

## AUCTION AND BID PROCEDURES

The following sets forth the proposed bidding and auction procedures (the “Auction and Bid Procedures”)<sup>1</sup> pursuant to which Gateway Ethanol, L.L.C. (“Gateway” or “Seller” or “Debtor”) will solicit bids and seek authority to sell all of Gateway’s right, title and interest in substantially all of the assets owned by Gateway (collectively, the “Assets”). Gateway’s assets include a dry-mill ethanol plant located near Pratt, Kansas.

Seller has entered into an asset purchase agreement (the “Purchase Agreement”) with Dougherty Funding, LLC (together with its permitted successors and assigns, “Purchaser”) for the sale of the Assets for an estimated purchase price of \$59,931,224.36, being the sum of: a) all Prepetition Senior Obligations owing to Purchaser pursuant to the Prepetition Senior Loan Documents as of the Closing Date (including all outstanding principal, accrued but unpaid interest at the applicable rate set forth in the Prepetition Senior Loan Documents, and all fees, costs and charges properly chargeable under the Prepetition Senior Loan Documents, including all attorneys’ fees and legal expenses through (and including) the Closing Date), plus b) all Postpetition Indebtedness owing to Purchaser pursuant to the Postpetition Loan Documents (including all outstanding principal, accrued but unpaid interest at the applicable rate set forth in the Postpetition Loan Documents, and all fees, costs and charges properly chargeable under the Postpetition Loan Documents, including all attorneys’ fees and legal expenses through (and including) the Closing Date), plus c) the assumption of certain specified liabilities (the “Purchase Price”); provided, that, if the Purchaser elects, by the Closing Date, to exclude any Category II Assumed Contract or Category III Assumed Contract, the Purchaser may reduce its Purchase Price by a specified amount of Prepetition Senior

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<sup>1</sup> The Auction and Bid Procedures were approved by the United States Bankruptcy Court for the District of Kansas (“Bankruptcy Court”) by an order dated October \_\_, 2008 (the “Bidding Procedures Order”), pursuant to Seller’s Motion for Order Pursuant to 11 U.S.C. §§ 105(a), 363 and 365 (1) Approving Auction and Bid Procedures; (2) Approving Expense Reimbursement; (3) Approving Form and Manner of Notice; (4) Authorizing Sale of Assets Free and Clear of Liens, Claims and Encumbrances, Subject to Higher or Better Offers; and (5) Approving Assumption and Assignment of Certain Executory Contracts and Unexpired Leases (the “Sale Motion”). Pursuant to the Sale Motion, Seller seeks authority to sell the Assets to Purchaser (as defined below) free and clear of liens, claims and encumbrances, subject to higher or better offers in accordance with the Auction and Bid Procedures set forth herein.

Obligations. Capitalized terms used herein and not otherwise defined have the meanings ascribed to such terms in the Purchase Agreement.

Seller intends to sell the Assets free and clear of all interests, liens, claims and encumbrances, subject to any applicable defenses; provided that Seller reserves the right to contest the validity, extent or priority of any Liens that encumbered the Assets prior to the consummation of the sale.

The sale of the Assets shall be conducted in accordance with Sections 363 and 365 of the Bankruptcy Code, Rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedure, and the Bidding Procedures Order, including the Seller's Auction and Bid Procedures.

### **Submission of Bids**

1. Seller will accept Competing Bids for the Assets in parcels and Competing Bids for the Assets as one lot. Competing Bids for individual Assets may be aggregated to be considered as a Competing Bid for the Assets as an entirety

2. Any Person seeking Confidential Information regarding Debtor and/or the Assets must identify such Person's shareholders or members owning at least 5% of such Person as well as such Person's affiliates and execute and deliver a confidentiality agreement in a form and in substance acceptable to Debtor in its sole and absolute discretion. Debtor, in its sole and absolute discretion (but after consultation with the Creditors' Committee, if applicable, the Prepetition Senior Lender, the Prepetition TIF Lender and the DIP Lender), may decline to provide Confidential Information or any other non-public information to any Person seeking it hereunder if Debtor concludes, in its sole and absolute discretion, that provision of such information to a particular Person could harm Debtor's estate in any way whatsoever or diminish the value of the Assets or their marketability.

