IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
FULCRUM BIOENERGY, INC., *et al.*,	Case No. 24-12008 (TMH)
Debtors.[1]	(Jointly Administered)
	Re: D.I. 12

CERTIFICATION OF COUNSEL REGARDING DEBTORS' MOTION FOR (I) AN ORDER PURSUANT TO SECTIONS 105, 363, 364, 365 AND 541 OF THE BANKRUPTCY CODE, BANKRUPTCY RULES 2002, 6004, 6006 AND 9007 AND DEL. BANKR. L.R. 2002-1 AND 6004-1 (A) APPROVING BIDDING PROCEDURES FOR THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS ASSETS; (B) APPROVING THE DEBTORS ENTRY INTO STALKING HORSE AGREEMENT AND RELATED BID PROTECTIONS (C) APPROVING PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OR REJECTION OF DESIGNATED EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (D) SCHEDULING AN AUCTION AND SALE HEARING; (E) APPROVING FORMS AND MANNER OF NOTICE OF RESPECTIVE DATES, TIMES, AND PLACES IN CONNECTION THEREWITH; AND (F) GRANTING RELATED RELIEF; (II) AN ORDER (A) APPROVING THE SALE OF THE DEBTORS ASSETS FREE AND CLEAR OF CLAIMS, LIENS, AND ENCUMBRANCES; AND (B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF DESIGNATED EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (III) CERTAIN RELATED RELIEF

The undersigned counsel to the above-captioned debtors and debtors in possession (the "Debtors") hereby certifies as follows:

1. On September 9, 2024, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware (the "Court").

[1] The debtors and debtors in possession in these chapter 11 cases, along with each debtor's federal tax identification numbers are: Fulcrum BioEnergy, Inc. (3733); Fulcrum Sierra BioFuels, LLC (1833); Fulcrum Sierra Finance Company, LLC (4287); and Fulcrum Sierra Holdings, LLC (8498). The location of the Debtors' service address is: Fulcrum BioEnergy Inc., P.O. Box 220 Pleasanton, CA 94566. All Court filings can be accessed at: https://www.veritaglobal.net/Fulcrum.

2. On September 11, 2024, the Debtors filed the *Debtors' Motion for (I) an Order Pursuant to Sections 105, 363, 364, 365 and 541 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9007 and Del. Bankr. L.R. 2002-1 and 6004-1 (A) Approving Bidding Procedures for the Sale of Substantially All of the Debtors Assets; (B) Approving the Debtors Entry into Stalking Horse Agreement and Related Bid Protections (C) Approving Procedures for the Assumption and Assignment or Rejection of Designated Executory Contracts and Unexpired Leases; (D) Scheduling an Auction and Sale Hearing; (E) Approving Forms and Manner of Notice of Respective Dates, Times, and Places in Connection Therewith; and (F) Granting Related Relief; (II) an Order (A) Approving the Sale of the Debtors Assets Free and Clear Of Claims, Liens, and Encumbrances; and (B) Approving the Assumption and Assignment of Designated Executory Contracts and Unexpired Leases; and (III) Certain Related Relief* (the "Motion") (D.I. 12). Attached to the Motion as Exhibit A was a proposed order (the "Proposed Order").

3. The deadline to file objections to the relief requested in the Motion was September 25, 2024, at 4:00 p.m. (ET), which was extended to October 2, 2024, at 4:00 p.m. (ET) for the Official Committee of Unsecured Creditors (the "Committee") (each, an "Objection Deadline").

4. On September 25, 2024, ThermoChem Recovery International, Inc.("TRI") filed its *Objection of Thermochem Recovery International, Inc. to the Debtors' Motion for (I) an Order Pursuant to Sections 105, 363, 364, 365 and 541 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9007 and Del. Bankr. L.R. 2002-1 and 6004-1 (A) Approving Bidding Procedures for the Sale of Substantially All of the Debtors' Assets; (B) Approving the Debtors' Entry Into Stalking Horse Agreement and Related Bid Protections; (C) Approving Procedures for the Assumption and Assignment or Rejection of Designated Executory Contracts and Unexpired*

Leases; (D) Scheduling an Auction and Sale Hearing; (E) Approving Forms and Manner of Notice of Respective Dates, Times, and Places in Connection Therewith; and (F) Granting Related Relief; (II) an Order (A) Approving the Sale of the Debtors' Assets Free and Clear of Claims, Liens, and Encumbrances; and (B) Approving the Assumption and Assignment of Designated Executory Contracts and Unexpired Leases; and (III) Certain Related Relief, and Request for Adequate Protection of Tri's Proprietary Interests (the "TRI Objection") (D.I. 91).

5. On September 25, 2024, Johnson Matthey Davy Technologies Ltd. filed its *Limited Objection of Johnson Matthey Davy Technologies Ltd. to Debtors' Motion for (I) an Order Pursuant to Sections 105, 363, 364, 365 and 541 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9007 and Del. Bankr. L.R. 2002-1 and 6004-1 (A) Approving Bidding Procedures for the Sale of Substantially All of the Debtors' Assets; (B) Approving the Debtors' Entry Into Stalking Horse Agreement and Related Bid Protections (C) Approving Procedures for the Assumption and Assignment or Rejection of Designated Executory Contracts and Unexpired Leases; (D) Scheduling an Auction and Sale Hearing; (E) Approving Forms and Manner of Notice of Respective Dates, Times, and Places in Connection Therewith; and (F) Granting Related Relief; (II) an Order (A) Approving the Sale of the Debtors' Assets Free and Clear of Claims, Liens, and Encumbrances; and (B) Approving the Assumption and Assignment of Designated Executory Contracts and Unexpired Leases; and (III) Certain Related Relief* (the "Johnson Matthey Objection") (D.I. 92).

6. On October 2, 2024, the Committee filed its *Objection of the Official Committee of Unsecured Creditors to Debtors' Motion for (I) an Order Pursuant to Sections 105, 363, 364, 365 and 541 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9007 and Del. Bankr. L.R. 2002-1 and 6004-1 (A) Approving Bidding Procedures for the Sale of*

Substantially All of the Debtors Assets; (B) Approving the Debtors Entry into Stalking Horse Agreement and Related Bid Protections (C) Approving Procedures for the Assumption and Assignment or Rejection of Designated Executory Contracts and Unexpired Leases; (D) Scheduling an Auction and Sale Hearing; (E) Approving Forms and Manner of Notice of Respective Dates, Times, and Places in Connection Therewith; and (F) Granting Related Relief; (II) an Order (A) Approving the Sale of the Debtors Assets Free and Clear Of Claims, Liens, and Encumbrances; and (B) Approving the Assumption and Assignment of Designated Executory Contracts and Unexpired Leases; and (III) Certain Related Relief (the "Committee Objection") (D.I. 104).

7. The Debtors have received no other objections, responses, or comments, and no other objection or other responsive pleading appears on the Court's docket.

8. On October 7, 2024, the Debtors filed the *Notice of Revised Final Order Pursuant to Sections 105, 363, 364, 365 and 541 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 And 9007 and Del. Bankr. L.R. 2002-1 and 6004-1 (A) Approving Bidding Procedures for the Sale of Substantially All of the Debtors' Assets; (B) Approving the Debtors' Entry Into Stalking Horse Agreement and Related Bid Protections; (C) Approving Procedures for the Assumption and Assignment or Rejection of Designated Executory Contracts and Unexpired Leases; (D) Scheduling anAuction and Sale Hearing; (E) Approving Forms and Manner of Notice of Respective Dates, Times, and Places in Connection Therewith; and (F) Granting Related Relief* (the "Revised Order Notice") (D.I. 123). Attached to the Revised Order Notice as Exhibit 1 was a revised order (the "Revised Order").

9. A final hearing on the Motion was held on October 9, 2024 (the "Hearing").

10. As discussed on the record at the Hearing, the TRI Objection was overruled, and the Debtors resolved the Johnson Matthey Objection and the Committee Objection through revisions to the revsised proposed order (the "Revised Proposed Order"). The Debtors also incorporated comments made at the Hearing regarding the TRI Objection to the Revised Proposed Order.

11. On October 10, 2024, the Debtors filed the *Certification of Counsel Regarding Debtors' Motion for (I) an Order Pursuant to Sections 105, 363, 364, 365 and 541 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9007 and Del. Bankr. L.R. 2002-1 and 6004-1 (A) Approving Bidding Procedures for the Sale of Substantially All of the Debtors Assets; (B) Approving the Debtors Entry into Stalking Horse Agreement and Related Bid Protections (C) Approving Procedures for the Assumption and Assignment or Rejection of Designated Executory Contracts and Unexpired Leases; (D) Scheduling an Auction and Sale Hearing; (E) Approving Forms and Manner of Notice of Respective Dates, Times, and Places in Connection Therewith; and (F) Granting Related Relief; (II) an Order (A) Approving the Sale of the Debtors Assets Free and Clear Of Claims, Liens, and Encumbrances; and (B) Approving the Assumption and Assignment of Designated Executory Contracts and Unexpired Leases; and (III) Certain Related Relief* (the "Initial CoC") (D.I. 149).

12. After the Debtors filed the Initial CoC, counsel for TRI requested additional language to be added to the Revised Proposed Order, and the Debtors incorporated the additional comments.

13. Attached hereto as **Exhibit A** is a copy of the Resvied Proposed Order. For the convenience of the Court and all parties in interest, a redline comparing the Revised Proposed Order against the Revised Order is attached hereto as **Exhibit B**.

14. Counsel for TRI, Johnson Matthey, the Prepetition Bonds Secured Parties, and the Committee have reviewed the Proposed Final Order and do not object to its entry.

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Final Order.

Dated: October 11, 2024
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Clint M. Carlisle

Robert J. Dehney, Sr. (No. 3578)
Curtis S. Miller (No. 4583)
Daniel B. Butz (No. 4227)
Clint M. Carlisle (No. 7313)
Avery Jue Meng (No. 7238)
1201 N. Market Street, 16th Floor
P.O. Box 1347
Wilmington, DE 19899-1347
Telephone: (302) 658-9200
Facsimile: (302) 658-3989
Email: rdehney@morrisnichols.com
cmiller@morrisnichols.com
dbutz@morrisnichols.com
ccarlisle@morrisnichols.com
ameng@morrisnichols.com

Proposed Counsel to the Debtors and Debtors in Possession

Exhibit A

Revsied Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
FULCRUM BIOENERGY, INC., *et al.*,	Case No. 24-12008 (TMH)
Debtors.[1]	(Jointly Administered)

ORDER PURSUANT TO SECTIONS 105, 363, 364, 365 AND 541 OF THE BANKRUPTCY CODE, BANKRUPTCY RULES 2002, 6004, 6006 AND 9007 AND DEL. BANKR. L.R. 2002-1 AND 6004-1 (A) APPROVING BIDDING PROCEDURES FOR THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS; (B) APPROVING THE DEBTORS' ENTRY INTO STALKING HORSE AGREEMENT AND RELATED BID PROTECTIONS; (C) APPROVING PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OR REJECTION OF DESIGNATED EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (D) SCHEDULING AN AUCTION AND SALE HEARING; (E) APPROVING FORMS AND MANNER OF NOTICE OF RESPECTIVE DATES, TIMES, AND PLACES IN CONNECTION THEREWITH; AND (F) GRANTING RELATED RELIEF

Upon the motion (the "Motion")[2] of the debtors and debtors in possession (the "Debtors") in the above-captioned jointly administered chapter 11 cases, for entry of an order, pursuant to sections 105(a), 363, 365, 503 and 507 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and 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"), (i) authorizing and approving certain proposed bidding procedures (as attached hereto as **Exhibit 1**, the "Bidding Procedures") governing the submission of competing proposals to purchase the

[1] The Debtors and Debtors in possession in these chapter 11 cases, along with each debtor's federal tax identification numbers are: Fulcrum BioEnergy, Inc. (3733); Fulcrum Sierra BioFuels, LLC (1833); Fulcrum Sierra Finance Company, LLC (4287); and Fulcrum Sierra Holdings, LLC (8498). The location of the Debtors' service address is: Fulcrum BioEnergy Inc., P.O. Box 220 Pleasanton, CA 94566. All Court filings can be accessed at: https://www.veritaglobal.net/Fulcrum.

[2] Capitalized terms not defined herein are defined in the Motion.

SH Acquired Assets, and to the extent applicable, the Expanded Assets (each as defined below) (the "Sale") pursuant to section 363 of the Bankruptcy Code, authorizing and approving the Debtors' entry into (but not consummation of) the Asset Purchase Agreement (substantially in the form attached to the Motion as **Exhibit B** and, together with all exhibits and schedules thereto, the "Stalking Horse Agreement"), by and among the Debtors and Switch, Ltd. ("Switch" or the "Stalking Horse Bidder"), pursuant to which the Debtors have agreed to sell the SH Acquired Assets to the Stalking Horse Bidder, subject to the terms and conditions contained in the Stalking Horse Agreement, (iii) approving the form and manner of notice of the Sale (the "Sale Notice"), (iv) scheduling a hearing for approval of the Sale (the "Sale Hearing") and setting other related dates and deadlines and (v) approving procedures for the assumption and assignment of the Debtors' executory contracts (the "Contracts") and unexpired leases (the "Leases") and the form of and manner of notice of proposed cure amounts; and the Court having reviewed the Motion and the First Day Declaration; and it appearing that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors and all other parties in interest; and after due deliberation, and good and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:

A. This Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012.

B. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution. Venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. The statutory and legal predicates for the relief requested in the Motion and provided for herein are sections 105(a), 363, 365, 503 and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004 and 6006, and Local Rule 6004-1.

D. Good and sufficient notice of the relief granted by this Order has been given and no further notice is required. A reasonable opportunity to object or be heard regarding the relief granted by this Order has been afforded to those parties entitled to notice pursuant to Local Rule 2002-1(b) and all other interested parties.

E. The Debtors have provided evidence (through testimony or otherwise) demonstrating good and sufficient reasons for the Court to approve the Bidding Procedures. Such good and sufficient reasons were set forth in the Motion, are incorporated by reference herein, and, among other things, form the basis for the findings of fact and conclusions of law set forth herein.

F. The Bidding Procedures are fair, reasonable and appropriate and are designed to maximize the value to be received by the Debtors' estates and creditors. The Bidding Procedures and all such steps and expenses incurred by the Debtors in connection with the implementation of the Bidding Procedures and this Order shall be deemed reasonable and appropriate and within the sound business judgment of the Debtors pursuant to section 363(b) of the Bankruptcy Code.

G. The Stalking Horse Agreement was entered into in good faith by the Debtors and the Stalking Horse Bidder, and is the result of a good faith, arms-length negotiation between the parties that are each represented by sophisticated legal counsel.

H. The Debtors have demonstrated compelling and sound business justifications for entering into the Stalking Horse Agreement and incurring the

`administrative obligations arising thereunder or in connection therewith, and the timing and procedures set forth therein.

I. The sale of the SH Acquired Assets as contemplated in the Stalking Horse Agreement is in the best interests of the Debtors' estates, their creditors and all other parties in interest, and represents a reasonable exercise of the Debtors' sound business judgment.

J. The Sale Notice, substantially in the form attached hereto as **Exhibit 3**, is reasonably calculated to provide all interested parties with timely and proper notice of the proposed sale, including: (i) the date, time and place of the Auction (if one is held), (ii) the Bidding Procedures and certain dates and deadlines related thereto, (iii) the objection deadline for the Sale and the date, time and place of the Sale Hearing, (iv) reasonably specific identification of the assets subject to the proposed sale, (v) instructions for promptly obtaining a copy of the Stalking Horse Agreement, (vi) representations describing the proposed sale as being free and clear of liens, claims, interests and other encumbrances, with all such liens, claims, interests and other encumbrances attaching with the same validity and priority to the sale proceeds, (vii) the commitment by the Stalking Horse Bidder to assume certain liabilities of the Debtors and (viii) notice of the proposed assumption and assignment of Contracts and Leases to either an affiliate of the Stalking Horse Bidder or an affiliate of any designee of the Stalking Horse Bidder (such party, the "Contract Party") pursuant to the Stalking Horse Agreement (or to another Successful Bidder selected at the Auction, if any) and the procedures and deadlines for objecting thereto. No other or further notice of the proposed Sale shall be required.

K. The Cure Notice attached hereto as **Exhibit 2** is reasonably calculated to provide all non-Debtor counterparties to the Debtors' Contracts and Leases with proper notice of the potential assumption and assignment of their Contract or Lease, the proposed cure amounts

relating thereto and the related assumption and assignment procedures; provided that the mere listing of any Contract or Lease on the Cure Notice does not require or guarantee that such Contract or Lease will be assumed and assigned, and all rights of the Debtors with respect to such Contracts and Leases are reserved.

L. The Bidding Procedures comply with the requirements of Local Rule 6004-1.

M. Entry of this Order is in the best interests of the Debtors' estates, their creditors and all other interested parties.

N. To the extent payable under this Order and in accordance with the Stalking Horse Agreement, the Bid Protections: (i)(a) are actual and necessary costs of preserving the Debtors' estates within the meaning of section 503(b) of the Bankruptcy Code and (b) shall be treated as an allowed administrative expense claim against the Debtors' estates pursuant to sections 105(a), 503(b), and 507(a)(2) of the Bankruptcy Code; (ii) are commensurate to the real and material benefits conferred upon the Debtors' estates by the Stalking Horse Bidder; (iii) are reasonably tailored to encourage, rather than hamper, bidding for the Assets, by providing a baseline of value, increasing the likelihood of competitive bidding at the Auction, and facilitating participation of other bidders in the sale process, thereby increasing the likelihood that the Debtors will receive the best possible price and terms for the Assets; (iv) are a material inducement for, and condition necessary to, ensure that the Stalking Horse Bidder will continue to pursue the transaction contemplated by the Stalking Horse Agreement; and (v) are reasonable in relation to the Stalking Horse Bidder's efforts and to the magnitude of the proposed transaction and the Stalking Horse Bidder's lost opportunities resulting from the time spent pursuing such transaction. Unless it is assured that the Bid Protections are available, the Stalking Horse Bidder is unwilling

to remain obligated to consummate the transaction or otherwise be bound by the Stalking Horse Agreement.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is hereby **GRANTED** as set forth herein.

2. All objections filed, if any, in response to the Motion or the relief requested therein that have not been withdrawn, waived, settled, or specifically addressed in this Order, and all reservations of rights included in such objections, are specifically overruled in all respects on the merits.

The Bidding Procedures

3. The Bidding Procedures, attached hereto as **Exhibit 1**, are approved, and the Debtors are authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures. To the extent of any conflict between the Bidding Procedures and this Order, the Bidding Procedures shall govern.

4. The Bidding Procedures shall govern the submission, receipt and analysis of all Bids, and any party desiring to submit a higher or better offer shall do so strictly in accordance with the terms of this Order and the Bidding Procedures.

