid (or if the Backup Bidder submits one or more Overbids at the Auction, its final Overbid) open and irrevocable until the closing of the transaction with the Successful Bidder. The Backup Bidder's Deposit shall be held in escrow until the closing of the transaction with the Successful Bidder.

- C. If a Successful Bidder fails to consummate the approved transactions contemplated by its Successful Bid, the Debtors, in consultation with the Agent and the Committee Representatives, may select the Backup Bidder as the Successful Bidder, and such Backup Bidder shall be deemed a Successful Bidder for all purposes. The Debtors will be authorized, but not required, to consummate all transactions contemplated by the Bid of such Backup Bidder without further order of the Court or notice to any party. In such case, the defaulting Successful Bidder's Deposit shall be forfeited to the Debtors, and the Debtors specifically reserve the right to seek all available remedies against the defaulting Successful Bidder, including with respect to specific performance.

**X. Highest or Otherwise Best Bid.**

When determining the highest or otherwise best Qualified Bid, as compared to other Qualified Bids, the Debtors, in consultation with the Agent and the Committee Representatives, may consider the following factors in addition to any other factors that the Debtors, the Agent, and the Committee Representatives deem appropriate: (a) the number, type, and nature of any changes to the Stalking Horse Purchase Agreement requested by the Qualified Bidder, including the type and amount of Assets sought and obligations to be assumed in the Bid; (b) the amount and nature of the total consideration; (c) the likelihood of the Bidder's ability to close a transaction and the timing thereof; (d) the net economic effect of any changes to the value to be received by the Debtors' estates from the transaction contemplated by the Bid Documents; and (e) the tax consequences of such Qualified Bid; *provided*, in each case, that the fact the Stalking Horse Bid and any exercise of the Credit Bid Right by the Agent comprises a credit bid shall not be a factor considered by the Debtors in their determination of the highest or otherwise best Qualified Bid.

**XI. Rights of the Agent/Other Rights to Credit Bid.**

The Agent shall be deemed to be a Qualified Bidder and is not required to make any Deposit. The Agent, may credit bid, at any time, in its sole and absolute discretion, any portion and up to the entire amount of the Agent's and the Lenders' respective claims, including, without limitation, both the Lenders' prepetition claims and all of the Debtors' obligations under the DIP Order (as defined below), at any time on any individual asset, portion of the assets, or all assets constituting their respective Collateral (as defined in the DIP Order) in conjunction with any sale of the Debtors' assets (the "Credit Bid Right"). Upon exercise of the Credit Bid Right and notwithstanding anything herein, the Agent's consultation rights shall be suspended. In addition, upon such exercise of the Credit Bid Right, the Agent shall not be required to take title to or ownership of, or have any obligation in connection with (in each case, legal, equitable, or otherwise), or be deemed to have taken title to or ownership of, or have any obligation in

connection with (in each case, legal, equitable, or otherwise), any individual asset, portion of the assets, or all of the assets, and the Agent shall have the right to designate any person or entity in its sole and absolute discretion that shall take title to the individual asset, portion of the assets, or all of the assets that are subject to the Credit Bid Right. Except for the holders of any Prior Liens (as defined in the DIP Order entered in these bankruptcy cases, the "DIP Order"), no other person may credit bid unless the entire amount of the Lenders' claims (including all prepetition and debtor in possession financing claims) will be indefeasibly paid in full in cash on the closing of the proposed sale. The rights of any valid Prior Lien holders with respect to the Prior Liens are reserved should the Agent or any other credit bidder exercise its credit bid right. In the event the Agent exercises the Credit Bid Right, and the amount of the credit bid of the Agent exceeds the total amount of the highest bids for the assets subject to the Credit Bid Right, such credit bid will be deemed the highest and best bid and such credit bid will be accepted by the Debtors and be presented for approval to the Bankruptcy Court. The Agent will not be a Backup Bidder unless the Agent consents in writing otherwise. So long as acceptable to the Agent in its reasonable discretion, the Debtors may (a) determine which Qualified Bid is the highest or otherwise best offer; (b) reject at any time before entry of an Order of the Bankruptcy Court approving the Successful 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; and (c) at or before the conclusion of the Auction, may impose such other terms and conditions upon Qualified Bidders as the Debtors determines to be in the best interests of the Debtors' estates in these cases. All terms and provisions of this paragraph shall control over any conflicting provision of these Bidding Procedures.