3. Upon written request to Seller by any Person interested in submitting a bid for the Assets, Seller shall, upon execution by such Person of a confidentiality agreement and the confirmed intent to timely consummate a transaction in terms of scope and value that is of interest to Seller, provide such Person with access to relevant business and financial information that will enable such Person to evaluate the

Assets for the purpose of submitting a competing offer for the Assets in one lot or in parcels.

4. The Purchase Agreement and its attached schedules (the “Schedules”) identify certain contracts and/or liabilities (including without limitation, executory contracts, unexpired leases, and other obligations) related to the Assets not previously rejected by Seller pursuant to an order of the Bankruptcy Court (all such contracts and liabilities, the “Contracts”) that Seller may assume and assign to the Purchaser at closing (the “Purchaser Assumed Contracts”). The Purchaser has reserved the right to designate certain Category II Assumed Contracts and Category III Assumed Contracts as Excluded Assets by the Closing and to reduce the Purchase Price by a designated amount of Prepetition Senior Obligations that the Prepetition Senior Lender will retain as a limited recourse secured claim against the Seller’s estate.

5. Any Qualified Bidder (other than Purchaser) interested in purchasing all or a portion of the Assets must submit a bid (a “Competing Bid”) prior to **5:00 p.m. Central Time on December 12, 2008** (the “Competing Bid Deadline”), in compliance with the provisions set forth below in order for such bid to be considered a Competing Bid.

6. Each Competing Bid shall remain open and irrevocable until the later of the fifteenth (15<sup>th</sup>) day following the date of entry of an order approving the sale by the Bankruptcy Court or the twentieth (25<sup>th</sup>) day following the date of the Auction, as defined below (the “Bid Expiration Date”), or the date of the Closing of the last sale of the Assets sold pursuant to the Auction if earlier, or such earlier date as may be determined by Seller, and shall:

a) be made by a Person (i) demonstrating evidence of committed financing and other ability to consummate the proposed transaction by the later of December 31, 2008 (with no financing contingency) or the Bid Expiration Date, and (ii) delivering to Seller an offer that Seller, in its discretion exercised in good faith and upon the advice of its investment banker and financial advisor and after consultation with the Creditors’ Committee, if applicable, the Prepetition Senior Lender, the Prepetition TIF Lender and the DIP Lender, believes is reasonably likely to lead to a Prevailing Bid (as defined below) (a “Qualified Bidder”);

b) be submitted in a writing identical to the Purchase Agreement (except that any proposed changes to the Purchase Agreement shall be set forth in the Qualified Bidder's purchase agreement in electronic form marked to reflect such changes) signed by the Qualified Bidder, (i) identifying (i) the bidder and the members of its investor group, as applicable, (ii) the consideration offered for the Assets, (iii) financial information regarding the bidder and its ability to consummate the proposed transaction, and (iv) all terms and conditions of the Competing Bid; provided that the Competing Bid may not include non-cash consideration;

c) if a Competing Bid is submitted for the Assets in one lot, be a higher or better offer for the Assets than the Purchase Price, and such offer shall not be considered a higher or better offer unless if for the Assets in one lot, such Competing Bid (i) provides for aggregate cash consideration to Seller's estate of at least more than the sum of the Purchase Price plus the Expense Reimbursement (the "Alternative Minimum Purchase Price"); (ii) is not (A) subject to conditions, representations or terms that Seller, in its sole and absolute discretion, after consultation with the Creditors' Committee, if applicable, the Prepetition Senior Lender, the Prepetition TIF Lender and the DIP Lender, determines to be unacceptable; or (B) subject to the bidder receiving any breakup fee, termination fee, expense reimbursement or similar type of purchaser protection payment; (iii) contains the following agreements (collectively, the "TIF Assumption Agreements") by the bidder (A) an agreement by the bidder to assume the Assessment Agreement dated March \_\_, 2006 (the "Assessment Agreement") among the County of Pratt, Kansas (the "County"), the Seller and the County Appraiser, Pratt County Kansas, and the Property Tax Increment Rebate Agreement dated March 30, 2006 (the "TIF Rebate Agreement") between the County and the Debtor; (B) an agreement by the bidder that the pledge of the "Increments" defined in the TIF Rebate Agreement to the Prepetition TIF Lender pursuant to the Pledge and Security Agreement dated March 30, 2006 (the "TIF Pledge Agreement") constitutes a Permitted Encumbrance on the Real Property defined in the APA; and (C) an agreement that the bidder will grant a first priority