5. The following dates and deadlines regarding competitive bidding are hereby established (subject to modification in accordance with the Bidding Procedures):

a. **Bid Deadline**: **November 4, 2024 at 5:00 p.m. (Prevailing Eastern Time)** is the deadline by which all Qualified Bids must be actually received by the parties specified in the Bidding Procedures (the "Bid Deadline").

b. **Auction**: **November 7, 2024 at 10:00 a.m. (Prevailing Eastern Time)** is the date and time of the Auction, if one is needed, which will be held at the offices of Morris Nichols Arsht & Tunnell LLP 1201 North Market Street,

Wilmington, DE 19801; *provided, however*, that the Debtors, in their discretion, shall have the right to hold the Auction at another place or virtually, with instructions for Qualified Bidders to participate to be provided prior to the Auction, with notice to all Qualified Bidders, the Consultation Parties and any other invitees.

6. Only a Qualified Bidder that has submitted a Qualified Bid by the Bid Deadline will be eligible to participate at the Auction. As described in the Bidding Procedures, if the Debtors do not receive any Qualified Bids other than from the Stalking Horse Bidder, the Debtors will not hold the Auction, the Stalking Horse Bidder will be named the Successful Bidder, and the Debtors will seek final approval at the Sale Hearing of the sale of the SH Acquired Assets to the Stalking Horse Bidder, in accordance with the terms of the Stalking Horse Agreement.

7. If the Auction is conducted, (i) each Qualified Bidder participating in the Auction shall be required to confirm that it has not engaged in any collusion with respect to the bidding process or the sale, (ii) each Qualified Bidder participating in the Auction shall be required to confirm that its Qualified Bid is a good faith, bona fide offer and it intends to consummate the proposed transaction if selected as the Successful Bidder, or if selected as the Back-Up Bidder in the event the Successful Bidder does not consummate the proposed transaction, and (iii) the Auction shall be conducted openly and shall be transcribed or videotaped.

Approval of Debtors' Entry into the Stalking Horse Agreement

8. The Debtors are hereby authorized to designate Switch, Ltd., together with any designated affiliate thereof, as the stalking horse bidder (the "Stalking Horse Bidder").

9. The Debtors are authorized, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, to enter into and perform under the Stalking Horse Agreement, subject to the

solicitation of higher or otherwise better offers for the SH Acquired Assets (as defined in section 1.1 of the Stalking Horse Agreement as "Acquired Assets") and entry of an order approving the sale of the SH Acquired Assets (the "Sale Order"). Subject to entry of the Sale Order, the Stalking Horse Agreement shall be binding and enforceable on the Debtors' estates and the parties thereto in accordance with and subject to its terms, including as they relate to the Bidding Procedures and related termination provisions.

10. The Stalking Horse Agreement is authorized and approved in the form attached to the Bidding Procedures Motion as Exhibit B as the stalking horse bid for the SH Acquired Assets (the "Stalking Horse Bid").

11. The Stalking Horse Bidder shall be deemed a Qualified Bidder, and the Stalking Horse Bid shall be deemed a Qualified Bid, for all purposes under the Bidding Procedures Order and Bidding Procedures.

12. The Stalking Horse Agreement shall be binding and enforceable on the parties thereto in accordance with its terms subject to entry of the Sale Order. The failure to describe specifically or include any provision of the Stalking Horse Agreement or related documents in the Motion or herein shall not diminish or impair the effectiveness of such provision as to such parties. The Stalking Horse Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto, solely in accordance with the terms thereof, without further order of the Court. Notice of any material changes to the Stalking Horse Agreement prior to the Sale Hearing shall be provided to the Consultation Parties within one (1) business day following agreement by the Debtors and Stalking Horse Bidder to such material change.

13. The Break-Up Fee (as defined in the Stalking Horse Agreement, the "Bid

Protections") is approved in its entirety and (i) shall, to the extent payable under the terms of the Stalking Horse Agreement, be treated as allowed administrative expense claims against the Debtors' estates pursuant to sections 105(a), 503(b), and 507(a)(2) of the Bankruptcy Code; (ii) shall not be subordinate to any other administrative expense claim against the Debtors' estates other than any claims granted superpriority administrative status by order of the Court pursuant to sections 364(c)(1), 364(d)(1), 503(b), and 507(b) of the Bankruptcy Code; (iii) shall not be subject to any bar date in these Chapter 11 Cases or any requirement to file any request for allowance of an administrative expense claim or proof of claim; (iv) shall be payable in accordance with the terms of and subject to the conditions set forth in the Stalking Horse Agreement and (v) shall survive the termination of the Stalking Horse Agreement and dismissal or conversion of these Chapter 11 Cases pursuant to the terms in the Stalking Horse Agreement; *provided* that the Break-Up Fee shall not be due and payable except from proceeds of an Alternative Transaction; provided further, that notwithstanding the foregoing, the Stalking Horse Bidder reserves the right to file a motion with the Court seeking approval and payment of the Break-Up Fee under each of the provisions in section 8.3(a) of the Stalking Horse Agreement.

14. Subject to the Bidding Procedures and entry of the Sale Order, the Debtors and Stalking Horse Bidder are granted all rights and remedies provided to them under the Stalking Horse Agreement, including, without limitation, the right to specifically enforce the Stalking Horse Agreement (including with respect to the Bid Protections and the Deposit) in accordance with its terms.

15. For the avoidance of doubt, notwithstanding that this Order approves Switch as the Stalking Horse Bidder and the Bid Protections pursuant to the Stalking Horse Agreement (subject to paragraph 13 herein), the ultimate approval of the Sale and Stalking Horse Agreement shall be

subject to entry of the Sale Order.

16. The Debtors are authorized to perform all of their respective pre-closing obligations under the Stalking Horse Agreement, and such obligations shall be binding upon the Debtors; *provided* that, for the avoidance of doubt, consummation of the transactions contemplated by the Stalking Horse Agreement shall be subject to entry of the Sale Order and the satisfaction or waiver of the other conditions to closing on the terms set forth in the Stalking Horse Agreement.

17. This Order, and the claims granted hereunder in favor of the Stalking Horse Bidder on account of the Bid Protections, shall be binding upon the Debtors' estates, including any chapter 7 or chapter 11 trustee or other fiduciary appointed for the Debtors' estates.

18. The automatic stay pursuant to section 362 of the Bankruptcy Code is hereby modified with respect to the Debtors to the extent necessary, without further order of the Court, to allow the Stalking Horse Bidder to (i) deliver any notice provided for in the Stalking Horse Agreement, including, without limitation, a notice terminating the Stalking Horse Agreement in accordance with the terms thereof and (ii) take any actions permitted under the Stalking Horse Agreement to terminate the Stalking Horse Agreement, solely to the extent permitted by the Stalking Horse Agreement, and assert any claims with respect to the Bid Protections solely in accordance with the terms of this Order, the Bidding Procedures, and the Stalking Horse Agreement.

Credit Bidding

19. Any bidder holding a perfected security interest in any of the SH Acquired Assets (and to the extent appliable, the Expanded Assets) may seek to credit bid all, or a portion of, such bidder's claims for its respective collateral subject to section 363(k) of the Bankruptcy Code (each such bid, a "Credit Bid"); *provided,* that such Credit Bid must comply with the terms of the Bidding

Procedures.

20. Pursuant to the terms and conditions of the Final DIP Order, the DIP Lender is authorized to Credit Bid the DIP Obligations on the DIP Collateral. The Prepetition Bonds Secured Parties (each as defined in the Final DIP Order), are entitled, but not required, to credit bid up to the full amount of the Prepetition Bond Obligations (as defined in the Final DIP Order), pursuant to section 363(k) of the Bankruptcy Code. Any Credit Bid by the Stalking Horse Bidder shall be deemed a Credit Bid in compliance with the requirements of the Bidding Procedures.

Hearing and Objection Deadline

21. The Sale Hearing shall take place in this Court on **November 12, 2024 at 2:00 p.m. (Prevailing Eastern Time)**; provided that the Sale Hearing may be adjourned without further notice other than announcement in open Court or by the filing of a notice on the docket of these Cases or a notice of agenda. Any obligations of the Debtors set forth in the Stalking Horse Agreement that are intended to be performed prior to the Sale Hearing and/or entry of the Sale Order pursuant to the Stalking Horse Agreement are authorized as set forth herein and are fully enforceable as of the date of entry of this Order.

22. The deadline to file objections, if any, to the transactions contemplated by the Stalking Horse Agreement or to entry of the Sale Order is **October 25, 2024 at 4:00 p.m. (Prevailing Eastern Time)**; *provided* that an objection to the Sale of the Expanded Assets, including any Expanded Assets consisting of intellectual property, may be filed up to and including the Sale Hearing (the "Sale Objection Deadline"). Objections, other than those that may be properly raised at the Sale Hearing, **must**: (i) be in writing, (ii) conform to the applicable provisions of the Bankruptcy Rules, the Local Rules and any orders of the Court, (iii) state with particularity the legal and factual basis for the objection and the specific grounds therefor, and (iv)

be filed with the Court and served so as to be **actually received** no later than the Sale Objection Deadline, as applicable, by the following parties (the "Notice Parties"): (a) the Debtors, P.O. Box 220 Pleasanton, CA 94566, Attn: Mark Smith; (b) proposed counsel to the Debtors, Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street. 16th Floor, P.O. Box 1347, Wilmington, DE 19899-1347, Attn: Robert J. Dehney Sr. (rdehney@morrisnichols.com); Daniel B. Butz (dbutz@morrisnichols.com); Clint M. Carlisle (ccarlisle@morrisnichols.com); Avery Jue Meng (ameng@morrisnichols.com); (c) the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"): 844 King Street, Room 2207, Wilmington, Delaware 19801, Attn: Rosa Sierra-Fox (rosa.sierra-fox@usdoj.gov); (d) counsel to the Committee: (i) Eversheds Sutherland (US) LLP, The Grace Building, 40th Floor, 1114 Avenue of the Americas, New York, NY 10036, Attn: Todd C. Meyers (ToddMeyers@eversheds-sutherland.com), Jennifer B. Kimble (JenniferKimble@eversheds-sutherland.com); Eversheds Sutherland (US) LLP, 999 Peachtree Street NE, Suite 2300, Atlanta, GA 30309-3996, Attn: Todd C. Meyers (toddmeyers@eversheds-sutherland.com)and (ii) Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, DE 19801, Attn: Jeffrey R. Waxman (jwaxman@morrisjames.com), Eric J. Monzo (emonzo@morrisjames.com); (e) counsel to Switch, Ltd.: (i) Latham & Watkins LLP, 1271 Avenue of the Americas, New York, NY 10020, Attn: Brian S. Rosen (Brian.Rosen@lw.com) and Adam Goldberg (Adam.Goldberg@lw.com) and (ii) Richards Layton & Finger, P.A., 920 N. King Street, Wilmington, DE 19801, Attn: Michael J. Merchant (Merchant@RLF.com); (f) counsel to UMB Bank, N.A.: (i) Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, NY 10065, Attn: Alexander Woolverton (awoolverton@kramerlevin.com); Douglas Buckley (dbuckley@kramerlevin.com), and (ii) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Andrew Magaziner

(amagaziner@ycst.com); and (g) counsel to PCL Administration LLC: Katten Muchin Rosenman LLP, 525 West Monroe Street, Chicago, Illinois 60661, Attn: Steven J. Reisman (sreisman@katten.com); Peter P. Knight (peter.knight@katten.com); and Joshua M. Altman, (josh.altman@katten.com), and (ii) Klehr Harrison Harvey Branzburg LLP, 919 N. Market Street, Suite 1000, Wilmington, DE 19801, Attn: Domenic Pacitti (DPacitti@klehr.com).

Sale Notice and Related Relief

23. The Sale Notice, substantially in the form attached hereto as **Exhibit 3**, is hereby approved. Within three (3) days of the entry of this Order, the Debtors shall cause the Sale Notice to be served upon: (a) the United States Trustee for the District of Delaware; (b) the creditors listed on the Debtors' consolidated list of thirty (30) largest unsecured creditors, as filed with the Debtors' chapter 11 petitions and the Official Committee of Unsecured Creditors; (c) all parties asserting a security interest in the SH Acquired Assets (and to the extent applicable, the Expanded Assets) to the extent any such interest is reasonably known to the Debtors; (d) applicable federal, state, county and city tax and regulatory authorities; (e) all entities known to have expressed a written interest in a transaction with respect to the SH Acquired Assets (and to the extent applicable, the Expanded Assets) or that have been identified by the Debtors or their advisors as a potential purchaser of the SH Acquired Assets (and to the extent applicable, the Expanded Assets); (f) local, state and federal authorities and agencies that have issued licenses or permits to the Debtors with respect to the operation and use of the SH Acquired Assets (and to the extent applicable, the Expanded Assets); (g) each counterparty to the Debtors' Contracts and Leases; and (h) all parties requesting notice pursuant to Bankruptcy Rule 2002.

Designation and Assumption Procedures

24. The procedures set forth below regarding the proposed assumption and assignment

of certain Contracts and Leases that may be designated to be assumed by the Debtors pursuant to section 365(b) of the Bankruptcy Code and assigned to the Contract Party (or the Successful Bidder selected at the Auction, if any) pursuant to section 365(f) of the Bankruptcy Code (as defined in the Stalking Horse Agreement, collectively, the "Assigned Contracts and Leases") in connection with the sale of the SH Acquired Assets (and to the extent applicable, the Expanded Assets) are hereby approved (the "Designation Procedures").

25. These Designation Procedures, as may be modified or supplemented by the Sale Order, shall govern the assumption and assignment of all Assigned Contracts and Leases:

a. **Cure Notice.** On or before the date that is two (2) business days after entry of the Bidding Procedures Order, the Debtors shall file with the Court a notice of the proposed assumption and assignment of certain executory contracts and unexpired leases in connection with the Sale, substantially in the form attached as **Exhibit 2** to the Bidding Procedures Order (the "Cure Notice"). The Debtors will serve the Cure Notice via first class mail (and by electronic mail, if available) on all non-Debtor counterparties to Contracts and Leases, and their respective known counsel, and provide a copy of same to the Contract Party and the Stalking Horse Bidder. The Cure Notice shall inform each recipient that its respective Contract or Lease may be designated by the Contract Party (as defined below) as either assumed or rejected and the timing and procedures relating to such designation, and, to the extent practicable (i) the title of the Contract or Lease, (ii) the name of the counterparty to the Contract or Lease, (iii) the Debtors' good faith estimates of the cure amounts required in connection with such Contract or Lease (the "Cure Amount"), (iv) the identity of the Contract Party and (v) the deadline by which any such Contract or Lease counterparty may file an objection to the proposed assumption and assignment and/or cure amount, and the procedures relating thereto; provided, however, that service of a Cure Notice does not constitute an admission that such Contract or Lease is an executory contract or unexpired lease. If the Debtors identify additional Contracts or Leases that might be assumed by the Debtors and assigned to the Contract Party, the Debtors will promptly send a supplemental Cure Notice to the applicable counterparties to such Contract or Lease.

b. **Adequate Assurance**. The Debtors shall serve by overnight mail (or by electronic mail, if available) no later than three (3) business days after entry of the Bidding Procedures Order the evidence of adequate assurance of future performance under the Contracts and Leases provided in connection with the Stalking Horse Bidder, including the legal name of the proposed

assignee, the proposed use of any leased premises, the proposed assignee's financial ability to perform under the Contracts and Leases and a contact person with the proposed assignee whom counterparties may contact if they wish to obtain further information regarding the proposed assignee. No later than two (2) days after the Bid Deadline, the Debtors shall serve on affected counterparties and their respective known counsel by electronic mail (if available) or overnight mail the adequate assurance information provided by each Qualified Bidder.

c. **Objections**. Objections, if any, to the proposed assumption and assignment of any Contract or Lease or to the cure amount proposed with respect thereto must: (i) be in writing, (ii) comply with the applicable provisions of the Bankruptcy Rules, Local Rules and any other orders of the Court, (iii) state with specificity the nature of the objection and, if the objection pertains to the proposed cure amount, the correct cure amount alleged by the objecting counterparty, together with any applicable and appropriate documentation in support thereof and (iv) be filed with the Court and served so as to be actually received by the Notice Parties before the Cure Notice Objection Deadline.

Following the Debtors' selection of the Successful Bidder and the Back-Up Bidder, if any, at the conclusion of the Auction, the Debtors shall announce the Successful Bidder and the Back-Up Bidder, if any, and within eighteen (18) hours of the conclusion of the Auction, shall file with the Court a notice of the Successful Bidder and the Back-Up Bidder, if any. The Debtors will serve the notice of the Successful Bidder and the Back-Up Bidder via first class mail (and by electronic mail, if available) on all non-Debtor counterparties to Contracts and Leases that the Successful Bidder or Back-Up Bidder intend to assume, and their respective known counsel, and provide a copy of same to the Contract Party and the Stalking Horse Bidder. If and only if the Stalking Horse Bidder is not the Successful Bidder, counterparties to the Debtors' Contracts and Leases shall have until the Sale Hearing to object to the assumption and assignment of a Contract or Lease solely on the issue of whether the Successful Bidder can provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code. For the avoidance of doubt, if the Stalking Horse Bidder is the Successful Bidder, all adequate assurance objections must be filed by the Sale Objection Deadline.

d. **Dispute Resolution**. Any objection to the proposed assumption and assignment or related cure of a Contract or Lease in connection with the proposed sale that remains unresolved as of the Sale Hearing shall be heard at the Sale Hearing or such later hearing if the objection is not resolved and the Debtors determine that an adjournment is appropriate. To the extent any such objection is resolved or determined unfavorably to the applicable Debtor, the Debtors may, subject to the terms of an agreement with the

Successful Bidder, file a notice rejecting the applicable Contract or Lease after such determination.

26. Any party who fails to timely file an objection to its scheduled cure amount listed on the Cure Notice or to the assumption and assignment of a Contract or Lease (i) shall be forever barred, estopped and enjoined from objecting thereto, including (a) making any demands for additional cure amounts or monetary compensation on account of any alleged defaults for the period prior to the applicable objection deadline against the Debtors, their estates or the Contract Party or the Stalking Horse Bidder or other Successful Bidder selected at the Auction, if any, with respect to any such Contract or Lease and (b) asserting that the Contract Party or the Successful Bidder has not provided adequate assurance of future performance as of the date of the Sale Order; (ii) shall be deemed to consent to (a) the sale of the SH Acquired Assets (and to the extent applicable, the Expanded Assets) as approved by the Sale Order and (b) the assumption and assignment of the Contracts and Leases; and (iii) shall be forever barred and estopped from asserting or claiming against the Debtors or the assignee of the relevant Contract or Lease that any conditions to assumption and assignment of such Contract or Lease must be satisfied (pursuant to section 365(b)(1) of the Bankruptcy Code or otherwise).

27. The proposed assumption and assignment of the Assigned Contracts and Leases and the Auction shall be conducted solely in accordance with the provisions of this Order, the Bidding Procedures and the Designation Procedures, as applicable.