Subject to the prior paragraph: (a) at the Auction, any Qualified Bidder, including the Stalking Horse Bidder, who has a valid, perfected, and unavoidable lien on any assets of the Debtors' estates (a "Secured Creditor") shall have the right to credit bid all or a portion of the value of such Secured Creditor's claims within the meaning of section 363(k) of the Bankruptcy Code; *provided* that a Secured Creditor shall have the right to credit bid its claim only with respect to the collateral by which such Secured Creditor is secured; *provided, further*, that for purposes of such Secured Creditor's Qualified Bid, the Secured Creditor's claim shall be deemed to have the value it possesses on the date of the Auction, and (b) the Stalking Horse Bidder shall have the right (including as part of any Overbid) to credit bid all or a portion of the value of the secured portion of its claims for the assets pursuant to section 363(k) of the Bankruptcy Code.

Any credit bid made by a Successful Bidder must include a cash component sufficient to pay the Breakup Fee.

## **XII. Reservation of Rights.**

The Debtors reserve their rights to modify these Bidding Procedures in their reasonable business judgment, in consultation with the Agent and the Committee Representatives, in any manner that will best promote the goals of the bidding process, or impose, at or prior to the Auction, additional customary terms and conditions on the sale of the Assets, including, without limitation: (a) extending the deadlines set forth in these Bidding Procedures; (b) adjourning the Auction at the Auction and/or adjourning the Sale Hearing (as defined below) in open court without further notice; (c) adding procedural rules that are reasonably necessary or advisable

under the circumstances for conducting the Auction; (d) canceling the Auction; and (e) rejecting any or all Bids or Qualified Bids.

Notwithstanding the foregoing and subject in all respects to the Stalking Horse Purchase Agreement, the Debtors may not impair or modify the Stalking Horse Bidder's rights and obligations under the Stalking Horse Purchase Agreement or the Stalking Horse Bidder's right to credit bid its secured claim (if any) and the Bidding Protections as part of any Bid at the Auction or otherwise.

### **XIII. Consent to Jurisdiction.**

All Qualified Bidders at the Auction shall be deemed to have consented to the jurisdiction of the Court and waived any right to a jury trial in connection with any disputes relating to the Auction, the construction and enforcement of these Bidding Procedures, and/or the Bid Documents, as applicable.

### **XIV. Sale Hearing.**

A hearing to consider approval of the Sale of all or substantially all of the Debtors' Assets to the Successful Bidder (or to approve the Stalking Horse Purchase Agreement if no Auction is held) (the "Sale Hearing") is currently scheduled to take place on or before September 30, 2016, at \_\_: \_\_ a.m. (prevailing Eastern Time), before the Honorable Kevin Gross, at the Court, 824 North Market Street, 6th Floor, Courtroom No. 3, Wilmington, Delaware 19801.

**The Sale Hearing may be continued to a later date by the Debtors by sending notice prior to, or making an announcement at, the Sale Hearing. No further notice of any such continuance will be required to be provided to any party (including the Stalking Horse Bidder).**

At the Sale Hearing, the Debtors shall present the Successful Bid to the Court for approval.

### **XV. Stalking Horse Purchase Agreement and Stalking Horse Rights.**

Notwithstanding anything in these Bidding Procedures to the contrary, the Stalking Horse Purchase Agreement and related transaction documents shall remain in full force and effect until such agreements have terminated in accordance with their respective terms and regardless of whether the Stalking Horse Bidder is designated the Successful Bidder or the Backup Bidder.

To provide an incentive and to compensate the Stalking Horse Bidder for performing the substantial due diligence and incurring the expenses necessary and entering into a Stalking Horse Purchase Agreement with the knowledge and risk that arises from participating in the sale and subsequent bidding process, the Debtors have agreed to pay the Stalking Horse Bidder, under the conditions and in the amount set forth in Section 10.2 of the Stalking Horse Purchase Agreement and the Bidding Procedures Order, a break-up fee (the "Breakup Fee") not to exceed three percent (3%) of the Base Purchase Price (as defined in the Stalking Horse Purchase Agreement). The Breakup Fee shall be paid in accordance with the Bidding Procedures Order and Stalking Horse Purchase Agreement.

The Stalking Horse Bidder shall have standing to appear and be heard on all issues related to the Auctions, the Sale and related matters, including the right to object to the sale of the Assets or any portion thereof (including the conduct of the Auctions and interpretation of these Bidding Procedures).