non-recourse mortgage on the Premises to secure the payment of any Taxes on the Premises that are paid by the Prepetition TIF Lenders because of the Premises' owner's failure to timely pay such Taxes and the Prepetition TIF Lender's collection costs (including, without limitation, reasonable attorney's fees and legal expenses) in enforcing such mortgage; and (iv) identifies the Contracts that the bidder desires the Seller to assume and assign to the bidder; provided, however, that the bidder may elect to reduce the purchase price to an amount less than the Alternative Minimum Purchase Price if the bidder elects not to have the Seller assume and assign any Class II Assumed Contract or Class III Assumed Contract specified by the bidder so long as the bidder agrees (the "Minimum Alternative Purchase Price Adjustment Agreement") to purchase the retained Prepetition Senior Obligations described in Section 2.1(c) of the Purchase Agreement on the terms and conditions set forth in Section 2.1(c) of the Purchase Agreement so that, after giving effect to such price, the sum of the purchase price being paid for the Assets and for the retained Prepetition Senior Obligations shall be at least equal to the Alternative Minimum Purchase Price; provided further, however, that Seller, in its sole and absolute discretion, may add or modify these requirements by announcement prior to the Auction (defined below);

d) a Competing Bid may be for less than all of the Assets; provided, however, that the Real Property is required to be sold as a single parcel. In the event Seller receives a Competing Bid for less than all of the Assets, Seller may combine such Competing Bid with other Competing Bids for some of the other Assets to provide for an aggregate purchase price which is an amount equal to or greater than the Alternative Minimum Purchase Price. Such Competing Bids shall not be considered a higher or better offer unless such Competing Bids (i) are not (A) subject to conditions, representations or terms unacceptable to Seller in its sole and absolute discretion; or (B) subject to the bidder receiving any breakup fee, termination fee, expense reimbursement or similar type of purchaser protection payment; (ii) provide that the sales contemplated by such combined Competing Bids are expressly conditioned upon the closing of all other sales contemplated by such combined Competing Bids; (iii) the Competing Bid for the

Real Property is required to contain the TIF Assumption Agreements; and (iv) the Competing Bids may contain the Alternative Minimum Purchase Price Adjustment Agreement; provided, however, that Seller, in its sole and absolute discretion, may add or modify these requirements by announcement prior to the Auction (defined below);

e) if a Competing Bid is submitted for the Assets in one lot, include an earnest money deposit of no less than \$3,000,000 in cash or cash equivalents (the “Bulk Assets Initial Deposit”). If a Competing Bid is submitted for the Assets in parcels, include an earnest money deposit of no less than ten percent (10%) of the Competing Bid in cash or cash equivalent (the “Parcel Assets Initial Deposit”). Seller reserves the right to condition its acceptance of any offer of a Qualified Bidder other than the Purchaser on the provision of an additional deposit of cash or a letter of credit in the amount and in the form acceptable to Seller in Seller’s sole and absolute discretion and to the Prepetition Senior Lender, the Prepetition TIF Lender and the DIP Lender, in their respective sole and absolute discretion (the “Additional Deposit”) (each Bulk Assets Initial Deposit, each Parcel Assets Initial Deposit and each Additional Deposit is each sometimes referred to herein as a “Sale Deposit”); and

f) be submitted on or before the Competing Bid Deadline by delivering the complete competing offer(s) together with the Bulk Assets Initial Deposit or Parcel Assets Initial Deposit, as applicable, to Tammee E. McVey at Bryan Cave LLP, One Kansas City Place, 1200 Main Street, Suite 3500, Kansas City, Missouri 64105 with copies to Frederick S. Loomis, Chairman of the Board, Gateway Ethanol, L.L.C., P.O. Box 8593, Pratt, Kansas 67124 and Geoffrey Richards, William Blair & Company, LLC, 222 West Adams Street, Chicago, Illinois 60606. Potential bidders may obtain copies of the Purchase Agreement from Tammee E. McVey at Bryan Cave LLP, One Kansas City Place, 1200 Main Street, Suite 3500, Kansas City, Missouri 64105 (816-374-3220) (temcvey@bryancave.com).

