

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF KANSAS**

<b>In re</b>	)	<b>In Proceedings Under Chapter 11</b>
	)	
<b>GATEWAY ETHANOL, L.L.C.,</b>	)	<b>Case No. 08-22579-DLS</b>
	)	
<b>Debtor.</b>	)	

**ORDER (1) APPROVING AUCTION AND BID PROCEDURES FOR  
SALE OF ASSETS; (2) APPROVING EXPENSE REIMBURSEMENT;  
AND (3) APPROVING FORM AND MANNER OF NOTICE**

Now on this 28<sup>th</sup> day of October, 2008, this matter having come before the Court upon Debtor’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”) filed on October 23, 2008, by Gateway Ethanol, L.L.C., debtor and debtors-in-possession (“Debtor” or “Seller”), seeking entry of an order (a) approving certain proposed bidding and auction procedures (the “Auction and Bid Procedures”) for the sale of all of Seller’s right, title and interest in substantially all of the assets owned, leased or otherwise used by Seller (the “Assets”) to Dougherty Funding, LLC (“Purchaser”), subject to higher or better offers, (b) approving Expense Reimbursement, and (c) approving the form and manner of proposed notice in connection with the foregoing. Unless otherwise defined herein, capitalized terms in this Order shall be given the same meaning accorded to such terms in the Sale Motion. The Court has considered the entire record in these proceedings to date, including the objections filed by October 27, 2008, and the arguments presented by counsel for the various parties reflected in the record at the hearing.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**<sup>1/</sup>

Based on the foregoing, and after due deliberation and good and sufficient factual and legal cause appearing therefor, the Court finds and concludes as follows:

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The predicates for relief sought herein include 11 U.S.C. §§ 105(a), 363 and 365 and Rules 2002, 6004, 6006 and 9006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

2. Prior to its bankruptcy proceeding, Seller initiated the marketing process for the Assets with the assistance of its investment banker and financial advisor, William Blair & Company, LLC (“William Blair”). William Blair’s marketing efforts generated several entities that appear to be interested in exploring a purchase of Debtor’s assets.

3. On October 23, 2008, Seller entered into an asset purchase agreement (the “Purchase Agreement”) with Purchaser for the purchase and sale of Seller’s Assets to Purchaser for an Estimated Purchase Price of \$59,931,224.36 (the “Purchase Price”). Debtor has filed the Purchase Agreement, including the attached schedules to date (the “Schedules”), with the Court. The process for selection of Purchaser as the “Stalking Horse” was fair and appropriate under the circumstances and is in the best interests of Debtor’s estate and creditors.

4. Purchaser shall be entitled, as provided in and subject to the terms and conditions set forth in the Purchase Agreement, to an expense reimbursement not to exceed the amount of \$250,000 (the “Expense Reimbursement”). The Expense Reimbursement constitutes a fair and reasonable exercise of Debtor’s business judgment and is fair, reasonable and in the best interests of Debtor’s estate and creditors.

5. Debtor’s obligation to Purchaser (under the conditions and as set forth in the Purchase Agreement) for the Expense Reimbursement is (a) an actual and necessary cost and expense of preserving the Debtor’s assets, within the meaning of section 503(b) of the Bankruptcy Code, (b) of substantial and commensurate benefit to Debtor’s estate, (c) reasonable and appropriate, in light of the size and nature of the transaction and the efforts that have been and will be expended by Purchaser, and (d) necessary to ensure that Purchaser will continue to pursue its proposed acquisition of the Assets. The Expense Reimbursement was a material inducement for, and condition of, Purchaser’s entry into the Purchase Agreement.

6. With respect to the Sale Motion and all matters addressed in this Order, due and proper notice has been given to all parties.

7. Debtor has good and sufficient business reasons for the relief requested in the Sale Motion and has exercised prudent and reasonable business judgment with respect

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<sup>1/</sup> Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052.

thereto. It is vital for the preservation of value for the Assets that the Sale Hearing occur on an expedited basis. The Auction and Bid Procedures are reasonable and appropriate and represent the best method for maximizing the value of the Assets.

### **ORDER**

In light of the Court's findings and conclusions, **IT IS HEREBY ORDERED:**

8. Pursuant to 11 U.S.C. §§ 105(a), 363 and 365 and Bankruptcy Rules 2002, 6004, 6006 and 9006, the Sale Motion is granted, and the transactions contemplated therein are authorized and approved, subject to final approval of the sale of the Assets to Purchaser (or the Successful Offeror(s) at the Auction) at the Sale Hearing pursuant to the Sale Order.

9. The Assets sold pursuant to this Order shall be free and clear of any and all interests, liens, claims and encumbrances pursuant to 11 U.S.C. § 363(f), with all such interests, liens, claims and encumbrances to attach to the Sale Proceeds with the same extent, validity, priority, force and effect as exists at the time of the Auction and as provided in the Final DIP Order, subject to any claims and defenses Debtor and its estate may possess with respect thereto, and subject to a further hearing and final court approval of the Auction. The Sale Proceeds, if any, will be distributed either pursuant to the Final DIP Order and the Debtor-In-Possession Loan and Security Agreement, as applicable, or further order of this Court. Subject to paragraph 12 hereof, nothing herein shall alter or affect the Final DIP Order or the rights granted to the DIP Lender pursuant to Interim DIP Order entered by the Court on October 8, 2008.