**XVI. Return of Deposit.**

The Deposit of the Successful Bidder shall be applied to the purchase price of such transaction at closing. The Deposits for each Qualified Bidder shall be held in one or more accounts on terms acceptable to the Debtors in their sole discretion and shall be returned (other than with respect to the Stalking Horse Bidder, the Successful Bidder, and the Backup Bidder) on or within three business days after the Auction.

If a Successful Bidder fails to consummate a proposed transaction because of a breach by such Successful Bidder, the Debtors will not have any obligation to return the Deposit deposited by such Successful Bidder, which may be retained by the Debtors as liquidated damages, in addition to any and all rights, remedies, or causes of action that may be available to the Debtors, and the Debtors shall be free to consummate the proposed transaction with the applicable Backup Bidder without the need for an additional hearing or order of the Court.

**XVII. Fiduciary Out.**

Nothing in these Bidding Procedures shall require the board of directors, board of managers, or such similar governing body of a Debtor to take any action, or to refrain from taking any action, with respect to these Bidding Procedures, to the extent such board of directors, board of managers, or such similar governing body determines, or based on the advice of counsel, that taking such action, or refraining from taking such action, as applicable, is required to comply with applicable law or its fiduciary obligations.

\* \* \* \* \*

Wilmington, Delaware

Dated: [ ], 2016

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Laura Davis Jones (DE Bar No. 2436)

Colin R. Robinson (DE Bar No. 5524)

Joseph M. Mulvihill (DE Bar No. 6061)

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*Counsel to the Debtors*



**Exhibit 2**

**Sale Notice**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

---

In re:

EMERALD OIL, INC., *et al.*,<sup>1</sup>

Debtors.

---

)  
) Chapter 11  
)  
) Case No. 16-10704 (KG)  
)  
) (Jointly Administered)  
)

**NOTICE OF SALE BY AUCTION AND SALE HEARING**

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**PLEASE TAKE NOTICE** that on May 25, 2016, the above-captioned debtors and debtors in possession (the “Debtors”) filed the *Debtors’ Motion for Entry of (I) An Order (A) Approving Bidding Procedures and Bid Protections in Connection with the Sale of Substantially All of the Debtors’ Assets, (B) Approving The Form And Manner of Notice Thereof, and (C) Scheduling an Auction and Sale Hearing, (D) Approving Procedures for the Assumption and Assignment of Contracts, and (E) Granting Related Relief and (II) An Order (A) Approving the Asset Purchase Agreement Between the Debtors and the Purchaser, and (B) Authorizing The Sale Of Substantially All Of The Debtors’ Assets Free and Clear Of Liens, Claims, Encumbrances, and Interests, (C) Authoring the Assumption and Assignment of Contracts, and (D) Granting Related Relief* [Docket No. 336] (the “Sale Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Court”) seeking, among other things, entry of an order (the “Sale Order”) authorizing and approving: (a) the sale of substantially all of the Debtors’ assets (the “Assets”) to New Emerald Holdings, LLC (the “Stalking Horse Bidder”) free and clear of liens, claims, encumbrances, and other interests, with all such liens, claims, encumbrances, and other interests attaching with the same validity and priority to the sale proceeds, except as set forth in the Stalking Horse Stalking Horse Purchase Agreement and subject to higher or otherwise better offers (the “Sale”); and (b) procedures for the assumption and assignment of executory contracts and unexpired leases (collectively, the “Contracts”). Please note that all capitalized terms used but not defined herein shall have the meanings set forth in the Sale Motion.

**PLEASE TAKE FURTHER NOTICE** that the Debtors are soliciting offers for the purchase of the Assets of the Debtors consistent with the bidding procedures (the “Bidding Procedures”) approved by the Court by entry of an order on [ ], 2016 [Docket No. ] (the “Bidding Procedures Order”). **All interested bidders should carefully read the Bidding Procedures and Bidding Procedures Order.** To the extent that there are any inconsistencies between this notice and the Bidding Procedures or Bidding Procedures Order, the Bidding Procedures or Bidding Procedures Order, as applicable, shall govern in all respects.

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: Emerald Oil, Inc. (9000); Emerald DB, LLC (2933); Emerald NWB, LLC (7528); Emerald WB LLC (8929); and EOX Marketing, LLC (4887). The location of the Debtors’ service address is: 200 Columbine Street, Suite 500, Denver, Colorado 80206.