7. Seller shall consult with the Creditors’ Committee, if applicable, the Prepetition Senior Lender, the Prepetition TIF Lender and the DIP Lender regarding

the conduct of the Auction and the selection of the “Prevailing Bidder(s)” and “Back-up Bidder(s)” as respectively defined below. Any Sale pursuant to one or more Competing Bids is subject to the terms of the relevant Order.

8. All bidders, whether a Qualified Bidder or not, their shareholders and/or the members owning at least 5% of such bidders, are deemed to have submitted to the exclusive jurisdiction of the Bankruptcy Court with respect to all matters related to the bids, the Auction, and the sale of the Assets.

#### **Bid Protection**

9. Purchaser shall be entitled, as provided in and subject to the terms and conditions set forth in the Purchase Agreement, to the Expense Reimbursement up to the amount of \$250,000.00.

10. Purchaser shall be entitled to the Expense Reimbursement at the time and upon satisfaction of the conditions set forth in the Purchase Agreement.

11. Seller shall pay the Expense Reimbursement by wire transfer of immediately available funds to such account as Purchaser may designate in writing in accordance with the terms of the Bidding Procedures Order.

#### **The Auction**

12. If Qualified Bidders have submitted Competing Bids by the Competing Bid Deadline, Seller may receive additional bids from Purchaser and Qualified Bidders for the Assets at an Auction (as defined below), to be held on a business day that is not less than three (3) business days and not more than ten (10) calendar days following the Competing Bid Deadline. A live oral Auction shall be organized and conducted by Seller at the offices of Bryan Cave LLP, One Kansas City Place, 1200 Main Street, Suite 3500, Kansas City, Missouri 64105, on invitation to Purchaser, each Qualified Bidder, the Prepetition Senior Lender, the Prepetition TIF Lender and the DIP Lender (the “Auction”). Within two (2) business days after the Competing Bid Deadline or as soon thereafter as is reasonably practical (but in no event later than 5:00 p.m. Central Time, on the second business day preceding the Auction date), Seller shall deliver copies of all Competing Bids (including copies of all documents

described in paragraph 6 herein) to Purchaser, each other Qualified Bidder, the Creditors' Committee, if applicable, the Prepetition Senior Lender, the Prepetition TIF Lender and the DIP Lender. Overbids for the Assets in one lot shall be in an amount of at least \$50,000 in excess of the last highest bid; provided, however, that any overbid by Purchaser shall be in an amount of at least the last highest bid less the Expense Reimbursement plus \$25,000. Overbids for the Assets in parcels shall be in an amount of at least \$25,000 in excess of the last highest bid.

13. The Expense Reimbursement shall be taken into account in determining the amount bid in each round of bidding. The only Persons who will be permitted to bid at the Auction are authorized representatives of Purchaser and each Qualified Bidder. Each bid submitted at the Auction must comply with the procedures set forth herein for Competing Bids and copies of each bid must be provided to Purchaser, each other Qualified Bidder, the Prepetition Senior Lender, the Prepetition TIF Lender and the DIP Lender at the Auction. All bids shall be made in the physical presence of Seller, Purchaser, all other Qualified Bidders, the Prepetition Senior Lender, the Prepetition TIF Lender and the DIP Lender. To facilitate a deliberate and orderly consideration of the Competing Bids, Seller may adjourn the Auction at any time and from time to time and may conduct multiple rounds of bidding, so long as the Sale Hearing is held within the time constraints set forth in the Purchase Agreement. Notwithstanding the foregoing, Seller, the Prepetition Senior Lender, the Prepetition TIF Lender and the DIP Lender shall determine, in their respective sole and absolute discretion, and subject to final determination by the Bankruptcy Court as set forth in paragraph 15 below, considering all of the factors referenced below, among others, whether a bid matches or is higher and better than another bid.

14. Any Qualified Bidder who is physically absent from the Auction for more than 30 minutes may, in the Debtor's sole and absolute discretion, be disqualified from the Auction. Only the Purchaser, the Qualified Bidders, the Creditors' Committee, if applicable, Debtor, the Prepetition Senior Lender, the Prepetition TIF Lender, the DIP Lender, and each of their authorized representatives, may attend and be present at the Auction. Debtor, in its sole discretion, may permit other Persons or Entities to attend the Auction.