28. Except as otherwise provided herein and in the Bidding Procedures, Local Rule 6004-1(c)(ii) is waived.

29. Nothing in this Order shall be construed to modify the requirements and provisions of sections 365(b), 365(d)(3), 365(d)(4) or 365(f) of the Bankruptcy Code, or to determine the effective date of rejection for any Contract or Lease which the Debtors may seek to reject.

30. For the avoidance of doubt, by entry of this Order, the Court is not making a ruling on the assumption and assignment of the Debtors' contracts or leases, including but not limited to, any of the Johnson Matthey Agreements, or of any license of intellectual property relating thereto. Objections to the assumption and assignment of a contract, lease, or related cure amount are reserved and preserved and can be made by the Cure Objection Deadline, which will be stated on the Cure Notice.

ThermoChem Recovery International, Inc.

31. The Debtors shall include in the data room the objection filed by ThermoChem Recovery International, Inc. to the Bidding Procedures Motion [D.I. 91].

Other Relief Granted

32. The Debtors are authorized to execute and deliver all instruments and documents and take such other action as may be necessary or appropriate to implement and effectuate the transactions contemplated by this Order.

33. The requirements set forth in Local Rule 9013-1 are satisfied by the contents of the Motion.

34. The findings and conclusions set forth herein constitute the Bankruptcy Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052. To the extent any findings of fact constitute conclusions of law, they are adopted as such. To the extent any conclusions of law constitute findings of fact, they are adopted as such.

35. To the extent any provisions of this Order shall be inconsistent with the Motion, the terms of this Order shall control.

36. This Order shall be immediately effective and enforceable upon entry hereof.

37. This Court shall retain jurisdiction with respect to all matters arising from or related

to the implementation or interpretation of the Order.

EXHIBIT 1 To Bidding Procedures Order

Bidding Procedures

BIDDING PROCEDURES

On September 11 2024, Fulcrum BioEnergy, Inc.; Fulcrum Sierra BioFuels, LLC; Fulcrum Sierra Finance Company, LLC; and Fulcrum Sierra Holdings, LLC, debtors and debtors in possession (collectively, the "Debtors") in the chapter 11 cases (the "Cases") pending in the United States Bankruptcy Court for the District of Delaware ("Court") and jointly administered under Case No. 24 -12008 (TMH), filed a motion D.I. 12 (the "Bidding Procedures Motion"), seeking, among other things, authorization for the Debtors to perform their obligations under that certain Asset Purchase Agreement (together with all exhibits thereto, the "Stalking Horse Agreement")[3] entered into by and among the Debtor Fulcrum Sierra Biofuels, LLC and Switch, Ltd. (the "Stalking Horse Bidder"), substantially in the form attached to the Bidding Procedures Motion as Exhibit B. As described in the Bidding Procedures Motion, the Stalking Horse Agreement contemplates, pursuant to the terms and subject to the conditions contained therein, the sale of the SH Acquired Assets in exchange for cash consideration in the amount of $15,000,000 plus the assumption of Assumed Liabilities.

The Stalking Horse Agreement provides for payment of bid protections in the form of a break-up fee in the amount of $600,000 (the "Break-Up Fee" or the "Bid Protections"), on the terms and conditions set forth in the Stalking Horse Agreement.

On October [9], 2024, the Court entered the "*Order (A) Authorizing and Approving Bidding Procedures, (B) Authorizing and Approving the Debtors' Entry Into the Stalking Horse Agreement, (C) Approving Notice Procedures, (D) Scheduling a Sale Hearing and (E) Approving Procedures for Assumption and Assignment and Determining Cure Amounts*" [D.I. •] (the "Bidding Procedures Order"), which, among other things, (i) authorized the Debtors to perform their pre-closing obligations under the Stalking Horse Agreement and (ii) approved these bidding procedures set forth herein (the "Bidding Procedures") governing the submission of competing proposals to purchase the SH Acquired Assets (and to the extent applicable, the Expanded Assets) pursuant to section 363 of the Bankruptcy Code. The sale of the SH Acquired Assets (and to the extent applicable, the Expanded Assets) will be implemented pursuant to the terms and conditions of the Bidding Procedures Order and the Stalking Horse Agreement, as the same may be amended pursuant to the terms thereof, subject to the Debtors' selection in their reasonable discretion, after consultation with UMB Bank, N.A., in its capacity as trustee for the Sierra BioFuels Bonds and the Sierra Holdings Bonds (each as defined in the *Declaration of Mark Smith in Support of Chapter 11 Petitions and First Day Relief*) ("UMB,") and the Official Committee of Unsecured Creditors of Fulcrum Bioenergy, Inc. (the "Committee," and together with UMB, the "Consultation Parties") of a higher or otherwise better bid as the Successful Bid and Back-Up Bid (as defined below) in accordance with these Bidding Procedures.[4]

Notice Parties

Information required to be provided under these Bidding Procedures must be provided to the following parties (collectively, the "Notice Parties"): (a) the Debtors, P.O. Box

[3] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Stalking Horse Agreement.

[4] If UMB determines that it will submit a Bid, it shall cease to be a Consultation Paty unless it irrevocably states, in writing, that it is no longer pursuing a Bid.

220 Pleasanton, CA 94566, Attn: Mark Smith; (b) Morris, Nichols, Arsht & Tunnell LLP ("Morris Nichols"), 1201 N. Market Street. 16th Floor, P.O. Box 1347, Wilmington, DE 19899-1347, Attn: Robert J. Dehney Sr. (rdehney@morrisnichols.com); Curtis S. Miller (cmiller@morrisnichols.com); Daniel B. Butz (dbutz@morrisnichols.com); Clint M. Carlisle (ccarlisle@morrisnichols.com); Avery Jue Meng (ameng@morrisnichols.com); (c) DSI Specialists, Inc. ("DSI", together with Morris Nichols, the "Debtors' Professionals"), 10 S. LaSalle Street, Suite 3300, Chicago, Illinois 60603, Attn: George Shoup (gshoup@dsiconsulting.com); Jack Donohue (jdonohue@dsiconsulting.com); and Steve Victor (svictor@dsiconsulting.com) (d) the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"): 844 King Street, Room 2207, Wilmington, Delaware 19801, Attn: Rosa Sierra-Fox (rosa.sierra-fox@usdoj.gov); (e) counsel to UMB: (i) Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, NY 10065, Attn: Alexander Woolverton (awoolverton@kramerlevin.com); Douglas Buckley (dbuckley@kramerlevin.com), and (ii) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Andrew Magaziner (amagaziner@ycst.com); (f) counsel to the Committee: (i) Eversheds Sutherland (US) LLP, The Grace Building, 40th Floor, 1114 Avenue of the Americas, New York, NY 10036, Attn: Todd C. Meyers (ToddMeyers@eversheds-sutherland.com), Jennifer B. Kimble (JenniferKimble@eversheds-sutherland.com) and Eversheds Sutherland (US) LLP, 999 Peachtree Street NE, Suite 2300, Atlanta, GA 30309, Attn: Todd C. Meyers (toddmeyers@eversheds-sutherland.com) and (ii) Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, DE 19801, Attn: Jeffrey R. Waxman (jwaxman@morrisjames.com), Eric J. Monzo (emonzo@morrisjames.com); (g) counsel to Switch, Ltd.: (i) Latham & Watkins LLP, 1271 Avenue of the Americas, New York, NY 10020, Attn: Adam Goldberg (Adam.Goldberg@lw.com) and Brian S. Rosen (Brian.Rosen@lw.com) and (ii) Richards, Layton & Finger, P.A. 920 N. King Street, Wilmington, DE 19801, Attn: Michael J. Merchant (Merchant@RLF.com); and (h) counsel to PCL Administration LLC: Katten Muchin Rosenman LLP, 525 West Monroe Street, Chicago, Illinois 60661, Attn: Steven J. Reisman (sreisman@katten.com); Peter P. Knight (peter.knight@katten.com); and Joshua M. Altman, (josh.altman@katten.com), and (ii) Klehr Harrison Harvey Branzburg LLP, 919 N. Market Street, Suite 1000, Wilmington, DE 19801, Attn: Domenic Pacitti (DPacitti@klehr.com).

Participation Requirements

To participate in the formal bidding process or otherwise be considered for any purpose hereunder, a person (other than the Stalking Horse Bidder) interested in submitting a bid (an "Interested Party") must deliver to the Debtors' Professionals the following documents (the "Preliminary Bid Documents"):

(i) an executed confidentiality agreement on terms reasonably acceptable to the Debtors (each, a "Confidentiality Agreement");

(ii) a statement and other factual support demonstrating to the Debtors' satisfaction in the exercise of their reasonable business judgment that the Interested Party has a bona fide interest in purchasing the SH Acquired Assets (and to the extent applicable, the Expanded Assets or any subset of the SH Acquired Assets or Expanded Assets); and

(iii) preliminary verbal or written proof by the Interested Party of its financial capacity to close a proposed transaction at the Purchase Price (as defined below), which may include (a) current unaudited or verified financial statements of, or verified financial commitments obtained by, the Interested Party (or, if the Interested Party is an entity formed for the purpose of acquiring the property to be sold, the party that will bear liability for a breach), or (b) sufficient financial or other information to establish adequate assurance of future performance pursuant to section 365(f)(2) of the Bankruptcy Code and, if applicable, section 365(b)(3) of the Bankruptcy Code to the non-Debtor counterparties to any executory contracts and unexpired leases to be assumed by the Debtors and assigned to the Potential Bidder in connection with the proposed transaction.

Once the Preliminary Bid Documents are received and verified by the Debtors' Professionals, the Debtors will deem the Interested Party a "Potential Bidder" and will provide a list of Potential Bidders to the Consultation Parties.

Due Diligence[5][6]

The Debtors will provide to each Potential Bidder reasonable due diligence information, as requested, as soon as reasonably practicable after such request, provided that if any Potential Bidder is (or is affiliated with) a competitor of the Debtors, the Debtors will not be required to disclose to such Potential Bidder any trade secrets, proprietary information, or other commercially sensitive information unless, under the Debtors' business judgment in consultation with the Consultation Parties, the Confidentiality Agreement executed by such Potential Bidder (i) sufficiently protects the Debtors' estates, and (ii) contains appropriate provisions to ensure that such trade secrets or proprietary information will not be used by such Potential Bidder or its Affiliates for an improper purpose or to gain an unfair competitive advantage. Each Potential Bidder will comply with all reasonable requests for additional information and due diligence access by the Debtors or their advisors regarding such Potential Bidder and its contemplated transaction. If the Debtors, after consultation with the Consultation Parties, determine at any time in their reasonable discretion that a Potential Bidder is not reasonably likely to be a Qualified Bidder (as defined below), then the Debtors' obligation to provide due diligence information to such Potential Bidder will terminate and all information provided by the Debtors prior to such time shall be returned to the Debtors or destroyed in accordance with the terms of the applicable Confidentiality Agreement.

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5 In the event a Potential Bidder requests access to unredacted Agreements or licenses entered into between the Debtors and Johnson Matthey or the confidential or proprietary information of Johnson Matthey, the Potential Bidder will enter into a Confidentiality Agreement reasonably acceptable to Johnson Matthey, making Johnson Matthey a party to the agreement and giving Johnson Matthey rights to enforce the confidentiality obligations therein. All confidentiality agreements with Potential Bidders and information contained therein provided to Johnson Matthey shall be maintained as confidential by Johnson Matthey under the applicable written confidentiality agreement or other obligation between the Debtors and the Committee.

6 The Debtors shall include in the data room the objection filed by ThermoChem Recovery International, Inc. to the Bidding Procedures Motion (D.I. 91).

Bid Requirements

To be eligible to participate in the Auction, each Potential Bidder must submit a proposal to purchase the SH Acquired Assets, and to the extent applicable, the Expanded Assets or any subset of the SH Acquired Assets or Expanded Assets (a "Bid") to the Debtors' Professionals by November 4, 2024 at 5:00 p.m. (ET) (the "Bid Deadline") which must:

1) state that the applicable Potential Bidder offers (i) to purchase the SH Acquired Assets pursuant to a transaction that is no less favorable to the Debtors' estates as the Debtors, in consultation with the Consultation Parties, may reasonably determine, than the transactions contemplated in the Stalking Horse Agreement and to the extent applicable (ii) to purchase the Expanded Assets or any subset of the SH Acquired Assets or Expanded Assets in accordance with the Package Bid requirements described herein;

2) be accompanied by a deposit (each, a "Good Faith Deposit") in the form of a wire transfer or certified check or such other form acceptable to the Debtors in their sole discretion, payable to the order of the Debtors, in an amount equal to 10% of the cash portion of the Purchase Price being bid;

3) specify the amount of cash or other consideration offered by the Potential Bidder (the "Purchase Price"), which Purchase Price must include an amount of consideration at closing that exceeds the aggregate sum of the following: (i) the aggregate consideration set forth in the Stalking Horse Agreement, including the assumption of the Assumed Liabilities; (ii) the Break-Up Fee, and (iii) the minimum bid increment of $250,000 (such aggregate sum, the "Minimum Purchase Price"). For the avoidance of doubt, if a Bid includes the SH Acquired Assets, the Minimum Purchase Price must include cash consideration sufficient to pay, in full, in cash, the Payoff Amount (as defined in the Stalking Horse Purchase Agreement) and the Break-Up Fee from the proceeds of such Bid at the initial closing of the transaction;

4) be irrevocable by the Potential Bidder until the selection of the Successful Bid in accordance with the terms of these Bidding Procedures; provided that, other than a Bid submitted by the Stalking Horse Bidder, if such Potential Bidder is selected as the Successful Bidder or Back-Up Bidder and is required to be a Back-Up Bidder hereunder, its Bid must remain irrevocable until the Debtors' consummation of a sale with the Successful Bidder;

5) include an executed asset purchase agreement, together with all exhibits and schedules thereto, pursuant to which the Potential Bidder proposes to effectuate a proposed transaction at the Purchase Price (or in the case of the Stalking Horse Bidder, at the purchase price set forth in the Stalking Horse Agreement) (the "Transaction Documents"), which Transaction Documents must include a copy of the proposed

asset purchase agreement marked against the Stalking Horse Agreement to show all changes requested by the Potential Bidder including, but not limited to, treatment of any assumed liabilities;

6) include a list which specifies in detail which of the Debtors' unexpired leases and executory contracts are to be assumed by the Debtors and assigned to the Potential Bidder in connection with the consummation of the proposed transaction;

7) provide a commitment to close no later than November 15, 2024 (the "Closing");

8) not be conditioned on unperformed due diligence, obtaining financing or any internal approval or otherwise be subject to contingencies more burdensome than those in the Stalking Horse Agreement;

9) include (i) a description of all governmental, licensing, regulatory or other filings, approvals or consents that are required to be made or obtained to close the proposed transaction, together with evidence of the ability to make or obtain such filings, consents or approvals in a timely manner, as well as a description of any material contingencies or other conditions that will be imposed upon, or that will otherwise apply to, the making, obtainment or effectiveness of any such filings, consents or approvals and (ii) an estimated timeframe for making and/or obtaining any such required governmental, licensing, regulatory or other filings, approvals or consents;

10) contain written evidence of a commitment for financing or other evidence of the ability to consummate a proposed transaction at the Purchase Price (including sufficient financial or other information to establish adequate assurance of future performance pursuant to section 365(f)(2) of the Bankruptcy Code and, if applicable, section 365(b)(3) of the Bankruptcy Code to the non-Debtor counterparties to any executory contracts and unexpired leases to be assumed by the Debtors and assigned to the Potential Bidder in connection with the proposed transaction), satisfactory to the Debtors in their reasonable discretion after consultation with the Consultation Parties, with appropriate contact information for such financing sources;

11) contain written evidence satisfactory to the Debtors in their reasonable discretion after consultation with the Consultation Parties of authorization and approval from the Potential Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and consummation of such Bid and the transaction(s) contemplated therein and any Overbid(s) (as defined below), and related Transaction Documents;

12) not request or entitle the Potential Bidder to any break-up fee, termination fee, expense reimbursement or similar type of payment;

13) fully disclose the identity of each entity that will be bidding for the SH Acquired Assets, and to the extent applicable, the Expanded Assets, or any subset of the SH Acquired Assets or Expanded Assets or otherwise sponsoring, financing (including through the issuance of debt in connection with such Bid), participating in or benefiting from (including through license or similar arrangement with respect to the assets to be acquired in connection with such Bid) such Bid (a "Participating Party"), and the complete terms of any such sponsorship, participation, financing or benefit;

14) constitute a good faith, bona fide offer to effectuate the proposed transaction;

15) include a written acknowledgement by such Potential Bidder that it agrees to all of the terms for sale set forth in these Bidding Procedures;

16) include an agreement to provide any other information reasonably requested by the Debtors; and

17) be received by the Bid Deadline.

Once Bids are received and verified by the Debtors' Professionals, the Debtors will provide the Bids to the Consultation Parties.

Package Bid Requirements

If a Potential Bidder's Bid contemplates the purchase of the SH Acquired Assets and any assets of a Debtor other than Biofuels (a "Non-Biofuels Debtor") (such Non-Biofuels Debtor assets, the "Expanded Assets" and such Bid, a "Package Bid"), then the Package Bid must meet the following requirements:

1) In order for a Package Bid to be considered a Qualifying Bid (a "Qualified Package Bid"), a Package Bid must clearly meet the conditions for a Qualified Bid for the SH Acquired Assets (except as applied to the Expanded Assets and the Debtor that would sell such Expanded Assets), including without limitation that it sets forth (i) a Purchase Price in cash solely allocable to the SH Acquired Assets and that such allocation of the Purchase Price be equal to or greater than the Minimum Purchase Price and (ii) a Purchase Price solely allocable to the Expanded Assets.

2) The Package Bid should include a separate executed asset purchase agreement, together with all exhibits and schedules thereto, pursuant to which the Potential Bidder proposes to effectuate a proposed transaction to purchase such Expanded Assets, which documents shall constitute "Transaction Documents" for the purpose of such Package Bid.[7] For the avoidance of doubt, a Qualified Package Bid that includes a Bid for the SH Acquired Assets must include cash consideration sufficient to pay, in full, in cash, the Payoff Amount (as

[7] For the avoidance of doubt, a Package Bid will not be precluded from constituting a Qualified Package Bid solely as a result of such bid not containing a separate asset purchase agreement for the Expanded Assets.

defined in the Stalking Horse Purchase Agreement) and the Break-Up Fee from the proceeds of such Qualified Package Bid at the initial closing of the transaction.

If the Debtors have received any Package Bids, then no later than **November 5, 2024 at 11:59 p.m. (ET)**, the Debtors shall transmit to all Qualified Bidders (including all Qualified Bidders who submitted a Qualified Bid that was not a Package Bid) with complete copies of all Transaction Documents and all other bid materials submitted by each Qualified Bidder that submitted a Package Bid, subject to exclusion of any confidential financial information as determined by the Debtors in their reasonable discretion or which has been so designated by the applicable Qualified Bidder.