**PLEASE TAKE FURTHER NOTICE** that, if the Debtors receive qualified competing bids within the requirements and time frame specified by the Bidding Procedures, the Debtors will conduct an auction (the "Auction") of the Assets **on September 29, 2016 at 10:00 a.m. (prevailing Eastern Time)** at the offices of Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022-4611 (or at any other location as the Debtors may hereafter designate on proper notice).

**PLEASE TAKE FURTHER NOTICE** that the Debtors will seek approval of the Sale at a hearing scheduled to commence on or before **September 30, 2016, at : a.m. (prevailing Eastern Time)** (the "Sale Hearing") before the Honorable Kevin Gross, United States Bankruptcy Judge for the Bankruptcy Court for the District of Delaware, at 824 North Market Street, 6th Floor, Courtroom No. 3, Wilmington, Delaware 19801.

**PLEASE TAKE FURTHER NOTICE** that, except as otherwise set forth in the Bidding Procedures Order with respect to any objections to proposed cure amounts or the assumption and assignment of Contracts, objections to the relief requested in the Sale Motion *must*: (a) be in writing; (b) conform to the applicable provisions of the Bankruptcy Rules and the Local Rules; (c) state with particularity the legal and factual basis for the objection and the specific grounds therefor; and (d) be filed with the Court and served so as to be **actually received on or before the earlier of September 30, 2016 at 10:00 a.m. (prevailing Eastern Time) or the Sale Hearing** by the following parties (the "Notice Parties"):

<b>Counsel to the Debtors</b>	<b>Co-Counsel to the Debtors</b>
Kirkland & Ellis LLP 300 North LaSalle Chicago, Illinois 60654 Attn.: Ryan Blaine Bennett, Steve Toth, Travis M. Bayer, and Timothy R. Bow	Pachulski Stang Ziehl & Jones LLP 919 North Market Street, 17th Floor, P.O. Box 8705 Wilmington, Delaware 19899 Attn.: Laura Davis Jones and Colin R. Robinson
<b>Proposed Co-Counsel to the Committee</b>	<b>The United States Trustee</b>
Akin Gump Strauss Hauer & Feld LLP One Bryant Park, Bank of America Tower New York, New York 10036 Attn.: David H. Botter and Sarah Link Schultz  Whiteford, Taylor & Preston LLC The Renaissance Centre 405 North King Street, Suite 500 Wilmington, DE 19801 Attn.: Christopher M. Samis and L. Katherine Good	Office of the United States Trustee for the District of Delaware 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 Attn.: Hannah McCollum, Esq.
<b>Counsel To the Agent Under the Debtors' Prepetition Credit Facility</b>	<b>Counsel to the Stalking Horse Bidder</b>
Weil, Gotshal & Manges LLP 767 Fifth Avenue New York, New York 10153 Attn.: Joseph H. Smolinsky & David N. Griffiths	Sheppard Mullin Richter & Hampton LLP 333 South Hope Street, 43rd Floor Los Angeles, California 90071 Attn.: Theodore A. Cohen

**CONSEQUENCES OF FAILING TO TIMELY MAKE AN OBJECTION**

**ANY PARTY OR ENTITY WHO FAILS TO TIMELY MAKE AN OBJECTION TO THE SALE ON OR BEFORE THE SALE OBJECTION DEADLINE IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER SHALL BE FOREVER BARRED FROM ASSERTING ANY OBJECTION TO THE SALE, INCLUDING WITH RESPECT TO THE TRANSFER OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, EXCEPT AS SET FORTH IN THE APPLICABLE PURCHASE AGREEMENT.**