15. Seller shall not be deemed to have accepted any offer unless and until such offer and bid and Seller's acceptance thereof have been subsequently authorized by separate order of the Bankruptcy Court.

16. Seller is authorized to conduct the Auction in accordance with such additional procedures and requirements as Seller, with Purchaser's approval and after consultation with the Creditors' Committee, if applicable, the Prepetition Senior Lender, the Prepetition TIF Lender and the DIP Lender, shall from time to time announce, consistent with these Auction and Bid Procedures.

17. At the Auction, after the conclusion of bidding, and following consultation with the Creditors' Committee, if applicable, the Prepetition Senior Lender, the Prepetition TIF Lender and the DIP Lender, Seller, taking into account any and all relevant factors including, but not limited to, the terms and conditions of the proposed purchase agreement, the scope of the proposed transaction(s), the aggregate value offered for the Assets that the maker of the bid(s) propose to purchase, and the likelihood and timing of closing on such proposed transaction(s), shall select the offer or offers that Seller determines in its sole and absolute discretion to reflect (i) the highest or best offer(s) for the Assets (such offer(s), the "Prevailing Bid(s)"), and (ii) the second highest or best offer(s) for the Assets (such offer(s), the "Back-up Bid(s)").

18. At the Auction, at the conclusion of bidding, Seller shall notify any Person submitting a Prevailing Bid (the "Prevailing Bidder") that such Person's offer has been determined by Seller to be a Prevailing Bid and any Person submitting a Back-up Bid (the "Back-up Bidder") that such Person's offer has been determined by the Seller to be a Back-up Bid. No later than one (1) business day after the Auction, and prior to the Sale Hearing, (a) the Prevailing Bidder, if other than Purchaser, shall deliver any unpaid portion of any Additional Deposit to Seller and (b) the Prevailing Bidder shall complete and sign all agreements and documents deemed by Seller as necessary to bind the Prevailing Bidder to all of the terms and conditions contemplated by the Prevailing Bid. After notification that a Qualified Bidder is a Prevailing Bidder, the Prevailing Bidder's Sale Deposit and Additional Deposit, if any, shall be nonrefundable when paid, and shall be forfeited to Seller, as liquidated damages, if for any reason the Prevailing Bidder fails to consummate the acquisition of the Assets in accordance with the Prevailing Bid and

such failure is the result of a breach by the Prevailing Bidder, except as otherwise set forth in the Prevailing Bidder's purchase agreement as approved by the Bankruptcy Court.

19. Each Sale Deposit received by Seller shall be maintained in an interest-bearing account and be subject to the jurisdiction of the Bankruptcy Court.

20. The Sale Deposit of the Prevailing Bidder or the Back-up Bidder, as the case may be, shall be applied by Seller against the purchase price to be paid by the Prevailing Bidder or the Back-up Bidder, as applicable, at the closing of the relevant transaction(s) approved by the Bankruptcy Court.

21. If for any reason the Prevailing Bidder fails to consummate the acquisition of the Assets in accordance with the Prevailing Bid, the Seller is authorized to effect the sale of the Assets to the Back-up Bidder in accordance with the Back-up Bid without further order of the Bankruptcy Court. If for any reason the Back-up Bidder fails to consummate the acquisition of the Assets in accordance with the Back-up Bid, and such failure is the result of a breach by the Back-up Bidder, the Back-up Bidder's Sale Deposit shall be forfeited to Seller as liquidated damages, except as otherwise set forth in the Back-up Bidder's purchase agreement as approved by the Bankruptcy Court.

22. No later than the Bid Expiration Date, Seller shall return to each Qualified Bidder(s), other than the Prevailing Bidder and the Back-up Bidder, their respective Sale Deposit(s), together with any interest accrued thereon. No later than the second business day after the closing of the sale of the Assets to the Prevailing Bidder, Seller shall return the Back-up Bidder's Sale Deposit to the Back-up Bidder, together with any interest accrued thereon.

23. The Auction and Bid Procedures are solely for the benefit of Seller, and nothing contained in the Bidding Procedures Order shall create any rights in any other Person or bidder other than the rights expressly granted to Purchaser under the Bidding Procedures Order.

24. Except as provided in the Bidding Procedures Order, the Bankruptcy Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of the Bidding Procedures Order.