If an Auction is held then: (i) at any time during the Auction a Qualified Bidder submits an Overbid that constitutes a Package Bid, then such Overbid shall allocate at least $250,000 of the aggregate additional Purchase Price of such Overbid to the SH Acquired Assets, or (ii) the Baseline Bid constitutes a Package Bid, then every successive Overbid must constitute a Package Bid and shall allocate at least $250,000 of the aggregate additional Purchase Price of such Overbid to the SH Acquired Assets.

For the avoidance of doubt, consistent with these Bidding Procedures at the conclusion of any Auction the Debtors may (i) select a Successful Bid that is a Qualified Bid for only the SH Acquired Assets and a Back-Up Bid that is only for the SH Acquired Assets; (ii) select a Successful Bid and Back-Up Bid that are each a Package Bid, (iii) select a Successful Bid that is a Qualified Bid for only a subset of the SH Acquired Assets and a Back-Up Bid that is a Package Bid; or (iv) select a Successful Bid for the SH Acquired Assets and select a Successful Bid and Back-Up Bid that are for only the Expanded Assets.[8]

Designation as Qualified Bidder

A qualified bidder ("Qualified Bidder") is a Potential Bidder that, in the Debtors' reasonable determination after consultation with the Consultation Parties, (i) has timely submitted a Bid that satisfies each of the requirements listed above in the sections entitled "Bid Requirements" or "Package Bid Requirements," as applicable, (ii) is able to consummate the proposed transaction within the required timeframe if selected as the Successful Bidder (such Bid submitted by a Qualified Bidder, a "Qualified Bid"); provided that the Debtors reserve the right to work with any Potential Bidder to cure any deficiencies in a Bid that is not initially deemed a Qualified Bid. By **November 5, 2024 at 11:59 p.m. (ET)**, the Debtors will determine in their reasonable discretion after consultation with the Consultation Parties whether such Potential Bidder is a Qualified Bidder, and notify the Potential Bidder of such determination. For the avoidance of doubt, (i) the Stalking Horse Bidder is a Qualified Bidder, (ii) the Stalking Horse Agreement is a Qualified Bid, and (iii) the Stalking Horse Bidder is authorized to submit any Overbids (as defined below) during the Auction, in each instance without further qualification required of the Stalking Horse Bidder.

[8] In determining whether a standalone bid for Expanded Assets is higher or better, the Debtors, in consultation with the Consultation Parties, will consider the costs of marketing such assets, including how the proceeds of a bid for such assets should be allocated between the estates.

"As Is, Where Is"

Any sale or transfer of the SH Acquired Assets, and to the extent applicable, the Expanded Assets, or any subset of the SH Acquired Assets or Expanded Assets will be on an "as is, where is" basis and without representations or warranties of any kind by the Debtors, their agents or the Debtors' chapter 11 estates, except and solely to the extent expressly set forth in a final purchase agreement approved by the Court as the Successful Bid or as set forth in the Sale Order. Each Qualified Bidder will be required to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Debtors' assets that are the subject of the Auction prior to making its Bid and that it has relied solely upon its own independent review and investigation in making its Bid. Except as otherwise provided in a final purchase agreement approved by the Court as the Successful Bid or the Sale Order, all of the Debtors' right, title and interest in the SH Acquired Assets, and to the extent applicable, the Expanded Assets will be sold or transferred free and clear of all Encumbrances (other than Permitted Post-Closing Encumbrances) as proposed in the Stalking Horse Agreement, with any Encumbrances (other than Permitted Post-Closing Encumbrances) to attach to the proceeds of the sale of the SH Acquired Assets, and to the extent applicable, the Expanded Assets as provided in the proposed form of sale order attached to the Bidding Procedures Motion.

Credit Bidding

Any Qualified Bidder holding a perfected security interest in any of the SH Acquired Assets, and to the extent applicable, the Expanded Assets, may seek to credit bid all, or a portion of, such bidder's claims for its respective collateral subject to section 363(k) of the Bankruptcy Code (each such bid, a "Credit Bid"); *provided*, that such Credit Bid complies with these Bidding Procedures. For the avoidance of doubt, the Stalking Horse Bidder is authorized to Credit Bid the DIP Obligations.

Auction

Baseline Bid. Immediately upon the designation of the Qualified Bids and no later than **November 6, 2024 at 8:00 pm (ET)** the Debtors will (i) notify all Qualified Bidders and Notice Parties in writing of the highest or otherwise best Qualified Bid, as determined by the Debtors in their reasonable discretion after consultation with the Consultation Parties (the "Baseline Bid"), and (ii) provide all Qualified Bidders and Notice Parties with complete copies of all Transaction Documents and all other bid materials submitted by each other Qualified Bidder, subject to exclusion of any confidential financial information as determined by the Debtors in their reasonable discretion or which has been so designated by the applicable Qualified Bidder. The Debtors' determination of which Qualified Bid constitutes the Baseline Bid shall take into account factors such as the projected percentage recovery to general unsecured creditors pursuant to such Qualified Bid and the certainty of such recovery, whether all administrative, priority and secured claims will be paid in full under such Qualified Bid and any other factors the Debtors reasonably deem relevant to the value of the Qualified Bid to the estates. No later than **November 6, 2024 at 5:00 p.m. (ET)**, each Qualified Bidder that has timely submitted a Qualified Bid must inform the Debtors whether it intends to attend the Auction; provided that in the event a Qualified Bidder elects not to attend the Auction, such Qualified Bidder's Qualified Bid will nevertheless remain fully enforceable against such Qualified Bidder; *provided further* that the Stalking Horse Bidder will not be required to, but may, attend and participate at the Auction.

If no Qualified Bids (other than the Stalking Horse Bid) are received by the Bid Deadline, then the Auction shall be cancelled**,** the Stalking Horse Bidder will be deemed the Successful Bidder, the Stalking Horse Agreement will be the Successful Bid, and, at the Sale Hearing, the Debtors will seek final Court approval of the sale of the SH Acquired Assets to the Stalking Horse Bidder in accordance with the terms of the Stalking Horse Agreement.

Auction Date and Location. The Auction will commence on or before November 7, 2024 at 10:00 a.m. (Prevailing Eastern Time) at the offices of **Morris Nichols Arsht & Tunnell, LLP, 1201 N. Market Street, Wilmington, DE 19801**, or on such other date and/or at such other location as determined by the Debtors. The Debtors may determine that the Auction will be held virtually.

Participation Requirements. Only a Qualified Bidder that has submitted a Qualified Bid will be eligible to participate at the Auction. The authorized representatives of each of the Qualified Bidders (including the Stalking Horse Bidder), the Debtors, UMB, and the Committee will be permitted to attend the Auction. In addition, pursuant to Local Rule 6004-1, all creditors of the Debtors who have not submitted Bids may attend the Auction as observers, provided that they send an email to the undersigned counsel indicating that they intend to attend the Auction no less than one (1) Business Day prior to the Auction, *provided further* that the Debtors' right to object on an emergency basis to any such creditor's proposed attendance at the Auction is reserved.

Auction Procedures. The Debtors and the Debtors' Professionals will direct and preside over the Auction. At the start of the Auction, the Debtors will describe the terms of the Baseline Bid. All Bids made thereafter must be Overbids (as defined below) and will be made and received on an open basis, and all material terms of each Bid will be fully disclosed to all other Qualified Bidders. The Debtors will maintain a transcript of all Bids made and announced at the Auction, including the Baseline Bid, all Overbids, the Successful Bid and the Back-Up Bid. Each Qualified Bidder will be required to confirm on the record of the Auction that it has not engaged in any collusion with respect to the bidding or the sale of the SH Acquired Assets, and to the extent applicable, the Expanded Assets, or any subset of the SH Acquired Assets or Expanded Assets. The Debtors, in their reasonable discretion after consultation with the Consultation Parties, reserve the right to conduct the Auction in a manner designed to maximize value based upon the nature and extent of the Qualified Bids received.

During the Auction, bidding will begin initially with the Baseline Bid and subsequently continue in minimum increments of at least $250,000 (each, an "Overbid"). The Debtors will announce at the Auction the material terms of each Overbid, value each Overbid in accordance with these Bidding Procedures and provide each Qualified Bidder with an opportunity to make a subsequent Overbid. Additional consideration in excess of the amount set forth in the Baseline Bid may include cash and/or other consideration acceptable to the Debtors in accordance with these Bidding Procedures. To the extent that an Overbid has been accepted entirely or in part because of the addition, deletion, or modification of a provision or provisions in the applicable Transaction Documents or the Stalking Horse Agreement, the Debtors will provide notice to each participant of the value ascribed by the Debtors to any such added, deleted, or modified provision

or provisions, with such value being determined by the Debtors in their reasonable discretion after consultation with the Consultation Parties.[9]

Any Overbid made from time to time by a Qualified Bidder must remain open and binding on the Qualified Bidder until and unless (i) the Debtors accept a higher or otherwise better bid submitted by another Qualified Bidder during the Auction as an Overbid and (ii) such Overbid is not selected as the Back-Up Bid (as defined below). To the extent not previously provided (which will be determined by the Debtors), a Qualified Bidder submitting an Overbid must submit at the Debtors' request, as part of its Overbid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors) demonstrating such Qualified Bidder's ability to close the transaction at the purchase price contemplated by such Overbid.

Identification of Successful Bid and Back-Up Bid

At the conclusion of the Auction, the Debtors, in the exercise of their reasonable business judgment, in consultation with the Consultation Parties, will select (i) the highest or otherwise best bid submitted by a Qualified Bidder during the Auction that the Debtors believe is most beneficial to the Debtors (the "Successful Bid"), and (ii) at the Debtors' discretion, the next highest or otherwise best bid after the Successful Bid (the "Back-Up Bid"); *provided* that the Stalking Horse Bidder may only be selected as the Back-Up Bid on the condition that the Outside Date (as defined in the Stalking Horse Agreement) shall remain applicable. In selecting the Successful Bid and the Back-Up Bid, if any, the Debtors shall take into account the projected percentage recovery to general unsecured creditors and the certainty of such recovery and whether all administrative, priority and secured claims will be paid in full and may also consider, among other things: (i) the number, type and nature of any changes to the Stalking Horse Agreement which may delay closing of the contemplated transaction and the cost to the Debtors of such modifications or delay; (ii) the liabilities being assumed; (iii) the likelihood of the Qualified Bidder's ability to close its proposed transaction and the timing thereof; (iv) the expected net benefit of the transaction to the Debtors' estates and (v) any other factors the Debtors may reasonably deem relevant. The Qualified Bidder that submits the Successful Bid will be deemed the "Successful Bidder," and the purchase agreement with respect to such Successful Bid will be deemed the "Successful Bidder Purchase Agreement." The Qualified Bidder that submits the Back-Up Bid, if any, will be deemed the "Back-Up Bidder." The successful Bidder and Back-Up Bidder, following the completion of the Auction, must increase their Good Faith Deposits so that they equal 10% of such Successful Bid or Back-Up Bid, as applicable. For the avoidance of doubt, the Stalking Horse Bidder shall not be required to increase its Good Faith Deposit.

The Auction will close when the Debtors announce that the Auction has concluded and a Successful Bid and, to the extent the Debtors determine in consultation with the Consultation Parties, a Back-Up Bid, has been selected. Notwithstanding anything herein to the contrary, the Debtors are authorized, but not required, to select a Back-Up Bidder and a Back-Up Bid. For the avoidance of doubt, the Debtors will not consider or support any bid for any of the SH Acquired Assets, and to the extent applicable, the Expanded Assets, whether or not such bid is made by a Qualified Bidder, received after the close of the Auction.

[9] The Debtors may, upon consultation with the Consultation Parties, approve joint bids in their reasonable business judgment on a case-by-case basis.

The Back-Up Bid, if any, will remain open and binding on the Back-Up Bidder until consummation of the Successful Bid with the Successful Bidder. If the Successful Bidder fails to consummate the Successful Bid within the time set forth therein, the Debtors, in consultation with the Consultation Parties, will be authorized, but not required, to select the Back-Up Bidder, if any, as the new Successful Bidder, and shall proceed to consummate the Successful Bid of the new Successful Bidder.

Implementation of the Sale

The hearing to authorize the sale of the SH Acquired Assets, and to the extent applicable, the Expanded Assets or any subset of the SH Acquired Assets or Expanded Assets, to the Successful Bidder pursuant to the Successful Bid (the "Sale Hearing") will be held before the Court on November 12, 2024, at 2:00 p.m. (Prevailing Eastern Time). The Sale Hearing may be adjourned or rescheduled by the Debtors to a time and date consistent with the Court's calendar, as set forth in notice on the docket of the Cases, a notice of agenda or stated orally on the record at a hearing before the Court. Upon the Court's approval of the Successful Bid, the Successful Bid will be deemed accepted by the Debtors, and the Debtors will be bound to the terms of that Successful Bid with no further opportunity for an auction or other process.

If the Successful Bidder or the Back-Up Bidder (if the Successful Bidder fails to consummate the proposed transaction) fails to enter into an asset purchase agreement as promptly as practicable or consummate the proposed transaction consistent with the Successful Bid or Back-Up Bid (if applicable), because of a breach or failure to perform on the part of the Successful Bidder or Back-Up Bidder (if applicable), all parties in interest reserve the right to seek all available damages from the defaulting Successful Bidder or Back-Up Bidder (if applicable), including specific performance and retention of the Good Faith Deposit; *provided* that the foregoing shall not expand the available damages or other remedies available to be sought against the Stalking Horse Bidder, which shall be limited to such damages and remedies explicitly set forth in the Stalking Horse Agreement.

Consent to Jurisdiction as Condition to Bidding

All Qualified Bidders at the Auction will be deemed to have consented to the jurisdiction of the Court with respect to all matters relating to the Auction and waived any right to a jury trial in connection with any disputes relating to the Auction.

Return of Good Faith Deposit

All Good Faith Deposits will be held by the Debtors in a non-interest-bearing escrow or trust account. Good Faith Deposits of Qualified Bidders, other than the Successful Bidder and the Back-Up Bidder, if any, will be returned to the unsuccessful bidders within seven (7) days after selection of the Successful Bidder and Back-Up Bidder, if any, in accordance with these Bidding Procedures. The Successful Bidder's Good Faith Deposit will be applied to the Purchase Price of the Successful Bid at closing, and the Debtors will be entitled to retain such Good Faith Deposit as part of their damages if the Successful Bidder fails to meet its obligations to close the transaction contemplated by the Successful Bid. The Good Faith Deposit of the Back-Up Bidder, if any, will be returned to the Back-Up Bidder, if any, within seven (7) days after the consummation of the sale with the Successful Bidder.

Reservation of Rights

The Debtors reserve the right, after consultation with the Consultation Parties, in their reasonable discretion and subject to the exercise of their business judgment, to alter or modify any Auction rules or procedures, to waive terms and conditions set forth herein with respect to all potential bidders, extend the deadlines set forth herein, alter the assumptions set forth herein, and/or to terminate discussions with any and all prospective acquirers and investors at any time and without specifying the reasons therefor, in each case to the extent not materially inconsistent with these Bidding Procedures, the Bidding Procedures Order and the Stalking Horse Agreement; provided that the Debtors shall only be permitted to modify or amend the terms of any Stalking Horse Agreement in accordance with the applicable Stalking Horse Agreement. Notwithstanding the foregoing, the Debtors may not alter or modify any provisions that permit a Qualified Package Bid if it does not include cash consideration sufficient to pay, in full, in cash, the Payoff Amount (as defined in the Stalking Horse Purchase Agreement) from the proceeds of such bid at the initial closing of the transaction absent the written consent of the Stalking Horse Bidder. Additionally, if the Debtors select a Bid for Expanded Assets as the Successful Bid or Back-Up Bid, the Debtors reserve the right to seek a surcharge under 506(c) of the Bankruptcy Code for the reasonable and necessary costs and expenses of preserving or disposing of such Expanded Assets.

EXHIBIT 2 To Bidding Procedures Order

Cure Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
FULCRUM BIOENERGY, INC., *et al.*,	Case No. 24-12008 (TMH)
Debtors.[1]	(Jointly Administered)

NOTICE OF (I) POSSIBLE TREATMENT OF CONTRACTS AND LEASES, (II) FIXING OF CURE AMOUNTS, AND (III) DEADLINE TO OBJECT THERETO

PLEASE TAKE NOTICE that, on September 11, 2024, the above-captioned debtors and debtors in possession (the "Debtors") filed the *Debtors' Motion for (I) an Order Pursuant to Sections 105, 363, 364, 365 and 541 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9007 and Del. Bankr. L.R. 2002-1 and 6004-1 (A) Approving Bidding Procedures and Bid Protections for the Sale of Substantially All of the Debtors' Assets; (B) Approving the Debtors' Entry Into Stalking Horse Agreement and Related Bid Protections; (C) Approving Procedures for the Assumption and Assignment or Rejection of Designated Executory Contracts and Unexpired Leases; (D) Scheduling an Auction and Sale Hearing; (E) Approving Forms and Manner of Notice of Respective Dates, Times, and Places In Connection Therewith; and (F) Granting Related Relief; (II) an Order (A) Approving the Sale of the Debtors' Assets Free and Clear of Claims, Liens, and Encumbrances; and (B) Approving the Assumption and Assignment or Rejection of Designated Executory Contracts and Unexpired Leases; and (III) Certain Related*

[1] The Debtors and Debtors in possession in these chapter 11 cases, along with each debtor's federal tax identification numbers are: Fulcrum BioEnergy, Inc. (3733); Fulcrum Sierra BioFuels, LLC (1833); Fulcrum Sierra Finance Company, LLC (4287); and Fulcrum Sierra Holdings, LLC (8498). The location of the Debtors' service address is: Fulcrum BioEnergy Inc., P.O. Box 220 Pleasanton, CA 94566. All Court filings can be accessed at: https://www.veritaglobal.net/Fulcrum.

Relief D.I. 12 (the "Bidding Procedures Motion")[2], 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 (the "Sale") of the SH Acquired Assets, and to the extent applicable, the Expanded Assets (each as defined in the Bidding Procedures Motion) free and clear of all liens, claims, encumbrances, and other interests (other than Permitted Post-Closing Encumbrances), with all such liens, claims, encumbrances, and other interests attaching with the same validity and priority to the Sale proceeds, to Switch, Ltd. (the "Stalking Horse Bidder"), except as set forth in the Stalking Horse Agreement and subject to higher or otherwise better offers; and (b) certain procedures for the assumption and assignment of executory contracts (the "Contracts") and unexpired leases (the "Leases") in connection with the Sale.