10. To the extent that any objections have not been withdrawn or resolved by stipulation prior to the entry of this Order or are not resolved by the relief granted herein or as stated on the record of the hearing, all such objections are overruled.

11. The sale of the Assets shall be conducted pursuant to the Auction and Bid Procedures attached hereto as **Exhibit A**, and expressly incorporated into and made a part of this Order. The Auction and Bid Procedures are hereby approved in their entirety.

12. The Expense Reimbursement is approved, and Seller is authorized and directed to comply with its terms as set forth in the Auction and Bid Procedures and Purchase Agreement. The Expense Reimbursement shall survive termination of the Purchase Agreement and shall constitute an administrative expense (which shall be a superpriority administrative expense claim senior to all other administrative expense claims and payable out of Seller's cash or other collateral securing Seller's obligations to its senior secured lender, prior to recovery by such lender) of Seller under Section 364(c)(1) of the Bankruptcy Code, and the Final DIP Order shall be deemed to so provide.

13. Within two (2) business days after the entry of this Order, Seller shall serve via first-class mail (except with respect to those parties receiving electronic notice in Seller's bankruptcy proceeding) a notice of the Auction and Bid Procedures and the Sale Motion, substantially in the form annexed hereto as **Exhibit B** (the "Sale Notice"), on the following

entities: (i) all parties that were contacted by Seller or William Blair 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 or William Blair; (iii) all entities who receive electronic notice in Seller's bankruptcy proceeding; and (iv) all parties 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 parties 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, service of the Sale Notice described herein shall constitute good and sufficient notice of the Auction and Bid Procedures, the Auction, this Order, the Sale Motion and the Sale Hearing (and any proceedings to be held thereon or related thereto) on all known and unknown creditors and parties in interest, including all persons entitled to service pursuant to Bankruptcy Rules 2002, 6004(a), 6004(c), 6006(c) and 9014. The form of Sale Notice is hereby approved.

14. Within three (3) business days after the entry of this Order, Seller shall serve via first-class mail on the counterparties (the "Counterparties") to those executory contracts and unexpired leases related to the Assets (the "Contracts") a notice, substantially in the form annexed hereto as **Exhibit C** (the "Contract Notice"), of (a) Seller's intent to assume and assign certain of the Contracts to Purchaser (or to such other successful bidder(s) ultimately selected by Seller pursuant to the Auction and Bid Procedures; (b) a list of the Contracts and the defaults (if any) related to each such Contract that are required to be cured pursuant to Section 365 of the Bankruptcy Code (the "Cure Amounts"); and (c) the procedures for filing any objections to the assumption and assignment of the Contracts, including any objections to the proposed Cure Amounts. The form of Contract Notice is hereby approved.

15. On December 18, 2008, at 10:00 a.m. Central Time, the Court shall conduct a hearing (the "Assumed Contracts Hearing") at which any potential disputes concerning the Cure Amounts under the Assumed Contracts shall be resolved. The Court's findings at the Assumed Contracts Hearing as to the Cure Amounts, if any, arising from the Assumed Contracts pursuant to Section 365(b) of the Bankruptcy Code, shall be final and binding on the parties to all Assumed Contracts, and shall not be subject to further dispute or audit based on performance prior to the time of assumption and assignment (to the extent any Assumed Contracts contain an audit clause).

16. Objections, if any, to the Sale Motion shall be in writing, shall conform to the Bankruptcy Rules and local rules and orders of the 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 5:00 p.m. Central Time on 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 and better bid for the Assets, the sole and exclusive remedy of such Qualified Bidder shall be to bid under protest at the Auction and, upon compliance with this paragraph, have standing at the Sale Hearing to contest the

Seller's determination. Purchaser shall have standing for all purposes and, as applicable, the terms of the Final DIP Order are not intended to be modified by this Order.

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

18. The Competing Bid Deadline is 5:00 p.m. Central Time on December 12, 2008.

19. If required, the Auction shall be held on December 15, 2008, at 10:00 a.m. Central Time or such other time as the parties may agree, to the extent there are Competing Bids submitted by Qualified Bidders.

20. The Sale Hearing to consider the relief requested in the Sale Motion and to consider whether to approve the Final Accepted Offer(s) shall be held before the Court on December 18, 2008, at 10:00 a.m. Central Time, United States Courthouse, Courtroom 144, 500 State Avenue, Kansas City, Kansas.

21. Deposits received by on or behalf of Debtor shall be subject to the liens of the DIP Lender and the Prepetition Senior Lender; provided that such liens shall (a) only extend to such deposits to the extent of Debtor's interest therein and subject to the right of any bidder to the return of such deposit, and (b) shall be subject to the provisions of the relevant asset purchase agreement.

22. The Auction and Bid Procedures are solely for the benefit of Seller, and nothing contained in this Order shall create any rights in any other person or bidder except as specified therein.

23. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

24. To the extent not previously resolved by the parties, the objections of \_\_\_\_\_ are overruled.

# # #

**ORDER SUBMITTED BY:**

Laurence M. Frazen KS Fed. #70114

Tammee E. McVey KS #14972

BRYAN CAVE LLP

3500 One Kansas City Place

1200 Main Street

Kansas City, Missouri 64105

Telephone: (816) 374-3200

Telecopy: (816) 374-3300

Attorneys for Debtor and Debtor in Possession

**EXHIBIT A**

(Auction and Bid Procedures)

**EXHIBIT B**

(Form of Sale Notice)



**EXHIBIT C**

(Form of Contract Notice)