**Notice of Auction and Bid Procedures, Sale Motion and Sale Hearing**

25. Within two (2) business days after the entry of the Bidding Procedures Order, Seller shall serve via first-class mail a notice (the "Sale Notice") of the Auction and Bid Procedures, the Bidding Procedures Order, the Sale Motion and the Sale Hearing (defined below), in such form as the Bankruptcy Court shall approve, on the following entities: (i) Purchaser and all Persons that were contacted by Seller or William Blair & Company, LLC in connection with the marketing and sale process for the Assets; (ii) all other prospective offerors and parties-in-interest upon written request to Seller; (iii) all Persons who receive electronic notice in Seller's bankruptcy proceedings; and (iv) all Persons pursuant to Bankruptcy Rules 6004(a), 6004(c), 6006(c) and 9014. Service pursuant to Bankruptcy Rules 6004(a), 6004(c), 6006(c) and 9014 on those Persons not receiving electronic notice shall be by first-class mail addressed to the business address of such Persons appearing in Seller's records, notwithstanding Bankruptcy Rule 9014. In addition, Seller shall publish the Sale Notice (in summary form) in *The Wall Street Journal* (National Edition). Pursuant to Bankruptcy Rule 2002, this service of the Sale Notice shall constitute good and sufficient notice of the Auction and Bid Procedures, the Auction, the Bidding Procedures Order, the Sale Motion and the Sale Hearing (and any proceedings to be held thereon) on all known and unknown creditors and parties-in-interest, including all Persons entitled to service pursuant to Bankruptcy Rules 6004(a), 6004(c), 6006(c) and 9014.

26. Objections, if any, to the Sale Motion shall be in writing, shall conform to the Bankruptcy Rules and local rules and orders of the Bankruptcy Court, shall set forth (i) the nature of the objector's claims against or interests in Seller's estate, (ii) the basis for the objection, (iii) the specific grounds therefor, and (iv) all evidence in support of said objection, and shall be filed and served so as to be received on or before December 16, 2008, by (a) each Person who receives electronic notice in Seller's bankruptcy proceedings and (b) counsel for Purchaser. Any Person objecting to the Sale Motion that has not complied with the requirements of this paragraph shall not be heard at the Sale Hearing. If any Qualified Bidder objects to Seller's determination of a Competing Bid as a higher or better bid for the Assets, the sole and exclusive remedy of such Qualified Bidder shall be to bid under protest at the Auction, state their reasons on

the record at the Auction for their objections and, upon compliance with this paragraph and the other Auction and Bid Procedures, have standing at the Sale Hearing to contest Seller's determination. Purchaser shall be deemed to have standing at the Sale Hearing for all purposes.

27. Except as set forth above, nothing otherwise contained in the Bidding Procedures Order shall be deemed to deprive any interested party of the right to object timely to the Sale Motion, all of which rights are expressly reserved by the Bidding Procedures Order.

### **Sale Hearing**

28. The Sale Hearing to consider the relief requested in the Sale Motion and to consider whether to approve the Prevailing Bid(s) and the Back-up Bid(s) (the "Sale Hearing") shall be held before the Bankruptcy Court within two (2) business days after the Auction, or as soon thereafter as the Court's schedule permits, and if no Auction is held, within five (5) business days after the Competing Bid Deadline, or at such other time as the Court may determine. Debtor shall serve those parties identified in paragraph 21 of these Auction and Bid Procedures with a separate Notice, setting forth the date and time of the Sale Hearing and the deadline for the filing of objections to the Sale Motion.

29. Subject to the time restrictions set forth in the Purchase Agreement, Seller, after consultation with the Creditors' Committee, if applicable, the Prepetition Senior Lender, the Prepetition TIF Lender and the DIP Lender, may extend the deadlines set forth in the Bidding Procedures Order, may recess or adjourn the Auction at any time or from time to time, and/or may seek adjournment of the Sale Hearing, and/or may adopt and/or implement and/or waive such other, additional or existing procedures or requirements consistent with these Auction and Bid Procedures and the Purchase Agreement that in its sole and absolute discretion serves to further an orderly auction and bid process, all without further notice. Seller shall file with the Bankruptcy Court appropriate notices of adjournment with respect to any such extension or adjournment.