PLEASE TAKE FURTHER NOTICE that, on October [•], 2024, the Court entered an order [D.I. •] (the "Bidding Procedures Order"), granting certain of the relief sought in the Bidding Procedures Motion, including, among other things, approving: (a) the bidding procedures (the "Bidding Procedures") for the Sale of the SH Acquired Assets, and to the extent applicable, the Expanded Assets or any subset of the SH Acquired Assets or Expanded Assets; and (b) procedures for the designation of the assumption and assignment of the Contracts and Leases.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Bidding Procedures Order, a hearing will be held before the Honorable Thomas M. Horan, United States Bankruptcy Judge, on **November 12, 2024, at 2:00 p.m. (Prevailing Eastern Time)**, in Courtroom **7** of the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801 to consider approval of the Sale (the "Sale Hearing"). The Sale

[2] Capitalized terms not defined are defined in the Bidding Procedures Motion, Bidding Procedures Order, or Bidding Procedures

Hearing may be rescheduled or continued from time to time without further notice other than the announcement of the adjourned date(s) at the Sale Hearing or any continued hearing or on the applicable hearing agenda or other notice filed on the docket of these chapter 11 cases.

PLEASE TAKE FURTHER NOTICE that you are receiving this notice (the "Cure Notice") because you or one of your affiliates may be a counterparty to one or more of the Contracts and Leases with one or more of the Debtors as set forth on Exhibit A attached hereto (the "Contract and Lease Schedule").[3] If the Court enters the Sale Order, the Debtors may assume and assign to the Stalking Horse Bidder (or to another Successful Bidder selected at the Auction, if any) or reject the Contract and/or Lease listed on the Contract and Lease Schedule, to which you are a counterparty, either as of the date of Closing or a later date pursuant to the Stalking Horse Agreement or the Successful Bidder Purchase Agreement, as applicable.

PLEASE TAKE FURTHER NOTICE that the Debtors have determined that the cure amounts necessary to cure all defaults, if any, and to pay all actual or pecuniary losses that have resulted from such defaults under the Contracts and Leases (the "Cure Amounts") are in the total amount as set forth on the Contract and Lease Schedule attached hereto as **Exhibit A**.

PLEASE TAKE FURTHER NOTICE that if you disagree with the proposed Cure Amounts, object to the ability of the Debtors to provide adequate assurance of future performance with respect to the Contract or Lease, or otherwise object to the potential assumption and assignment of the Contract or Lease to the Stalking Horse Bidder or other Successful Bidder,

[3] This Cure Notice is being sent to counterparties to contracts and leases that may be executory contracts and unexpired leases. This Cure Notice is not an admission by the Debtors that such contract or lease is executory or unexpired.

as applicable, you must file with the Court and serve an objection (an "Objection") on the following parties so as to be actually received before **4:00 p.m. (prevailing Eastern Time) on October [•], 2024** (the "Cure Notice Objection Deadline"): (a) the Debtors, P.O. Box 220 Pleasanton, CA 94566, Attn: Mark Smith; (b) proposed counsel to the Debtors, Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street. 16th Floor, P.O. Box 1347, Wilmington, DE 19899-1347, Attn: Robert J. Dehney Sr. (rdehney@morrisnichols.com); Curtis S. Miller (cmiller@morrisnichols.com); Daniel B. Butz (dbutz@morrisnichols.com); Clint M. Carlisle (ccarlisle@morrisnichols.com); Avery Jue Meng (ameng@morrisnichols.com); (c) the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"): 844 King Street, Room 2207, Wilmington, Delaware 19801, Attn: Rosa Sierra-Fox (rosa.sierra-fox@usdoj.gov); (d) counsel to the Committee: (i) Eversheds Sutherland (US) LLP, The Grace Building, 40th Floor, 1114 Avenue of the Americas, New York, NY 10036, Attn: Todd C. Meyers (ToddMeyers@eversheds-sutherland.com), Jennifer B. Kimble (JenniferKimble@eversheds-sutherland.com), Eversheds Sutherland (US) LLP, 999 Peachtree Street NE, Suite 2300, Atlanta, GA 30309, Attn: Todd C. Meyers (toddmeyers@eversheds-sutherland.com) and (ii) Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, DE 19801, Attn: Jeffrey R. Waxman (jwaxman@morrisjames.com), Eric J. Monzo (emonzo@morrisjames.com); (e) counsel to Switch, Ltd.: (i) Latham & Watkins LLP, 1271 Avenue of the Americas, New York, NY 10020, Attn: Adam Goldberg (Adam.Goldberg@lw.com) and Brian S. Rosen (Brian.Rosen@lw.com) and (ii) Richards, Layton & Finger, P.A., 920 N. King Street, Wilmington, DE 19801, Attn: Michael J. Merchant (Merchant@RLF.com); and (f) counsel to UMB Bank, N.A.: (A) Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, NY 10065, Attn: Alexander Woolverton (awoolverton@kramerlevin.com); Douglas Buckley (dbuckley@kramerlevin.com),

and (B) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Andrew Magaziner (amagaziner@ycst.com). All Objections must: (i) be in writing; (ii) comply with the applicable provisions of the Bankruptcy Rules, Local Rules and any orders of the Court; and (iii) state with specificity the nature of the objection and, if the objection pertains to the Cure Amount, the correct cure amount alleged by the objecting counterparty, together with any applicable and appropriate documentation in support thereof.

PLEASE TAKE FURTHER NOTICE that if and only if the Stalking Horse Bidder is **not** the Successful Bidder, counterparties to the Contracts and Leases shall have until **the Sale Hearing** to object to the assumption and assignment of the Contracts and Leases **solely** on the issue of whether the Successful Bidder can provide adequate assurance of further performance as required by section 365 of the Bankruptcy Court. For the avoidance of doubt, if the Stalking Horse Bidder is the Successful Bidder, all adequate assurance Objections must be filed by the Cure Notice Objection Deadline.

PLEASE TAKE FURTHER NOTICE that any party that fails to timely file an Objection shall be deemed to have consented to the assumption and assignment of the Contract or Lease to the Stalking Horse Bidder or Successful Bidder, as applicable, and the Cure Amounts proposed by the Debtors in this Cure Notice, and shall be forever enjoined and barred from seeking any additional amount(s) on account of the Debtors' cure obligations under section 365 of the Bankruptcy Code or otherwise from the Debtors or their estates (except, to the extent applicable, with respect to matters arising after the Closing and that are not otherwise paid in the ordinary course).

PLEASE TAKE FURTHER NOTICE that any objection to the proposed assumption and assignment or related cure of a Contract or Lease in connection with the Sale that

remains unresolved as of the Sale Hearing shall be heard at the Sale Hearing (or at a later date as fixed by the Court) provided that any such objection may be adjourned, in full or in part, by the Debtors to a later date by listing such adjournment in a notice of agenda or other notice filed on the docket of the cases and served on the affected counterparty.

PLEASE TAKE FURTHER NOTICE that the Debtors hereby reserve all rights to amend, revise or supplement any documents relating to the Sale and/or to be executed, delivered, assumed and/or performed in connection with the Sale or the Stalking Horse Agreement or Successful Bidder Purchase Agreement, as applicable, including the Contract and Lease Schedule.

PLEASE TAKE FURTHER NOTICE that notwithstanding anything herein, this Cure Notice shall not be deemed to be an assumption, rejection, or termination of any of the Contracts and Leases. Moreover, the Debtors explicitly reserve their rights to reject or assume any of the Contracts and Leases pursuant to section 365(a) of the Bankruptcy Code and nothing herein (a) alters in any way the prepetition nature of the Contracts and Leases or the validity, priority, or amount of any claims of counterparties to the Contracts and Leases against the Debtors that may arise under such Contracts and Leases, (b) creates a postpetition contract or agreement, or (c) elevates to administrative expense priority any claims of counterparties to the Contracts and Leases against the Debtors that may arise under such Contracts and Leases.

PLEASE TAKE FURTHER NOTICE that copies of the Bidding Procedures Motion (and all exhibits thereto), the Bidding Procedures Order, the Bidding Procedures, and proposed Sale Order (and all exhibits thereto) are available for review free of charge by accessing https://www.veritaglobal.net/Fulcrum.

Dated: October[•], 2024
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Draft

Robert J. Dehney, Sr. (No. 3578)
Curtis S. Miller (No. 4583)
Daniel B. Butz (No. 4227)
Clint M. Carlisle (No. 7313)
Avery Jue Meng (No. 7238)
1201 N. Market Street, 16th Floor
P.O. Box 1347
Wilmington, Delaware 19899-1347
Telephone: (302) 658-9200
Facsimile: (302) 658-3989
Email: rdehney@morrisnichols.com
cmiller@morrisnichols.com
dbutz@morrisnichols.com
ccarlisle@morrisnichols.com
ameng@morrisnichols.com

Proposed Counsel to the Debtors and Debtors in Possession

EXHIBIT 3 To Bidding Procedures Order

Sale Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
FULCRUM BIOENERGY, INC., *et al.*,	Case No. 24-12008 (TMH)
Debtors.[1]	(Jointly Administered)

NOTICE OF SALE, BIDDING PROCEDURES, AUCTION AND SALE HEARING

PLEASE TAKE NOTICE that, on September 11, 2024, the above-captioned debtors and debtors in possession (the "Debtors") filed the *Debtors' Motion for (I) an Order Pursuant to Sections 105, 363, 364, 365 and 541 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9007 and Del. Bankr. L.R. 2002-1 and 6004-1 (A) Approving Bidding Procedures for the Sale of Substantially All Assets of Debtors; (B) Approving the Debtors' Entry Into the Stalking Horse Agreement and Related Bid Protections; (C) Approving Procedures for the Assumption and Assignment or Rejection of Designated Executory Contracts and Unexpired Leases; (D) Scheduling the Auction and Sale Hearing; (E) Approving Forms and Manner of Notice of Respective Dates, Times, and Places In Connection Therewith; and (F) Granting Related Relief; (II) an Order (A) Approving the Sale of the Debtors' Assets Free and Clear of Claims, Liens, and Encumbrances; (B) Approving the Assumption and Assignment or Rejection of Designated Executory Contracts and Unexpired Leases; and (III) Certain Related Relief* [D.I. 12] (the "Bidding Procedures Motion")[2], with the United States Bankruptcy Court for the District of

[1] The Debtors and Debtors in possession in these chapter 11 cases, along with each debtor's federal tax identification numbers are: Fulcrum BioEnergy, Inc. (3733); Fulcrum Sierra BioFuels, LLC (1833); Fulcrum Sierra Finance Company, LLC (4287); and Fulcrum Sierra Holdings, LLC (8498). The location of the Debtors' service address is: Fulcrum BioEnergy Inc., P.O. Box 220 Pleasanton, CA 94566. All Court filings can be accessed at: https://www.veritaglobal.net/Fulcrum.

[2] Capitalized terms not defined herein are defined in the Bidding Procedures Motion or Bidding Procedures.

Delaware (the "Court"), seeking, among other things, entry of an order (the "Sale Order") authorizing and approving: (a) the sale (the "Sale") of certain assets (the "SH Acquired Assets"), to Switch, Ltd. (the "Stalking Horse Bidder"), except as set forth in the Stalking Horse Agreement and subject to higher or otherwise better offers; and (b) certain procedures for the assumption and assignment of executory contracts (the "Contracts") and unexpired leases (the "Leases") in connection with the Sale.

PLEASE TAKE FURTHER NOTICE THAT THE DEBTORS ARE PROPOSING TO SELL THE SH ACQUIRED ASSETS, AND TO THE EXTENT APPLICABLE, THE EXPANDED ASSETS OR ANY SUBSET OF THE SH ACQUIRED ASSETS OR EXPANDED ASSETS, FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS (OTHER THAN PERMITTED POST-CLOSING ENCUMBRANCES). IN CONNECTION WITH THE SALE, THE STALKING HORSE BIDDER AND/OR OTHER SUCCESSFUL BIDDERS OR BACKUP BIDDERS WILL ALSO BE SEEKING A FINDING FROM THE COURT THAT THEY ARE NOT LIABLE UNDER THEORIES OF "SUCCESSOR LIABILITY" FOR ANY LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS ARISING BEFORE THE DATE OF CLOSING.

PLEASE TAKE FURTHER NOTICE THAT ANY PARTY OR ENTITY WHO FAILS TO TIMELY MAKE AN OBJECTION TO THE SALE 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, AND THE ABSENCE OF SUCCESSOR LIABILITY.

PLEASE TAKE FURTHER NOTICE that the Debtors are soliciting offers for the purchase of the SH Acquired Assets, and to the extent applicable, the Expanded Assets or any subset of the SH Acquired Assets or Expanded Assets, and assumption of the Assumed Liabilities (as defined in the Stalking Horse Agreement) of the Debtors consistent with the bidding procedures (the "Bidding Procedures") approved by the Court by entry of an order on October [9], 2024 [D.I. •] (the "Bidding Procedures Order"). The deadline for each Potential Bidder to submit a proposal to purchase the SH Acquired Assets, and to the extent applicable, the Expanded Assets or any subset of the SH Acquired Assets or Expanded Assets, is **November 4, 2024 at 5:00 p.m. (Prevailing Eastern Time)** (the "Bid Deadline"). **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.

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 SH Acquired Assets, and to the extent applicable, the Expanded Assets or any subset of the SH Acquired Assets or Expanded Assets, on **November 7, 2024 at 10:00 a.m. (prevailing Eastern Time)** at the offices of **Morris Nichols Arsht & Tunnell LLP, 1201 North Market Street, Wilmington, DE 19801** (or virtually, or at any other location as the Debtors may hereafter provide notice of in accordance with the Bidding Procedures and Bidding Procedures Order).

PLEASE TAKE FURTHER NOTICE that, pursuant to the Bidding Procedures Order, a hearing will be held before the Honorable Thomas M. Horan, United States Bankruptcy Judge, on **November 12, 2024 at 2:00 p.m. (prevailing Eastern Time)**, in Courtroom 7 of the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801, to consider approval of the Sale (the "Sale Hearing"). The Sale Hearing may be rescheduled or continued from time to time without further notice other than the announcement of the adjourned date(s) at the Sale Hearing or any continued hearing or on the applicable hearing agenda or other notice filed on the docket of these chapter 11 cases.

2. **PLEASE TAKE FURTHER NOTICE** that, except as otherwise set forth in the Bidding Procedures or Stalking Horse Agreement with respect to (i) matters arising under Contracts and Leases following the Closing or (ii) the assignment of Contracts and Leases to parties other than the Stalking Horse Bidder, the deadline to file objections, if any, to the transactions contemplated by the Stalking Horse Agreement or to entry of the Sale Order is **October 25, 2024 at 4:00 p.m. (Prevailing Eastern Time);** *provided* that an objection to the Sale of the Expanded Assets, including any Expanded Assets consisting of intellectual property, may be filed up to and including the Sale Hearing (the "Sale Objection Deadline"). Objections, other than those that may be properly raised at the Sale Hearing, **must**: (i) be in writing, (ii) conform to the applicable provisions of the Bankruptcy Rules, the Local Rules and any orders of the Court, (iii) state with particularity the legal and factual basis for the objection and the specific grounds therefor and (iv) be filed with the Court and served so as to be actually received no later than the Sale Objection Deadline by the following parties: (a) the Debtors, P.O. Box 220 Pleasanton, CA 94566, Attn: Mark Smith; (b) proposed counsel to the Debtors, Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street. 16th Floor, P.O. Box 1347, Wilmington, DE 19899-1347, Attn:

Robert J. Dehney Sr. (rdehney@morrisnichols.com); Curtis S. Miller (cmiller@morrisnichols.com); Daniel B. Butz (dbutz@morrisnichols.com); Clint M. Carlisle (ccarlisle@morrisnichols.com); Avery Jue Meng (ameng@morrisnichols.com); (c) the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"): 844 King Street, Room 2207, Wilmington, Delaware 19801, Attn: Rosa Sierra-Fox (rosa.sierra-fox@usdoj.gov); (d) counsel to the Committee: (i) Eversheds Sutherland (US) LLP, The Grace Building, 40th Floor, 1114 Avenue of the Americas, New York, NY 10036, Attn: Todd C. Meyers (ToddMeyers@eversheds-sutherland.com), Jennifer B. Kimble (JenniferKimble@eversheds-sutherland.com), Eversheds Sutherland (US), LLP, 999 Peachtree St NE, Suite 2300, Atlanta, GA 30309, Attn: Todd C. Meyers (toddmeyers@eversheds-sutherland.com) and (ii) Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, DE 19801, Attn: Jeffrey R. Waxman (jwaxman@morrisjames.com), Eric J. Monzo (emonzo@morrisjames.com); (e) counsel to Switch, Ltd.: (i) Latham & Watkins LLP, 1271 Avenue of the Americas, New York, NY 10020, Attn: Brian S. Rosen (Brian.Rosen@lw.com) and Adam Goldberg (Adam.Goldberg@lw.com) and (ii) Richards Layton & Finger, P.A., 920 N. King Street, Wilmington, DE 19801, Attn: Michael J. Merchant (Merchant@RLF.com); (f) counsel to UMB Bank, N.A.: (i) Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, NY 10065, Attn: Alexander Woolverton (awoolverton@kramerlevin.com); Douglas Buckley (dbuckley@kramerlevin.com), and (ii) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Andrew Magaziner (amagaziner@ycst.com); and (g) counsel to PCL Administration LLC: Katten Muchin Rosenman LLP, 525 West Monroe Street, Chicago, Illinois 60661, Attn: Steven J. Reisman (sreisman@katten.com); Peter P. Knight (peter.knight@katten.com); and Joshua M. Altman, (josh.altman@katten.com), and (ii) Klehr

Harrison Harvey Branzburg LLP, 919 N. Market Street, Suite 1000, Wilmington, DE 19801, Attn: Domenic Pacitti (DPacitti@klehr.com).

PLEASE TAKE FURTHER NOTICE that copies of the Bidding Procedures Motion (and all exhibits thereto), the Bidding Procedures Order, the Bidding Procedures, and proposed Sale Order (and all exhibits thereto) are available for review free of charge by accessing https://www.veritaglobal.net/Fulcrum.

PLEASE TAKE FURTHER NOTICE that, in accordance with the Bidding Procedures Order, a separate notice will be provided to the counterparties to executory contracts and unexpired leases that may be assumed and assigned in connection with the Sale.