**NO SUCCESSOR OR TRANSFEREE LIABILITY**

The Stalking Horse Purchase Agreement and proposed Sale Order provide that the Stalking Horse Bidder and/or Successful Bidder, if applicable, will have no responsibility for, and the Assets will be sold free and clear of, any successor liability, including the following: (a) any liability or other obligation of the Debtors' estates or related to the Assets other than as expressly set forth in the applicable Purchase Agreement; or (b) any claims against the Debtors, their estates, or any of their predecessors or affiliates. Except as expressly provided in the Sale Order or the applicable Purchase Agreement, the Stalking Horse Bidder or Successful Bidder shall have no liability whatsoever with respect to the Debtors' estates' (or their predecessors' or affiliates') respective businesses or operations or any of the Debtors' estates' (or their predecessors' or affiliates') obligations (as described below, "Successor or Transferee Liability") based, in whole or part, directly or indirectly, on any theory of successor or vicarious liabilities of any kind or character, including, but not limited to, any theory of antitrust, environmental, successor or transferee liability, labor law, *de facto* merger, or substantial continuity, whether known or unknown as of the Closing Date (as defined in the applicable Purchase Agreement), now existing or hereafter arising, whether asserted or unasserted, fixed or contingent, liquidated or unliquidated with respect to the Debtors or any obligations of the Debtors arising prior to the closing of the Sale, including, but not limited to, liabilities on account of any taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to the operation of any of the Assets prior to the closing of the Sale.

**PLEASE TAKE FURTHER NOTICE** that copies of the Sale Motion, Bidding Procedures, and Bidding Procedures Order, as well as all related exhibits, including the Stalking Horse Purchase Agreement and the proposed Sale Order, are available: (a) free of charge upon request to Donlin, Recano & Company, Inc. (the notice and claims agent retained in these chapter 11 cases) by calling 1 (877) 208-9515; (b) by visiting the website maintained in these chapter 11 cases at <http://www.donlinrecano.com/emerald>; or (c) for a fee via PACER by visiting <http://www.deb.uscourts.gov>.

**PLEASE TAKE FURTHER NOTICE** that you may obtain additional information concerning the above-captioned chapter 11 cases at the website maintained in these chapter 11 cases at <http://www.donlinrecano.com/emerald>.

Wilmington, Delaware

Dated: [ ], 2016

---

Laura Davis Jones (DE Bar No. 2436)  
Colin R. Robinson (DE Bar No. 5524)  
Joseph M. Mulvihill (DE Bar No. 6061)  
**PACHULSKI STANG ZIEHL & JONES LLP**  
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- and -

James H.M. Sprayregen, P.C.  
Ryan Blaine Bennett (admitted *pro hac vice*)  
Travis M. Bayer (admitted *pro hac vice*)  
**KIRKLAND & ELLIS LLP**  
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[ryan.bennett@kirkland.com](mailto:ryan.bennett@kirkland.com)  
[travis.bayer@kirkland.com](mailto:travis.bayer@kirkland.com)

*Counsel to the Debtors*

**Exhibit 3**

**Contract Notice**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

EMERALD OIL, INC., *et al.*,<sup>1</sup>

Debtors.

)  
) Chapter 11  
)  
) Case No. 16-10704 (KG)  
)  
) (Jointly Administered)  
)

**NOTICE OF PROPOSED ASSUMPTION AND ASSIGNMENT OF CERTAIN  
EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**PLEASE TAKE NOTICE** that on May 25, 2016, the above-captioned debtors and debtors in possession (the “Debtors”) filed the *Debtors’ Motion for Entry of (I) An Order (A) Approving Bidding Procedures and Bid Protections in Connection with the Sale of Substantially All of the Debtors’ Assets, (B) Approving The Form And Manner of Notice Thereof, and (C) Scheduling an Auction and Sale Hearing, (D) Approving Procedures for the Assumption and Assignment of Contracts, and (E) Granting Related Relief and (II) An Order (A) Approving the Asset Purchase Agreement Between the Debtors and the Purchaser, and (B) Authorizing The Sale Of Substantially All Of The Debtors’ Assets Free and Clear Of Liens, Claims, Encumbrances, and Interests, (C) Authoring the Assumption and Assignment of Contracts, and (D) Granting Related Relief* [Docket No. 336] (the “Sale Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Court”) seeking, among other things, entry of an order (the “Sale Order”) authorizing and approving: (a) the sale of substantially all of the Debtors’ assets (the “Assets”) to New Emerald Holdings, LLC (the “Stalking Horse Bidder”) free and clear of liens, claims, encumbrances, and other interests, with all such liens, claims, encumbrances, and other interests attaching with the same validity and priority to the sale proceeds, except as set forth in the Stalking Horse Purchase Agreement and subject to higher or otherwise better offers (the “Sale”); and (b) procedures for the assumption and assignment of executory contracts and unexpired leases (collectively, the “Contracts”).

