

Notice of Intent to Sell Personal Property, Compensate Real Estate Broker, and/or Pay any Secured Creditor's Fees and Costs; Motion for Authority to Sell Property Free and Clear of Liens; and Notice of Hearing

**In re Cascade Grain
U.S. Bankruptcy Court for the District of Oregon - Case No. 09-30508-elp7**

ATTACHMENT

Item 9

The Trustee seeks authority to sell the Property free and clear of liens and interests pursuant to an auction to be conducted on **December 9, 2009 at 10:30 a.m.** in the courtroom of the Hon. Elizabeth L. Perris, Courtroom No. 1, 7th Floor, 1001 SW Fifth Avenue, Portland, Oregon.

Prospective bidders at the auction will be required to contact the Trustee and obtain the form of Asset Purchase Agreement pursuant to which the Assets are to be sold (the "APA") and submit an APA in substantially the form of the APA (marked to show changes from the APA form) that contains, at a minimum, the following: (1) designating the Assets to be acquired; (2) provide for the cash purchase price with respect to the Assets; (3) a forfeiture of the Sale Deposit (defined below) as liquidated damages if such buyer defaults under the APA; (4) an agreement that the sale will not be subject to any (a) financing contingency, (b) contingency relating to the completion of unperformed due diligence, (c) contingency relating to the approval of the Bidder's board of directors or other internal approvals or consents, and (d) any conditions precedent to the Bidder's obligation to purchase the Assets other than those included in the APA; and (5) an agreement that no initial bid shall provide for the payment to the bidder of any breakup fee, topping fee, expense reimbursement or other similar arrangement. The sale will occur, subject to approval by the bankruptcy court, on a date that is no later than eleven (11) days after entry of a final order approving the sale. Except with respect to Kelly, the bidder must submit a deposit in the form of a certified check in the amount of \$100,000 payable to the order of the Bankruptcy Estate of Cascade Grain Products, LLC (the "Sale Deposit") and such deposit shall be held by the Trustee in escrow in a segregated account pending the closing of the sale. The bidder must provide an executed confidentiality agreement (in form and substance reasonably satisfactory to the Trustee). Except with respect to Kelly, the bidder must submit evidence satisfactory to the Trustee in his commercially reasonable discretion that the bidder is willing, authorized, capable and qualified financially, legally and otherwise, to unconditionally perform all obligations under the APA in the event that it submits the prevailing bid at the auction. The bidder must submit the APA, the Sale Deposit, the confidentiality agreement and evidence

regarding financial qualifications to the Trustee by no later than **December 7, 2009 at 5:00 p.m. (PST)**.

The Trustee reserves the right, in his sole discretion, to determine the financial qualification of any proposed bidder to consummate a transaction and to disqualify any proposed bidder from participating in the auction. The Trustee may determine, in his business judgment, which bid is the highest and best bid resulting from the auction, in consultation with Kelly and the Lenders, and subject to bankruptcy court approval. The Trustee may improve such other terms and conditions as he may determine to be in the best interests of the Estate, its creditors and other parties in interest, provided such terms and conditions shall not be inconsistent with the terms of the APA and the settlement agreement between the Trustee, Kelly and the Lenders, unless otherwise agreed to by Kelly and the Lenders in writing.

The Trustee may reject, at any time before entry of an order of the bankruptcy court approving a sale to the winning bidder at the auction, any bid that, in the Trustee's judgment, is inadequate or insufficient, is not in conformity with the requirements of set forth herein, the Bankruptcy Code or the auction bidding procedures, or is contrary to the best interests of the Estate and its creditors. The Trustee reserves the right to withdraw the sale of all or any portion of the Property, at any time prior to Court approval of the sale to the winning bidder at the auction.

The Trustee will determine bidding procedures prior to the auction and will notify all competing bidders of such procedures.

Upon completion of the auction, the Trustee will identify the highest and best bid, in consultation with the Kelly and the Lenders. The Trustee will immediately seek Court approval for a sale to the winning bidder. The Trustee's presentation to the bankruptcy court for approval of a particular bid shall not constitute acceptance of the bid. The Trustee will be deemed to have accepted a bid only when the bid has been approved by the bankruptcy court. The second highest and best bid shall remain open and irrevocable through the consummation of the final agreements and closing of the sale to the winning bidder. If the sale to the second highest bidder fails to close, then the Assets will be sold to the next highest bidder (including Kelly), until a sale closes.