Dated: October [•], 2024
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Draft

Robert J. Dehney, Sr. (No. 3578)
Curtis S. Miller (No. 4583)
Daniel B. Butz (No. 4227)
Clint M. Carlisle (No. 7313)
Avery Jue Meng (No. 7238)
1201 N. Market Street, 16th Floor
P.O. Box 1347
Wilmington, Delaware 19899-1347
Telephone: (302) 658-9200
Facsimile: (302) 658-3989
Email: rdehney@morrisnichols.com
cmiller@morrisnichols.com
dbutz@morrisnichols.com
ccarlisle@morrisnichols.com
ameng@morrisnichols.com

Proposed Counsel to the Debtors and Debtors in Possession

Exhibit B

Redline

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
FULCRUM BIOENERGY, INC., *et al.*,	Case No. 24-12008 (TMH)
Debtors.[1]	(Jointly Administered)

ORDER PURSUANT TO SECTIONS 105, 363, 364, 365 AND 541 OF THE BANKRUPTCY CODE, BANKRUPTCY RULES 2002, 6004, 6006 AND 9007 AND DEL. BANKR. L.R. 2002-1 AND 6004-1 (A) APPROVING BIDDING PROCEDURES FOR THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS; (B) APPROVING THE DEBTORS' ENTRY INTO STALKING HORSE AGREEMENT AND RELATED BID PROTECTIONS; (C) APPROVING PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OR REJECTION OF DESIGNATED EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (D) SCHEDULING AN AUCTION AND SALE HEARING; (E) APPROVING FORMS AND MANNER OF NOTICE OF RESPECTIVE DATES, TIMES, AND PLACES IN CONNECTION THEREWITH; AND (F) GRANTING RELATED RELIEF

Upon the motion (the "Motion")[2] of the debtors and debtors in possession (the "Debtors") in the above-captioned jointly administered chapter 11 cases, for entry of an order, pursuant to sections 105(a), 363, 365, 503 and 507 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and 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"), (i) authorizing and approving certain proposed bidding procedures (as attached hereto as

[1] The Debtors and Debtors in possession in these chapter 11 cases, along with each debtor's federal tax identification numbers are: Fulcrum BioEnergy, Inc. (3733); Fulcrum Sierra BioFuels, LLC (1833); Fulcrum Sierra Finance Company, LLC (4287); and Fulcrum Sierra Holdings, LLC (8498). The location of the Debtors' service address is: Fulcrum BioEnergy Inc., P.O. Box 220 Pleasanton, CA 94566. All Court filings can be accessed at: https://www.veritaglobal.net/Fulcrum.

[2] Capitalized terms not defined herein are defined in the Motion.

Exhibit 1, the "Bidding Procedures") governing the submission of competing proposals to purchase the SH Acquired Assets, and to the extent applicable, the Expanded Assets (each as defined below) (the "Sale") pursuant to section 363 of the Bankruptcy Code, authorizing and approving the Debtors' entry into (but not consummation of) the Asset Purchase Agreement (substantially in the form attached to the Motion as **Exhibit B** and, together with all exhibits and schedules thereto, the "Stalking Horse Agreement"), by and among the Debtors and Switch, Ltd. ("Switch" or the "Stalking Horse Bidder"), pursuant to which the Debtors have agreed to sell the SH Acquired Assets to the Stalking Horse Bidder, subject to the terms and conditions contained in the Stalking Horse Agreement, (iii) approving the form and manner of notice of the Sale (the "Sale Notice"), (iv) scheduling a hearing for approval of the Sale (the "Sale Hearing") and setting other related dates and deadlines and (v) approving procedures for the assumption and assignment of the Debtors' executory contracts (the "Contracts") and unexpired leases (the "Leases") and the form of and manner of notice of proposed cure amounts; and the Court having reviewed the Motion and the First Day Declaration; and it appearing that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors and all other parties in interest; and after due deliberation, and good and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:

A. This Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012.

B. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution. Venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. The statutory and legal predicates for the relief requested in the Motion and provided for herein are sections 105(a), 363, 365, 503 and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004 and 6006, and Local Rule 6004-1.

D. Good and sufficient notice of the relief granted by this Order has been given and no further notice is required. A reasonable opportunity to object or be heard regarding the relief granted by this Order has been afforded to those parties entitled to notice pursuant to Local Rule 2002-1(b) and all other interested parties.

E. The Debtors have provided evidence (through testimony or otherwise) demonstrating good and sufficient reasons for the Court to approve the Bidding Procedures. Such good and sufficient reasons were set forth in the Motion, are incorporated by reference herein, and, among other things, form the basis for the findings of fact and conclusions of law set forth herein.

F. The Bidding Procedures are fair, reasonable and appropriate and are designed to maximize the value to be received by the Debtors' estates and creditors. The Bidding Procedures and all such steps and expenses incurred by the Debtors in connection with the implementation of the Bidding Procedures and this Order shall be deemed reasonable and appropriate and within the sound business judgment of the Debtors pursuant to section 363(b) of the Bankruptcy Code.

G. The Stalking Horse Agreement was entered into in good faith by the Debtors and the Stalking Horse Bidder, and is the result of a good faith, arms-length negotiation between the parties that are each represented by sophisticated legal counsel.

H. The Debtors have demonstrated compelling and sound business justifications for entering into the Stalking Horse Agreement and incurring the `administrative obligations arising thereunder or in connection therewith, and the timing and procedures set forth therein.

I. The sale of the SH Acquired Assets as contemplated in the Stalking Horse Agreement is in the best interests of the Debtors' estates, their creditors and all other parties in interest, and represents a reasonable exercise of the Debtors' sound business judgment.

J. The Sale Notice, substantially in the form attached hereto as **Exhibit 3**, is reasonably calculated to provide all interested parties with timely and proper notice of the proposed sale, including: (i) the date, time and place of the Auction (if one is held), (ii) the Bidding Procedures and certain dates and deadlines related thereto, (iii) the objection deadline for the Sale and the date, time and place of the Sale Hearing, (iv) reasonably specific identification of the assets subject to the proposed sale, (v) instructions for promptly obtaining a copy of the Stalking Horse Agreement, (vi) representations describing the proposed sale as being free and clear of liens, claims, interests and other encumbrances, with all such liens, claims, interests and other encumbrances attaching with the same validity and priority to the sale proceeds, (vii) the commitment by the Stalking Horse Bidder to assume certain liabilities of the Debtors and (viii) notice of the proposed assumption and assignment of Contracts and Leases to either an affiliate of the Stalking Horse Bidder or an affiliate of any designee of the Stalking

Horse Bidder (such party, the "Contract Party") pursuant to the Stalking Horse Agreement (or to another Successful Bidder selected at the Auction, if any) and the procedures and deadlines for objecting thereto. No other or further notice of the proposed Sale shall be required.

K. The Cure Notice attached hereto as **Exhibit 2** is reasonably calculated to provide all non-Debtor counterparties to the Debtors' Contracts and Leases with proper notice of the potential assumption and assignment of their Contract or Lease, the proposed cure amounts relating thereto and the related assumption and assignment procedures; provided that the mere listing of any Contract or Lease on the Cure Notice does not require or guarantee that such Contract or Lease will be assumed and assigned, and all rights of the Debtors with respect to such Contracts and Leases are reserved.

L. The Bidding Procedures comply with the requirements of Local Rule 6004-1.

M. Entry of this Order is in the best interests of the Debtors' estates, their creditors and all other interested parties.

N. To the extent payable under this Order and in accordance with the Stalking Horse Agreement, the Bid Protections: (i)(a) are actual and necessary costs of preserving the Debtors' estates within the meaning of section 503(b) of the Bankruptcy Code and (b) shall be treated as an allowed administrative expense claim against the Debtors' estates pursuant to sections 105(a), 503(b), and 507(a)(2) of the Bankruptcy Code; (ii) are commensurate to the real and material benefits conferred upon the Debtors' estates by the Stalking Horse Bidder; (iii) are reasonably tailored to encourage, rather than hamper, bidding for the Assets, by providing a baseline of value, increasing the likelihood of competitive bidding at the Auction, and facilitating

participation of other bidders in the sale process, thereby increasing the likelihood that the Debtors will receive the best possible price and terms for the Assets; (iv) are a material inducement for, and condition necessary to, ensure that the Stalking Horse Bidder will continue to pursue the transaction contemplated by the Stalking Horse Agreement; and (v) are reasonable in relation to the Stalking Horse Bidder's efforts and to the magnitude of the proposed transaction and the Stalking Horse Bidder's lost opportunities resulting from the time spent pursuing such transaction. Unless it is assured that the Bid Protections are available, the Stalking Horse Bidder is unwilling to remain obligated to consummate the transaction or otherwise be bound by the Stalking Horse Agreement.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is hereby **GRANTED** as set forth herein.

2. All objections filed, if any, in response to the Motion or the relief requested therein that have not been withdrawn, waived, settled, or specifically addressed in this Order, and all reservations of rights included in such objections, are specifically overruled in all respects on the merits.

The Bidding Procedures

3. The Bidding Procedures, attached hereto as **Exhibit 1**, are approved, and the Debtors are authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures. To the extent of any conflict between the Bidding Procedures and this Order, the Bidding Procedures shall govern.

4. The Bidding Procedures shall govern the submission, receipt and analysis of all Bids, and any party desiring to submit a higher or better offer shall do so strictly in accordance

with the terms of this Order and the Bidding Procedures.

5. The following dates and deadlines regarding competitive bidding are hereby established (subject to modification in accordance with the Bidding Procedures):

a. **Bid Deadline**: ~~**October 25**~~**November 4, 2024 at ~~4:00 p.m~~5:00 p.m. (Prevailing Eastern Time)** is the deadline by which all Qualified Bids must be actually received by the parties specified in the Bidding Procedures (the "Bid Deadline").

b. **Auction**: **November ~~1~~7, 2024 at 10:00 a.m. (Prevailing Eastern Time)** is the date and time of the Auction, if one is needed, which will be held at the offices of Morris Nichols Arsht & Tunnell LLP 1201 North Market Street, Wilmington, DE 19801; *provided, however*, that the Debtors, in their discretion, shall have the right to hold the Auction at another place or virtually, with instructions for Qualified Bidders to participate to be provided prior to the Auction, with notice to all Qualified Bidders, the Consultation Parties and any other invitees.

6. Only a Qualified Bidder that has submitted a Qualified Bid by the Bid Deadline will be eligible to participate at the Auction. As described in the Bidding Procedures, if the Debtors do not receive any Qualified Bids other than from the Stalking Horse Bidder, the Debtors will not hold the Auction, the Stalking Horse Bidder will be named the Successful Bidder, and the Debtors will seek final approval at the Sale Hearing of the sale of the SH Acquired Assets to the Stalking Horse Bidder, in accordance with the terms of the Stalking Horse Agreement.

7. If the Auction is conducted, (i) each Qualified Bidder participating in the Auction shall be required to confirm that it has not engaged in any collusion with respect to the bidding process or the sale, (ii) each Qualified Bidder participating in the Auction shall be required to confirm that its Qualified Bid is a good faith, bona fide offer and it intends to consummate the proposed transaction if selected as the Successful Bidder, or if selected as the Back-Up Bidder in the event the Successful Bidder does not consummate the proposed transaction, and (iii) the Auction shall be conducted openly and shall be transcribed or videotaped.

Approval of Debtors' Entry into the Stalking Horse Agreement

8. The Debtors are hereby authorized to designate Switch, Ltd., together with any designated affiliate thereof, as the stalking horse bidder (the "Stalking Horse Bidder").

9. The Debtors are authorized, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, to enter into and perform under the Stalking Horse Agreement, subject to the solicitation of higher or otherwise better offers for the SH Acquired Assets (as defined in section 1.1 of the Stalking Horse Agreement as "Acquired Assets") and entry of an order approving the sale of the SH Acquired Assets (the "Sale Order"). Subject to entry of the Sale Order, the Stalking Horse Agreement shall be binding and enforceable on the Debtors' estates and the parties thereto in accordance with and subject to its terms, including as they relate to the Bidding Procedures and related termination provisions.

10. The Stalking Horse Agreement is authorized and approved in the form attached to the Bidding Procedures Motion as Exhibit B as the stalking horse bid for the SH Acquired Assets (the "Stalking Horse Bid").

11. The Stalking Horse Bidder shall be deemed a Qualified Bidder, and the Stalking

Horse Bid shall be deemed a Qualified Bid, for all purposes under the Bidding Procedures Order and Bidding Procedures.

12. The Stalking Horse Agreement shall be binding and enforceable on the parties thereto in accordance with its terms subject to entry of the Sale Order. The failure to describe specifically or include any provision of the Stalking Horse Agreement or related documents in the Motion or herein shall not diminish or impair the effectiveness of such provision as to such parties. The Stalking Horse Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto, solely in accordance with the terms thereof, without further order of the Court. Notice of any material changes to the Stalking Horse Agreement prior to the Sale Hearing shall be provided to the Consultation Parties within one (1) business day following agreement by the Debtors and Stalking Horse Bidder to such material change.

13. The Break-Up Fee (as defined in the Stalking Horse Agreement, the "Bid Protections") is approved in its entirety and (i) shall, to the extent payable under the terms of the Stalking Horse Agreement, be treated as allowed administrative expense claims against the Debtors' estates pursuant to sections 105(a), 503(b), and 507(a)(2) of the Bankruptcy Code; (ii) shall not be subordinate to any other administrative expense claim against the Debtors' estates other than any claims granted superpriority administrative status by order of the Court pursuant to sections 364(c)(1), 364(d)(1), 503(b), and 507(b) of the Bankruptcy Code; (iii) shall not be subject to any bar date in these Chapter 11 Cases or any requirement to file any request for allowance of an administrative expense claim or proof of claim; (iv) shall be payable in accordance with the terms of and subject to the conditions set forth in the Stalking Horse

Agreement and (v) shall survive the termination of the Stalking Horse Agreement and dismissal or conversion of these Chapter 11 Cases pursuant to the terms in the Stalking Horse Agreement; *provided* that the Break-Up Fee shall not be due and payable except from proceeds of an Alternative Transaction; provided further, that notwithstanding the foregoing, the Stalking Horse Bidder reserves the right to file a motion with the Court seeking approval and payment of the Break-Up Fee under each of the provisions in section 8.3(a) of the Stalking Horse Agreement.

14. Subject to the Bidding Procedures and entry of the Sale Order, the Debtors and Stalking Horse Bidder are granted all rights and remedies provided to them under the Stalking Horse Agreement, including, without limitation, the right to specifically enforce the Stalking Horse Agreement (including with respect to the Bid Protections and the Deposit) in accordance with its terms.

15. For the avoidance of doubt, notwithstanding that this Order approves Switch as the Stalking Horse Bidder and the Bid Protections pursuant to the Stalking Horse Agreement (subject to paragraph 13 herein), the ultimate approval of the Sale and Stalking Horse Agreement shall be subject to entry of the Sale Order.

16. The Debtors are authorized to perform all of their respective pre-closing obligations under the Stalking Horse Agreement, and such obligations shall be binding upon the Debtors; *provided* that, for the avoidance of doubt, consummation of the transactions contemplated by the Stalking Horse Agreement shall be subject to entry of the Sale Order and the satisfaction or waiver of the other conditions to closing on the terms set forth in the Stalking Horse Agreement.

17. This Order, and the claims granted hereunder in favor of the Stalking Horse

Bidder on account of the Bid Protections, shall be binding upon the Debtors' estates, including any chapter 7 or chapter 11 trustee or other fiduciary appointed for the Debtors' estates.

18. The automatic stay pursuant to section 362 of the Bankruptcy Code is hereby modified with respect to the Debtors to the extent necessary, without further order of the Court, to allow the Stalking Horse Bidder to (i) deliver any notice provided for in the Stalking Horse Agreement, including, without limitation, a notice terminating the Stalking Horse Agreement in accordance with the terms thereof and (ii) take any actions permitted under the Stalking Horse Agreement to terminate the Stalking Horse Agreement, solely to the extent permitted by the Stalking Horse Agreement, and assert any claims with respect to the Bid Protections solely in accordance with the terms of this Order, the Bidding Procedures, and the Stalking Horse Agreement.

Credit Bidding

19. Any bidder holding a perfected security interest in any of the SH Acquired Assets (and to the extent appliable, the Expanded Assets) may seek to credit bid all, or a portion of, such bidder's claims for its respective collateral subject to section 363(k) of the Bankruptcy Code (each such bid, a "Credit Bid"); *provided*, that such Credit Bid must comply with the terms of the Bidding Procedures.

20. Pursuant to the terms and conditions of the Final DIP Order, the DIP Lender is authorized to Credit Bid the DIP Obligations on the DIP Collateral. The Prepetition Bonds Secured Parties (each as defined in the Final DIP Order), are entitled, but not required, to credit bid up to the full amount of the Prepetition Bond Obligations (as defined in the Final DIP Order), pursuant to section 363(k) of the Bankruptcy Code. Any Credit Bid by the Stalking Horse Bidder

shall be deemed a Credit Bid in compliance with the requirements of the Bidding Procedures.

Hearing and Objection Deadline

21. The Sale Hearing shall take place in this Court on **November ~~11~~12, 2024 at ~~:00 .m~~2:00 p.m. (Prevailing Eastern Time)**; provided that the Sale Hearing may be adjourned without further notice other than announcement in open Court or by the filing of a notice on the docket of these Cases or a notice of agenda. Any obligations of the Debtors set forth in the Stalking Horse Agreement that are intended to be performed prior to the Sale Hearing and/or entry of the Sale Order pursuant to the Stalking Horse Agreement are authorized as set forth herein and are fully enforceable as of the date of entry of this Order.

22. The deadline to file objections, if any, to the transactions contemplated by the Stalking Horse Agreement or to entry of the Sale Order is **October 25, 2024 at 4:00 p.m. (Prevailing Eastern Time)**; *provided* that an objection to the Sale of the Expanded Assets, including any Expanded Assets consisting of intellectual property, may be filed up to and including the Sale Hearing (the "Sale Objection Deadline"). Objections, ~~if any~~other than those that may be properly raised at the Sale Hearing, **must**: (i) be in writing, (ii) conform to the applicable provisions of the Bankruptcy Rules, the Local Rules and any orders of the Court, (iii) state with particularity the legal and factual basis for the objection and the specific grounds therefor, and (iv) be filed with the Court and served so as to be **actually received** no later than the Sale Objection Deadline, as applicable, by the following parties (the "Notice Parties"): (a) the Debtors, P.O. Box 220 Pleasanton, CA 94566, Attn: Mark Smith; (b) proposed counsel to the Debtors, Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street. 16th Floor, P.O. Box 1347, Wilmington, DE 19899-1347, Attn: Robert J. Dehney Sr. (rdehney@morrisnichols.com);

Daniel B. Butz (dbutz@morrisnichols.com); Clint M. Carlisle (ccarlisle@morrisnichols.com); Avery Jue Meng (ameng@morrisnichols.com); (c) the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"): 844 King Street, Room 2207, Wilmington, Delaware 19801, Attn: Rosa Sierra-Fox (rosa.sierra-fox@usdoj.gov); (d) counsel to the Committee: (i) Eversheds Sutherland (US) LLP, The Grace Building, 40th Floor, 1114 Avenue of the Americas, New York, NY 10036, Attn: Todd C. Meyers (ToddMeyers@eversheds-sutherland.com), Jennifer B. Kimble (JenniferKimble@eversheds-sutherland.com); Eversheds Sutherland (US) LLP, 999 Peachtree Street NE, Suite 2300, Atlanta, GA 30309-3996, Attn: Todd C. Meyers (toddmeyers@eversheds-sutherland.com)and (ii) Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, DE 19801, Attn: Jeffrey R. Waxman (jwaxman@morrisjames.com), Eric J. Monzo (emonzo@morrisjames.com); (e) counsel to Switch, Ltd.: (i) Latham & Watkins LLP, 1271 Avenue of the Americas, New York, NY 10020, Attn: Brian S. Rosen (Brian.Rosen@lw.com) and Adam Goldberg (Adam.Goldberg@lw.com) and (ii) Richards Layton & Finger, P.A., 920 N. King Street, Wilmington, DE 19801, Attn: Michael J. Merchant (Merchant@RLF.com); (f) counsel to UMB Bank, N.A.: (i) Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, NY 10065, Attn: Alexander Woolverton (awoolverton@kramerlevin.com); Douglas Buckley (dbuckley@kramerlevin.com), and (ii) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Andrew Magaziner (amagaziner@ycst.com); and (g) counsel to PCL Administration LLC: Katten Muchin Rosenman LLP, 525 West Monroe Street, Chicago, Illinois 60661, Attn: Steven J. Reisman (sreisman@katten.com); Peter P. Knight (peter.knight@katten.com); and Joshua M. Altman, (josh.altman@katten.com), and (ii) Klehr

Harrison Harvey Branzburg LLP, 919 N. Market Street, Suite 1000, Wilmington, DE 19801, Attn: Domenic Pacitti (DPacitti@klehr.com).