**PLEASE TAKE FURTHER NOTICE** that on [\_\_\_\_], 2016, the Court entered an order [Docket No. \_\_\_\_] (the “Bidding Procedures Order”) granting certain of the relief sought in the Sale Motion, including, among other things, approving: (a) the bidding procedures (the “Bidding Procedures”) for the Sale of the Assets; and (b) procedures for the assumption and assignment of the Contracts (the “Assumption Procedures”).<sup>2</sup>

**PLEASE TAKE FURTHER NOTICE** that the Debtors will seek approval of the Sale at a hearing scheduled to commence on or before **September 30, 2016, at : a.m.**

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: Emerald Oil, Inc. (9000); Emerald DB, LLC (2933); Emerald NWB, LLC (7528); Emerald WB LLC (8929); and EOX Marketing, LLC (4887). The location of the Debtors’ service address is: 200 Columbine Street, Suite 500, Denver, Colorado 80206.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Sale Motion.

**(prevailing Eastern Time)** (the “**Sale Hearing**”) before the Honorable Kevin Gross, United States Bankruptcy Judge for the Bankruptcy Court for the District of Delaware, at 824 North Market Street, 6th Floor, Courtroom No. 3, Wilmington, Delaware 19801.

**PLEASE TAKE FURTHER NOTICE** that upon the closing of the Sale, the Debtors intend to assume and assign to the Stalking Horse Bidder, or any other Successful Bidder arising from the Auction (as defined in the Bidding Procedures Order), the Contracts and any modifications thereto (collectively, the “**Assigned Contracts**”) set forth on **Exhibit A** attached hereto, subject to (a) the Stalking Horse Bidder’s right to designate additional Contracts as Assigned Contracts or remove certain Contracts from the list of Assigned Contracts pursuant to Section 1.1(b)(vii) of the Stalking Horse Purchase Agreement or (b) any similar right of any other Successful Bidder arising from the Auction. In addition, the cure amounts, if any, necessary for the assumption and assignment of the Assigned Contracts (the “**Cure Amounts**”) are set forth on **Exhibit A** attached hereto.

**PLEASE TAKE FURTHER NOTICE** that the Debtors have evaluated the financial wherewithal of the Stalking Horse Bidder (e.g., financial credibility, willingness, and ability of the interested party to perform under the Contracts) and believe that the Stalking Horse Bidder’s financial health, agreement to pay cure amounts related to the Assigned Contracts, and commitment to pay obligations as they come due satisfies the requirements of adequate assurance of future performance under section 365(f)(2)(B) of the Bankruptcy Code.

**PLEASE TAKE FURTHER NOTICE** that after **September 27, 2016** (the “**Bid Deadline**”), the Debtors will separately identify the Contracts designated for assumption and assignment by each Qualified Bidder and furnish adequate assurance information demonstrating the ability of each Qualified Bidder (other than the Stalking Horse Bidder) to comply with the requirements of adequate assurance of future performance under section 365(f)(2)(B) of the Bankruptcy Code, including, without limitation, each Qualified Bidder’s financial wherewithal and willingness to perform under the Assigned Contracts.

**PARTIES LISTED ON EXHIBIT A ATTACHED HERETO ARE RECEIVING THIS NOTICE BECAUSE THE STALKING HORSE BIDDER HAS IDENTIFIED THEM AS A COUNTERPARTY TO AN ASSIGNED CONTRACT.** Under the terms of the Assumption Procedures, the Stalking Horse Bidder or Successful Bidder may modify the list of Assigned Contracts in accordance with the Stalking Horse Purchase Agreement or the Successful Bidder’s Purchase Agreement, as applicable. Any counterparty added to the list of Assigned Contracts by such a modification will receive notice thereof (the “**Assumption Notice**”) and will have an opportunity to object to the proposed cure amount or assumption and assignment of the Assigned Contract, if applicable.

#### **Obtaining Additional Information**

Additional copies of the Bidding Procedures Order, the Bidding Procedures, and any other related documents are available: (a) free of charge upon request to Donlin, Recano & Company, Inc. (the notice and claims agent retained in these chapter 11 cases) by calling 1 (877) 208-9515; (b) by visiting the website maintained in these chapter 11 cases at <http://www.donlinrecano.com/emerald> or (c) for a fee via PACER by visiting <http://www.deb.uscourts.gov>.



**Filing Assumption and Assignment Objections**

Pursuant to the Assumption Procedures, objections to the proposed assumption and assignment of an Assigned Contract, including any objection relating to the Cure Amount and/or adequate assurance of future performance (collectively, a "Contract Objection"), must: (a) be in writing; (b) state with specificity the nature of such objection and alleged Cure Amount, including applicable and appropriate documentation in support of such alleged Cure Amount; (c) comply with the Bankruptcy Rules and the Local Rules; (d) for Contract Objections to any Cure Amount set forth on **Exhibit A** attached hereto or to the assumption and assignment of an Assigned Contract to the Stalking Horse Bidder, be filed with the Court and served so as to be **actually received** by the earlier of 7 days from service of the Contract Notice, **September 30, 2016 at 10:00 a.m. (prevailing Eastern Time)**, or the Sale Hearing; and (e) for Contract Objections to the adequate assurance of future performance by a Qualified Bidder other than the Stalking Horse Bidder, be filed with the Court and served so as to be **actually received** at or prior to the Sale Hearing, which is scheduled on or before **September 30, 2016, at : a.m. (prevailing Eastern Time)**.

Any timely filed Contract Objections made prior to the Sale Hearing will be considered at the Sale Hearing, or another date agreed to by the parties, and must be served on the following parties:

<b>Counsel to the Debtors</b>	<b>Co-Counsel to the Debtors</b>
Kirkland & Ellis LLP 300 North LaSalle Chicago, Illinois 60654 Attn.: Ryan Blaine Bennett, Steve Toth, Travis M. Bayer, and Timothy R. Bow	Pachulski Stang Ziehl & Jones LLP 919 North Market Street, 17th Floor, P.O. Box 8705 Wilmington, Delaware 19899 Attn.: Laura Davis Jones and Colin R. Robinson
<b>Proposed Co-Counsel to the Committee</b>	<b>The United States Trustee</b>
Akin Gump Strauss Hauer & Feld LLP One Bryant Park, Bank of America Tower New York, New York 10036 Attn.: David H. Botter and Sarah Link Schultz  Whiteford, Taylor & Preston LLC The Renaissance Centre 405 North King Street, Suite 500 Wilmington, DE 19801 Attn.: Christopher M. Samis and L. Katherine Good	Office of the United States Trustee for the District of Delaware 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 Attn: Hannah McCollum, Esq.
<b>Counsel To the Agent Under the Debtors' Prepetition Credit Facility</b>	<b>Counsel to the Stalking Horse Bidder</b>
Weil, Gotshal & Manges LLP 767 Fifth Avenue New York, New York 10153 Attn.: Joseph H. Smolinsky & David N. Griffiths	Sheppard Mullin Richter & Hampton LLP 333 South Hope Street, 43rd Floor Los Angeles, California 90071 Attn.: Theodore A. Cohen

If any timely filed Contract Objection cannot be resolved by the Stalking Horse Bidder or Successful Bidder arising from the Auction, if any, and the objecting party, the Court shall resolve such Contract Objection prior to assumption and assignment of such designated Contract, and upon entry of an order by the Court resolving such Contract Objection, the assignment, if approved by the Court, shall be deemed effective as of the date such objecting party receives the Assumption Notice. To the extent that any Contract Objection cannot be resolved by the parties, such Contract shall be assumed and assigned only upon satisfactory resolution of the Contract Objection, to be determined in the reasonable discretion of the Stalking Horse Bidder or other Successful Bidder arising from the Auction, if any, and until such time as the Contract Objection can be resolved, the Contract shall be conditionally assumed and assigned pending a resolution of the Contract Objection after notice and a hearing.

**CONSEQUENCES OF FAILING TO TIMELY FILE AND SERVE AN OBJECTION**

**ANY COUNTERPARTY TO AN ASSIGNED CONTRACT WHO FAILS TO TIMELY FILE AND SERVE AN OBJECTION TO THE PROPOSED ASSUMPTION AND ASSIGNMENT OF AN ASSIGNED CONTRACT AND/OR THE CURE AMOUNT SET FORTH ON EXHIBIT A ATTACHED HERETO IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER AND THE ASSUMPTION PROCEDURES SHALL BE FOREVER BARRED FROM ASSERTING ANY OBJECTION TO THE ASSUMPTION AND ASSIGNMENT OF THE ASSIGNED CONTRACT AND/OR THE CURE AMOUNT SET FORTH ON EXHIBIT A ATTACHED HERETO, INCLUDING ASSERTING ADDITIONAL CURE AMOUNTS WITH RESPECT TO THE ASSIGNED CONTRACT RELATING TO ANY PERIOD PRIOR TO THE TIME OF ASSUMPTION AND ASSIGNMENT.**