Sale Notice and Related Relief

23. The Sale Notice, substantially in the form attached hereto as **Exhibit 3**, is hereby approved. Within three (3) days of the entry of this Order, the Debtors shall cause the Sale Notice to be served upon: (a) the United States Trustee for the District of Delaware; (b) the creditors listed on the Debtors' consolidated list of thirty (30) largest unsecured creditors, as filed with the Debtors' chapter 11 petitions~~, or any official committee appointed in the Debtors' cases~~ and the Official Committee of Unsecured Creditors; (c) all parties asserting a security interest in the SH Acquired Assets (and to the extent applicable, the Expanded Assets) to the extent any such interest is reasonably known to the Debtors; (d) applicable federal, state, county and city tax and regulatory authorities; (e) all entities known to have expressed a written interest in a transaction with respect to the SH Acquired Assets (and to the extent applicable, the Expanded Assets) or that have been identified by the Debtors or their advisors as a potential purchaser of the SH Acquired Assets (and to the extent applicable, the Expanded Assets); (f) local, state and federal authorities and agencies that have issued licenses or permits to the Debtors with respect to the operation and use of the SH Acquired Assets (and to the extent applicable, the Expanded Assets); (g) each counterparty to the Debtors' Contracts and Leases; and (h) all parties requesting notice pursuant to Bankruptcy Rule 2002.

Designation and Assumption Procedures

24. The procedures set forth below regarding the proposed assumption and assignment of certain Contracts and Leases that may be designated to be assumed by the Debtors

pursuant to section 365(b) of the Bankruptcy Code and assigned to the Contract Party (or the Successful Bidder selected at the Auction, if any) pursuant to section 365(f) of the Bankruptcy Code (as defined in the Stalking Horse Agreement, collectively, the "Assigned Contracts and Leases") in connection with the sale of the SH Acquired Assets (and to the extent applicable, the Expanded Assets) are hereby approved (the "Designation Procedures").

25. These Designation Procedures, as may be modified or supplemented by the Sale Order, shall govern the assumption and assignment of all Assigned Contracts and Leases:

a. **Cure Notice.** On or before the date that is two (2) business days after entry of the Bidding Procedures Order, the Debtors shall file with the Court a notice of the proposed assumption and assignment of certain executory contracts and unexpired leases in connection with the Sale, substantially in the form attached as **Exhibit 2** to the Bidding Procedures Order (the "Cure Notice"). The Debtors will serve the Cure Notice via first class mail (and by electronic mail, if available) on all non-Debtor counterparties to Contracts and Leases, and their respective known counsel, and provide a copy of same to the Contract Party and the Stalking Horse Bidder. The Cure Notice shall inform each recipient that its respective Contract or Lease may be designated by the Contract Party (as defined below) as either assumed or rejected and the timing and procedures relating to such designation, and, to the extent practicable (i) the title of the Contract or Lease, (ii) the name of the counterparty to the Contract or Lease, (iii) the Debtors' good faith estimates of the cure amounts required in connection with such Contract or Lease (the "Cure Amount"), (iv) the identity of the Contract Party and (v) the deadline by which any such Contract or Lease counterparty may file an objection to the proposed assumption and assignment and/or cure amount, and the procedures relating thereto; provided, however, that service of a Cure Notice does not constitute an admission that such Contract or Lease is an executory contract or unexpired lease. If the Debtors identify additional Contracts or Leases that might be assumed by the Debtors and assigned to the Contract Party, the Debtors will promptly send a supplemental Cure Notice to the applicable counterparties to such Contract or Lease.

b. **Adequate Assurance**. The Debtors shall serve by overnight mail (or by electronic mail, if available) no later than three (3) business days after entry of the Bidding Procedures Order the evidence of adequate assurance of future performance under the Contracts and Leases provided in connection with the Stalking Horse Bidder, including the legal name of the proposed

assignee, the proposed use of any leased premises, the proposed assignee's financial ability to perform under the Contracts and Leases and a contact person with the proposed assignee whom counterparties may contact if they wish to obtain further information regarding the proposed assignee. No later than ~~three~~two (~~3~~2) days after the Bid Deadline, the Debtors shall serve on affected counterparties and their respective known counsel by electronic mail (if available) or overnight mail the adequate assurance information provided by each Qualified Bidder.

c. **Objections**. Objections, if any, to the proposed assumption and assignment of any Contract or Lease or to the cure amount proposed with respect thereto must: (i) be in writing, (ii) comply with the applicable provisions of the Bankruptcy Rules, Local Rules and any other orders of the Court, (iii) state with specificity the nature of the objection and, if the objection pertains to the proposed cure amount, the correct cure amount alleged by the objecting counterparty, together with any applicable and appropriate documentation in support thereof and (iv) be filed with the Court and served so as to be actually received by the Notice Parties before the Cure Notice Objection Deadline.

Following the Debtors' selection of the Successful Bidder and the Back-Up Bidder, if any, at the conclusion of the Auction, the Debtors shall announce the Successful Bidder and the Back-Up Bidder, if any, and within eighteen (18) hours of the conclusion of the Auction, shall file with the Court a notice of the Successful Bidder and the Back-Up Bidder, if any. The Debtors will serve the notice of the Successful Bidder and the Back-Up Bidder via first class mail (and by electronic mail, if available) on all non-Debtor counterparties to Contracts and Leases that the Successful Bidder or Back-Up Bidder intend to assume, and their respective known counsel, and provide a copy of same to the Contract Party and the Stalking Horse Bidder. If and only if the Stalking Horse Bidder is not the Successful Bidder, counterparties to the Debtors' Contracts and Leases shall have until ~~November 6, 2024, at 4:00 p.m. (ET)~~the Sale Hearing to object to the assumption and assignment of a Contract or Lease solely on the issue of whether the Successful Bidder can provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code. For the avoidance of doubt, if the Stalking Horse Bidder is the Successful Bidder, all adequate assurance objections must be filed by the Sale Objection Deadline.

d. **Dispute Resolution**. Any objection to the proposed assumption and assignment or related cure of a Contract or Lease in connection with the proposed sale that remains unresolved as of the Sale Hearing shall be heard at the Sale Hearing or such later hearing if the objection is not resolved and the Debtors determine that an adjournment is appropriate. To the extent any

such objection is resolved or determined unfavorably to the applicable Debtor, the Debtors may, subject to the terms of an agreement with the Successful Bidder, file a notice rejecting the applicable Contract or Lease after such determination.

26. Any party who fails to timely file an objection to its scheduled cure amount listed on the Cure Notice or to the assumption and assignment of a Contract or Lease (i) shall be forever barred, estopped and enjoined from objecting thereto, including (a) making any demands for additional cure amounts or monetary compensation on account of any alleged defaults for the period prior to the applicable objection deadline against the Debtors, their estates or the Contract Party or the Stalking Horse Bidder or other Successful Bidder selected at the Auction, if any, with respect to any such Contract or Lease and (b) asserting that the Contract Party or the Successful Bidder has not provided adequate assurance of future performance as of the date of the Sale Order; (ii) shall be deemed to consent to (a) the sale of the SH Acquired Assets (and to the extent applicable, the Expanded Assets) as approved by the Sale Order and (b) the assumption and assignment of the Contracts and Leases; and (iii) shall be forever barred and estopped from asserting or claiming against the Debtors or the assignee of the relevant Contract or Lease that any conditions to assumption and assignment of such Contract or Lease must be satisfied (pursuant to section 365(b)(1) of the Bankruptcy Code or otherwise).

27. The proposed assumption and assignment of the Assigned Contracts and Leases and the Auction shall be conducted solely in accordance with the provisions of this Order, the Bidding Procedures and the Designation Procedures, as applicable.

28. Except as otherwise provided herein and in the Bidding Procedures, Local Rule 6004-1(c)(ii) is waived.

29. Nothing in this Order shall be construed to modify the requirements and

provisions of sections 365(b), 365(d)(3), 365(d)(4) or 365(f) of the Bankruptcy Code, or to determine the effective date of rejection for any Contract or Lease which the Debtors may seek to reject.

30. For the avoidance of doubt, by entry of this Order, the Court is not making a ruling on the assumption and assignment of the Debtors' contracts or leases, including but not limited to, any of the Johnson Matthey Agreements, or of any license of intellectual property relating thereto. Objections to the assumption and assignment of a contract, lease, or related cure amount are reserved and preserved and can be made by the Cure Objection Deadline, which will be stated on the Cure Notice.

ThermoChem Recovery International, Inc.

31. The Debtors shall include in the data room the objection filed by ThermoChem Recovery International, Inc. to the Bidding Procedures Motion [D.I. 91].

Other Relief Granted

32. ~~30.~~ The Debtors are authorized to execute and deliver all instruments and documents and take such other action as may be necessary or appropriate to implement and effectuate the transactions contemplated by this Order.

33. ~~31.~~ The requirements set forth in Local Rule 9013-1 are satisfied by the contents of the Motion.

34. ~~32.~~ The findings and conclusions set forth herein constitute the Bankruptcy Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052. To the extent any findings of fact constitute conclusions of law, they are adopted as such. To the extent any conclusions of law constitute findings of fact, they are adopted as such.

35. ~~33.~~ To the extent any provisions of this Order shall be inconsistent with the Motion, the terms of this Order shall control.

36. ~~34.~~ This Order shall be immediately effective and enforceable upon entry hereof.

37. ~~35.~~ This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of the Order.

EXHIBIT 1 To Bidding Procedures Order

Bidding Procedures

BIDDING PROCEDURES

On September 11 2024, Fulcrum BioEnergy, Inc.; Fulcrum Sierra BioFuels, LLC; Fulcrum Sierra Finance Company, LLC; and Fulcrum Sierra Holdings, LLC, debtors and debtors in possession (collectively, the "Debtors") in the chapter 11 cases (the "Cases") pending in the United States Bankruptcy Court for the District of Delaware ("Court") and jointly administered under Case No. 24 -12008 (TMH), filed a motion D.I. 12 (the "Bidding Procedures Motion"), seeking, among other things, authorization for the Debtors to perform their obligations under that certain Asset Purchase Agreement (together with all exhibits thereto, the "Stalking Horse Agreement")[3] entered into by and among the Debtor Fulcrum Sierra Biofuels, LLC and Switch, Ltd. (the "Stalking Horse Bidder"), substantially in the form attached to the Bidding Procedures Motion as Exhibit B. As described in the Bidding Procedures Motion, the Stalking Horse Agreement contemplates, pursuant to the terms and subject to the conditions contained therein, the sale of the SH Acquired Assets in exchange for cash consideration in the amount of $15,000,000 plus the assumption of Assumed Liabilities.

The Stalking Horse Agreement provides for payment of bid protections in the form of a break-up fee in the amount of $600,000 (the "Break-Up Fee" or the "Bid Protections"), on the terms and conditions set forth in the Stalking Horse Agreement.

On October [~~•~~9], 2024, the Court entered the "*Order (A) Authorizing and Approving Bidding Procedures, (B) Authorizing and Approving the Debtors' Entry Into the Stalking Horse Agreement, (C) Approving Notice Procedures, (D) Scheduling a Sale Hearing and (E) Approving Procedures for Assumption and Assignment and Determining Cure Amounts*" [D.I. ~~[•]~~•] (the "Bidding Procedures Order"), which, among other things, (i) authorized the Debtors to perform their pre-closing obligations under the Stalking Horse Agreement and (ii) approved these bidding procedures set forth herein (the "Bidding Procedures") governing the submission of competing proposals to purchase the SH Acquired Assets (and to the extent applicable, the Expanded Assets) pursuant to section 363 of the Bankruptcy Code. The sale of the SH Acquired Assets (and to the extent applicable, the Expanded Assets) will be implemented pursuant to the terms and conditions of the Bidding Procedures Order and the Stalking Horse Agreement, as the same may be amended pursuant to the terms thereof, subject to the Debtors' selection in their reasonable discretion, after consultation with UMB Bank, N.A., in its capacity as trustee for the Sierra BioFuels Bonds and the Sierra Holdings Bonds (each as defined in the *Declaration of Mark Smith in Support of Chapter 11 Petitions and First Day Relief*) ("UMB,") and the Official Committee of Unsecured Creditors of Fulcrum Bioenergy, Inc. (the "Committee," and together with ~~the Committee~~UMB, the "Consultation Parties") of a higher or otherwise better bid as the Successful Bid and Back-Up Bid (as defined below) in accordance with these Bidding Procedures.[4]

[3] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Stalking Horse Agreement.

[4] If UMB determines that it will submit a Bid, it shall cease to be a Consultation Paty unless it irrevocably states, in writing, that it is no longer pursuing a Bid.

Notice Parties

Information required to be provided under these Bidding Procedures must be provided to the following parties (collectively, the "Notice Parties"): (a) the Debtors, P.O. Box 220 Pleasanton, CA 94566, Attn: Mark Smith; (b) Morris, Nichols, Arsht & Tunnell LLP ("Morris Nichols"), 1201 N. Market Street. 16th Floor, P.O. Box 1347, Wilmington, DE 19899-1347, Attn: Robert J. Dehney Sr. (rdehney@morrisnichols.com); Curtis S. Miller (cmiller@morrisnichols.com); Daniel B. Butz (dbutz@morrisnichols.com); Clint M. Carlisle (ccarlisle@morrisnichols.com); Avery Jue Meng (ameng@morrisnichols.com); (c) DSI Specialists, Inc. ("DSI", together with Morris Nichols, the "Debtors' Professionals"), 10 S. LaSalle Street, Suite 3300, Chicago, Illinois 60603, Attn: George Shoup (gshoup@dsiconsulting.com); Jack Donohue (jdonohue@dsiconsulting.com); and Steve Victor (svictor@dsiconsulting.com) (d) the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"): 844 King Street, Room 2207, Wilmington, Delaware 19801, Attn: Rosa Sierra-Fox (rosa.sierra-fox@usdoj.gov); (e) counsel to UMB: (i) Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, NY 10065, Attn: Alexander Woolverton (awoolverton@kramerlevin.com); Douglas Buckley (dbuckley@kramerlevin.com), and (ii) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Andrew Magaziner (amagaziner@ycst.com); (f) counsel to the Committee: (i) Eversheds Sutherland (US) LLP, The Grace Building, 40th Floor, 1114 Avenue of the Americas, New York, NY 10036, Attn: Todd C. Meyers (ToddMeyers@eversheds-sutherland.com), Jennifer B. Kimble (JenniferKimble@eversheds-sutherland.com) and Eversheds Sutherland (US) LLP, 999 Peachtree Street NE, Suite 2300, Atlanta, GA 30309, Attn: Todd C. Meyers (toddmeyers@eversheds-sutherland.com) and (ii) Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, DE 19801, Attn: Jeffrey R. Waxman (jwaxman@morrisjames.com), Eric J. Monzo (emonzo@morrisjames.com); ~~and~~ (g) counsel to Switch, Ltd.: (i) Latham & Watkins LLP, 1271 Avenue of the Americas, New York, NY 10020, Attn: Adam Goldberg (Adam.Goldberg@lw.com) and Brian S. Rosen (Brian.Rosen@lw.com) and (ii) Richards, Layton & Finger, P.A. 920 N. King Street, Wilmington, DE 19801, Attn: Michael J. Merchant (Merchant@RLF.com)~~.~~; and (h) counsel to PCL Administration LLC: Katten Muchin Rosenman LLP, 525 West Monroe Street, Chicago, Illinois 60661, Attn: Steven J. Reisman (sreisman@katten.com); Peter P. Knight (peter.knight@katten.com); and Joshua M. Altman, (josh.altman@katten.com), and (ii) Klehr Harrison Harvey Branzburg LLP, 919 N. Market Street, Suite 1000, Wilmington, DE 19801, Attn: Domenic Pacitti (DPacitti@klehr.com).

Participation Requirements

To participate in the formal bidding process or otherwise be considered for any purpose hereunder, a person (other than the Stalking Horse Bidder) interested in submitting a bid (an "Interested Party") must deliver to the Debtors' Professionals the following documents (the "Preliminary Bid Documents"):

(i) an executed confidentiality agreement on terms reasonably acceptable to the Debtors (each, a "Confidentiality Agreement");

(ii) a statement and other factual support demonstrating to the Debtors' satisfaction in the exercise of their reasonable business

judgment that the Interested Party has a bona fide interest in purchasing the SH Acquired Assets (and to the extent applicable, the Expanded Assets or any subset of the SH Acquired Assets or Expanded Assets); and

(iii) preliminary verbal or written proof by the Interested Party of its financial capacity to close a proposed transaction at the Purchase Price (as defined below), which may include (a) current unaudited or verified financial statements of, or verified financial commitments obtained by, the Interested Party (or, if the Interested Party is an entity formed for the purpose of acquiring the property to be sold, the party that will bear liability for a breach), or (b) sufficient financial or other information to establish adequate assurance of future performance pursuant to section 365(f)(2) of the Bankruptcy Code and, if applicable, section 365(b)(3) of the Bankruptcy Code to the non-Debtor counterparties to any executory contracts and unexpired leases to be assumed by the Debtors and assigned to the Potential Bidder in connection with the proposed transaction.

Once the Preliminary Bid Documents are received and verified by the Debtors' Professionals, the Debtors will deem the Interested Party a "Potential Bidder" and will provide a list of Potential Bidders to the Consultation Parties.