*[Remainder of page intentionally left blank]*

Wilmington, Delaware

Dated: [ ], 2016

---

Laura Davis Jones (DE Bar No. 2436)

Colin R. Robinson (DE Bar No. 5524)

Joseph M. Mulvihill (DE Bar No. 6061)

**PACHULSKI STANG ZIEHL & JONES LLP**

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[crobinson@pszjlaw.com](mailto:crobinson@pszjlaw.com)

[jmulvihill@pszjlaw.com](mailto:jmulvihill@pszjlaw.com)

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James H.M. Sprayregen, P.C.

Ryan Blaine Bennett (admitted *pro hac vice*)

Travis M. Bayer (admitted *pro hac vice*)

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[travis.bayer@kirkland.com](mailto:travis.bayer@kirkland.com)

*Counsel to the Debtors*

**Exhibit A**

**Assigned Contracts**

**Assigned Contracts<sup>1</sup>**

Debtor	Counterparty	Description of Assigned Contracts or Leases	Cure Amount

<sup>1</sup> The presence of a contract or lease on this **Exhibit A** does not constitute an admission by the Debtors that such contract is an executory contract or such lease is an unexpired lease pursuant to section 365 of the Bankruptcy Code or any other applicable law, and the Debtors reserve all rights to withdraw any proposed assumption and assignment or to reject any contract or lease at any time before such contract or lease is assumed and assigned pursuant to an order of the Court.

**Exhibit 4**

**Assumption Notice**



**PLEASE TAKE FURTHER NOTICE** that, accordingly, pursuant to the Assumption Procedures and by this written notice, the Debtors hereby notify you that they have determined, in the exercise of their business judgment, that the Contracts and any modifications thereto set forth on Exhibit A attached hereto (collectively, the “Assigned Contracts”) shall be assumed and assigned to the Stalking Horse Bidder, subject to the Stalking Horse Bidder’s payment of the cure amounts set forth on Exhibit A, or such other cure amounts that are agreed to by the parties.

**PLEASE TAKE FURTHER NOTICE** that, as set forth more fully at Section 1.1(b)(vii) of the Stalking Horse Purchase Agreement, the Stalking Horse Bidder has the right under certain circumstances to designate additional Contracts as Assigned Contracts or remove certain Contracts from the list of Assigned Contracts prior to Closing (as defined in the Stalking Horse Purchase Agreement).

**PLEASE TAKE FURTHER NOTICE** that copies of the Bidding Procedures Order and the Bidding Procedures and any other related documents are available: (a) free of charge upon request to Donlin, Recano & Company, Inc. (the notice and claims agent retained in these chapter 11 cases) by calling 1 (877) 208-9515; (b) by visiting the website maintained in these chapter 11 cases at <http://www.donlinrecano.com/emerald>; or (c) for a fee via PACER by visiting <http://www.deb.uscourts.gov>.

**PLEASE TAKE FURTHER NOTICE** that, except as otherwise provided by the Bidding Procedures Order, the time for filing objections to (a) the cure amounts related to the Assigned Contracts, (b) the Debtors’ ability to assume and assign any Assigned Contract, and (c) adequate assurance of future performance by the assumption and assignment to the Stalking Horse Bidder has passed and no further notice or action is necessary with respect to such matters.

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Wilmington, Delaware

Dated: [ ], 2016

---

Laura Davis Jones (DE Bar No. 2436)

Colin R. Robinson (DE Bar No. 5524)

Joseph M. Mulvihill (DE Bar No. 6061)

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- and -

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**Exhibit A**

**Assigned Contracts**

**Assigned Contracts<sup>1</sup>**

<b>Debtor</b>	<b>Counterparty</b>	<b>Description of Assigned Contracts or Leases</b>	<b>Cure Amount (except as otherwise agreed to by the parties)</b>

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<sup>1</sup> The presence of a contract or lease on this **Exhibit A** does not constitute an admission by the Debtors that such contract is an executory contract or such lease is an unexpired lease pursuant to section 365 of the Bankruptcy Code or any other applicable law, and the Debtors reserve all rights to withdraw any proposed assumption and assignment, or to reject any contract or lease at any time before such contract or lease is assumed and assigned pursuant to an order of the Court.