Due Diligence[5][6]

The Debtors will provide to each Potential Bidder reasonable due diligence information, as requested, as soon as reasonably practicable after such request, provided that if any Potential Bidder is (or is affiliated with) a competitor of the Debtors, the Debtors will not be required to disclose to such Potential Bidder any trade secrets, proprietary information, or other commercially sensitive information unless, under the Debtors' business judgment in consultation with the Consultation Parties, the Confidentiality Agreement executed by such Potential Bidder (i) sufficiently protects the Debtors' estates, and (ii) contains appropriate provisions to ensure that such trade secrets or proprietary information will not be used by such Potential Bidder or its Affiliates for an improper purpose or to gain an unfair competitive advantage. Each Potential Bidder will comply with all reasonable requests for additional information and due diligence access by the Debtors or their advisors regarding such Potential Bidder and its contemplated

[5] In the event a Potential Bidder requests access to unredacted Agreements or licenses entered into between the Debtors and Johnson Matthey or the confidential or proprietary information of Johnson Matthey, the Potential Bidder will enter into a Confidentiality Agreement reasonably acceptable to Johnson Matthey, making Johnson Matthey a party to the agreement and giving Johnson Matthey rights to enforce the confidentiality obligations therein. All confidentiality agreements with Potential Bidders and information contained therein provided to Johnson Matthey shall be maintained as confidential by Johnson Matthey under the applicable written confidentiality agreement or other obligation between the Debtors and the Committee.

[6] The Debtors shall include in the data room the objection filed by ThermoChem Recovery International, Inc. to the Bidding Procedures Motion (D.I. 91).

transaction. If the Debtors, after consultation with the Consultation Parties, determine at any time in their reasonable discretion that a Potential Bidder is not reasonably likely to be a Qualified Bidder (as defined below), then the Debtors' obligation to provide due diligence information to such Potential Bidder will terminate and all information provided by the Debtors prior to such time shall be returned to the Debtors or destroyed in accordance with the terms of the applicable Confidentiality Agreement.

Bid Requirements

To be eligible to participate in the Auction, each Potential Bidder must submit a proposal to purchase the SH Acquired Assets ~~(~~, and to the extent applicable, the Expanded Assets or any subset of the SH Acquired Assets or Expanded Assets~~)~~ (a "Bid") to the Debtors' Professionals by ~~October 25~~November 4, 2024 at ~~4:00 p.m~~5:00 p.m. (ET) (the "Bid Deadline") which must:

1) state that the applicable Potential Bidder offers (i) to purchase the SH Acquired Assets pursuant to a transaction that is no less favorable to the Debtors' estates as the Debtors, in consultation with the Consultation Parties, may reasonably determine, than the transactions contemplated in the Stalking Horse Agreement and to the extent applicable (ii) to purchase the Expanded Assets or any subset of the SH Acquired Assets or Expanded Assets in accordance with the Package Bid requirements described herein;

2) be accompanied by a deposit (each, a "Good Faith Deposit") in the form of a wire transfer or certified check or such other form acceptable to the Debtors in their sole discretion, payable to the order of the Debtors, in an amount equal to 10% of the cash portion of the Purchase Price being bid;

3) specify the amount of cash or other consideration offered by the Potential Bidder (the "Purchase Price"), which Purchase Price must include an amount of consideration at closing that exceeds the aggregate sum of the following: (i) the aggregate consideration set forth in the Stalking Horse Agreement, including the assumption of the Assumed Liabilities; (ii) the Break-Up Fee, and (iii) the minimum bid increment of $250,000 (such aggregate sum, the "Minimum Purchase Price"). For the avoidance of doubt, if a Bid includes the SH Acquired Assets, the Minimum Purchase Price must include cash consideration sufficient to pay, in full, in cash, the Payoff Amount (as defined in the Stalking Horse Purchase Agreement) and the Break-Up Fee from the proceeds of such Bid at the initial closing of the transaction;

4) be irrevocable by the Potential Bidder until the selection of the Successful Bid in accordance with the terms of these Bidding Procedures; provided that, other than a Bid submitted by the Stalking Horse Bidder, if such Potential Bidder is selected as the Successful

Bidder or Back-Up Bidder and is required to be a Back-Up Bidder hereunder, its Bid must remain irrevocable until the Debtors' consummation of a sale with the Successful Bidder;

5) include an executed asset purchase agreement, together with all exhibits and schedules thereto, pursuant to which the Potential Bidder proposes to effectuate a proposed transaction at the Purchase Price (or in the case of the Stalking Horse Bidder, at the purchase price set forth in the Stalking Horse Agreement) (the "Transaction Documents"), which Transaction Documents must include a copy of the proposed asset purchase agreement marked against the Stalking Horse Agreement to show all changes requested by the Potential Bidder including, but not limited to, treatment of any assumed liabilities;

6) include a list which specifies in detail which of the Debtors' unexpired leases and executory contracts are to be assumed by the Debtors and assigned to the Potential Bidder in connection with the consummation of the proposed transaction;

7) provide a commitment to close ~~within 14 days after the Sale Hearing~~no later than November 15, 2024 (the "Closing");

8) not be conditioned on unperformed due diligence, obtaining financing or any internal approval or otherwise be subject to contingencies more burdensome than those in the Stalking Horse Agreement;

9) include (i) a description of all governmental, licensing, regulatory or other filings, approvals or consents that are required to be made or obtained to close the proposed transaction, together with evidence of the ability to make or obtain such filings, consents or approvals in a timely manner, as well as a description of any material contingencies or other conditions that will be imposed upon, or that will otherwise apply to, the making, obtainment or effectiveness of any such filings, consents or approvals and (ii) an estimated timeframe for making and/or obtaining any such required governmental, licensing, regulatory or other filings, approvals or consents;

10) contain written evidence of a commitment for financing or other evidence of the ability to consummate a proposed transaction at the Purchase Price (including sufficient financial or other information to establish adequate assurance of future performance pursuant to section 365(f)(2) of the Bankruptcy Code and, if applicable, section 365(b)(3) of the Bankruptcy Code to the non-Debtor counterparties to any executory contracts and unexpired leases to be assumed by the Debtors and assigned to the Potential Bidder in connection with the proposed transaction), satisfactory to the Debtors in their reasonable

discretion after consultation with the Consultation Parties, with appropriate contact information for such financing sources;

11) contain written evidence satisfactory to the Debtors in their reasonable discretion after consultation with the Consultation Parties of authorization and approval from the Potential Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and consummation of such Bid and the transaction(s) contemplated therein and any Overbid(s) (as defined below), and related Transaction Documents;

12) not request or entitle the Potential Bidder to any break-up fee, termination fee, expense reimbursement or similar type of payment;

13) fully disclose the identity of each entity that will be bidding for the SH Acquired Assets ~~(~~, and to the extent applicable, the Expanded Assets~~)~~, or any subset of the SH Acquired Assets or Expanded Assets or otherwise sponsoring, financing (including through the issuance of debt in connection with such Bid), participating in or benefiting from (including through license or similar arrangement with respect to the assets to be acquired in connection with such Bid) such Bid (a "Participating Party"), and the complete terms of any such sponsorship, participation, financing or benefit;

14) constitute a good faith, bona fide offer to effectuate the proposed transaction;

15) include a written acknowledgement by such Potential Bidder that it agrees to all of the terms for sale set forth in these Bidding Procedures;

16) include an agreement to provide any other information reasonably requested by the Debtors; and

17) be received by the Bid Deadline.

Once Bids are received and verified by the Debtors' Professionals, the Debtors will provide the Bids to the Consultation Parties.

Package Bid Requirements

If a Potential Bidder's Bid contemplates the purchase of the SH Acquired Assets and any assets of a Debtor other than Biofuels (a "Non-Biofuels Debtor") (such Non-Biofuels Debtor assets, the "Expanded Assets" and such Bid, a "Package Bid"), then the Package Bid must meet the following requirements:

1) In order for a Package Bid to be considered a Qualifying Bid (a "Qualified Package Bid"), a Package Bid must clearly meet the conditions for a Qualified Bid for the SH Acquired Assets (except as applied to the Expanded Assets and the Debtor that would sell such Expanded Assets), including without limitation that it sets forth (i) a

Purchase Price in cash solely allocable to the SH Acquired Assets and that such allocation of the Purchase Price be equal to or greater than the Minimum Purchase Price and (ii) a Purchase Price solely allocable to the Expanded Assets.

2) The Package Bid should include a separate executed asset purchase agreement, together with all exhibits and schedules thereto, pursuant to which the Potential Bidder proposes to effectuate a proposed transaction to purchase such Expanded Assets, which documents shall constitute "Transaction Documents" for the purpose of such Package Bid.[57] For the avoidance of doubt, a Qualified Package Bid that includes a Bid for the SH Acquired Assets must include cash consideration sufficient to pay, in full, in cash, the Payoff Amount (as defined in the Stalking Horse Purchase Agreement) and the Break-Up Fee from the proceeds of such Qualified Package Bid at the initial closing of the transaction.

If the Debtors have received any Package Bids, then ~~at least two (2) business days prior to the Auction~~no later than **November 5, 2024 at 11:59 p.m. (ET)**, the Debtors shall transmit to all Qualified Bidders (including all Qualified Bidders who submitted a Qualified Bid that was not a Package Bid) ~~and the Consultation Parties a proposed form of asset purchase agreement for the Expanded Assets that are the subject of a Qualified Package Bid.~~ with complete copies of all Transaction Documents and all other bid materials submitted by each Qualified Bidder that submitted a Package Bid, subject to exclusion of any confidential financial information as determined by the Debtors in their reasonable discretion or which has been so designated by the applicable Qualified Bidder.

If an Auction is held then: (i) at any time during the Auction a Qualified Bidder submits an Overbid that constitutes a Package Bid, then such Overbid shall allocate at least $250,000 of the aggregate additional Purchase Price of such Overbid to the SH Acquired Assets, or (ii) the Baseline Bid constitutes a Package Bid, then every successive Overbid must constitute a Package Bid and shall allocate at least $250,000 of the aggregate additional Purchase Price of such Overbid to the SH Acquired Assets.

For the avoidance of doubt, consistent with these Bidding Procedures at the conclusion of any Auction the Debtors may (i) select a Successful Bid that is a Qualified Bid for only the SH Acquired Assets and a Back-Up Bid that is only for the SH Acquired Assets; (ii) select a Successful Bid and Back-Up Bid that are each a Package Bid, (iii) select a Successful Bid that is a Qualified Bid for only a subset of the SH Acquired Assets and a Back-Up Bid that is a Package Bid; or (iv) select a Successful Bid for the SH Acquired Assets and select a Successful Bid and Back-Up Bid that are for only the Expanded Assets.[68]

[57] For the avoidance of doubt, a Package Bid will not be precluded from constituting a Qualified Package Bid solely as a result of such bid not containing a separate asset purchase agreement for the Expanded Assets.

[68] In determining whether a standalone bid for Expanded Assets is higher or better, the Debtors, in consultation with the Consultation Parties, will consider the costs of marketing such assets, including how the proceeds of a bid for such assets should be allocated between the estates.

Designation as Qualified Bidder

A qualified bidder ("Qualified Bidder") is a Potential Bidder that, in the Debtors' reasonable determination after consultation with the Consultation Parties, (i) has timely submitted a Bid that satisfies each of the requirements listed above in the sections entitled "Bid Requirements" or "Package Bid Requirements," as applicable, (ii) is able to consummate the proposed transaction within the required timeframe if selected as the Successful Bidder (such Bid submitted by a Qualified Bidder, a "Qualified Bid"); provided that the Debtors reserve the right to work with any Potential Bidder to cure any deficiencies in a Bid that is not initially deemed a Qualified Bid. ~~Within two (2) business days after a Potential Bidder delivers all of the documents described above~~By **November 5, 2024 at 11:59 p.m. (ET)**, the Debtors will determine in their reasonable discretion after consultation with the Consultation Parties whether such Potential Bidder is a Qualified Bidder, and notify the Potential Bidder of such determination. For the avoidance of doubt, (i) the Stalking Horse Bidder is a Qualified Bidder, (ii) the Stalking Horse Agreement is a Qualified Bid, and (iii) the Stalking Horse Bidder is authorized to submit any Overbids (as defined below) during the Auction, in each instance without further qualification required of the Stalking Horse Bidder.

"As Is, Where Is"

Any sale or transfer of the SH Acquired Assets~~(~~, and to the extent applicable, the Expanded Assets~~)~~, or any subset of the SH Acquired Assets or Expanded Assets will be on an "as is, where is" basis and without representations or warranties of any kind by the Debtors, their agents or the Debtors' chapter 11 estates, except and solely to the extent expressly set forth in a final purchase agreement approved by the Court as the Successful Bid or as set forth in the Sale Order. Each Qualified Bidder will be required to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Debtors' assets that are the subject of the Auction prior to making its Bid and that it has relied solely upon its own independent review and investigation in making its Bid. Except as otherwise provided in a final purchase agreement approved by the Court as the Successful Bid or the Sale Order, all of the Debtors' right, title and interest in the SH Acquired Assets~~(~~, and to the extent applicable, the Expanded Assets~~)~~ will be sold or transferred free and clear of all Encumbrances (other than Permitted Post-Closing Encumbrances) as proposed in the Stalking Horse Agreement, with any Encumbrances (other than Permitted Post-Closing Encumbrances) to attach to the proceeds of the sale of the SH Acquired Assets~~(~~, and to the extent applicable, the Expanded Assets~~)~~ as provided in the proposed form of sale order attached to the Bidding Procedures Motion.

Credit Bidding

Any Qualified Bidder holding a perfected security interest in any of the SH Acquired Assets~~(~~, and to the extent ~~appliable~~applicable, the Expanded Assets~~)~~, may seek to credit bid all, or a portion of, such bidder's claims for its respective collateral subject to section 363(k) of the Bankruptcy Code (each such bid, a "Credit Bid"); *provided*, that such Credit Bid complies with these Bidding Procedures. For the avoidance of doubt, the Stalking Horse Bidder is authorized to Credit Bid the DIP Obligations.

Auction

Baseline Bid. ~~No~~Immediately upon the designation of the Qualified Bids and no later than ~~two days prior to the commencement of the Auction,~~**November 6, 2024 at 8:00 pm (ET)** the Debtors will (i) notify all Qualified Bidders and Notice Parties in writing of the highest or otherwise best Qualified Bid, as determined by the Debtors in their reasonable discretion after consultation with the Consultation Parties (the "Baseline Bid"), and (ii) provide all Qualified Bidders and Notice Parties with complete copies of all Transaction Documents and all other bid materials submitted by each other Qualified Bidder, subject to exclusion of any confidential financial information as determined by the Debtors in their reasonable discretion or which has been so designated by the applicable Qualified Bidder. The Debtors' determination of which Qualified Bid constitutes the Baseline Bid shall take into account factors such as the projected percentage recovery to general unsecured creditors pursuant to such Qualified Bid and the certainty of such recovery, whether all administrative, priority and secured claims will be paid in full under such Qualified Bid and any other factors the Debtors reasonably deem relevant to the value of the Qualified Bid to the estates. No later than ~~the day prior to the commencement of the Auction~~**November 6, 2024 at 5:00 p.m. (ET)**, each Qualified Bidder that has timely submitted a Qualified Bid must inform the Debtors whether it intends to attend the Auction; provided that in the event a Qualified Bidder elects not to attend the Auction, such Qualified Bidder's Qualified Bid will nevertheless remain fully enforceable against such Qualified Bidder; *provided further* that the Stalking Horse Bidder will not be required to, but may, attend and participate at the Auction.

If no Qualified Bids (other than the Stalking Horse Bid) are received by the Bid Deadline, then the Auction shall be cancelled**,** the Stalking Horse Bidder will be deemed the Successful Bidder, the Stalking Horse Agreement will be the Successful Bid, and, at the Sale Hearing, the Debtors will seek final Court approval of the sale of the SH Acquired Assets to the Stalking Horse Bidder in accordance with the terms of the Stalking Horse Agreement.

Auction Date and Location. The Auction will commence on or before November ~~1~~7, 2024 at 10:00 a.m. (Prevailing Eastern Time) at the offices of **Morris Nichols Arsht & Tunnell, LLP, 1201 N. Market Street, Wilmington, DE 19801**, or on such other date and/or at such other location as determined by the Debtors. The Debtors may determine that the Auction will be held virtually.

Participation Requirements. Only a Qualified Bidder that has submitted a Qualified Bid will be eligible to participate at the Auction. The authorized representatives of each of the Qualified Bidders (including the Stalking Horse Bidder), the Debtors, UMB, and the Committee will be permitted to attend the Auction. In addition, pursuant to Local Rule 6004-1, all creditors of the Debtors who have not submitted Bids may attend the Auction as observers, provided that they send an email to the undersigned counsel indicating that they intend to attend the Auction no less than one (1) Business Day prior to the Auction, *provided further* that the Debtors' right to object on an emergency basis to any such creditor's proposed attendance at the Auction is reserved.

Auction Procedures. The Debtors and the Debtors' Professionals will direct and preside over the Auction. At the start of the Auction, the Debtors will describe the terms of the Baseline Bid. All Bids made thereafter must be Overbids (as defined below) and will be made

and received on an open basis, and all material terms of each Bid will be fully disclosed to all other Qualified Bidders. The Debtors will maintain a transcript of all Bids made and announced at the Auction, including the Baseline Bid, all Overbids, the Successful Bid and the Back-Up Bid. Each Qualified Bidder will be required to confirm on the record of the Auction that it has not engaged in any collusion with respect to the bidding or the sale of the SH Acquired Assets ~~(~~, and to the extent applicable, the Expanded Assets~~)~~, or any subset of the SH Acquired Assets or Expanded Assets. The Debtors, in their reasonable discretion after consultation with the Consultation Parties, reserve the right to conduct the Auction in a manner designed to maximize value based upon the nature and extent of the Qualified Bids received.

During the Auction, bidding will begin initially with the Baseline Bid and subsequently continue in minimum increments of at least $250,000 (each, an "Overbid"). The Debtors will announce at the Auction the material terms of each Overbid, value each Overbid in accordance with these Bidding Procedures and provide each Qualified Bidder with an opportunity to make a subsequent Overbid. Additional consideration in excess of the amount set forth in the Baseline Bid may include cash and/or other consideration acceptable to the Debtors in accordance with these Bidding Procedures. To the extent that an Overbid has been accepted entirely or in part because of the addition, deletion, or modification of a provision or provisions in the applicable Transaction Documents or the Stalking Horse Agreement, the Debtors will provide notice to each participant of the value ascribed by the Debtors to any such added, deleted, or modified provision or provisions, with such value being determined by the Debtors in their reasonable discretion after consultation with the Consultation Parties.~~7~~[9]

Any Overbid made from time to time by a Qualified Bidder must remain open and binding on the Qualified Bidder until and unless (i) the Debtors accept a higher or otherwise better bid submitted by another Qualified Bidder during the Auction as an Overbid and (ii) such Overbid is not selected as the Back-Up Bid (as defined below). To the extent not previously provided (which will be determined by the Debtors), a Qualified Bidder submitting an Overbid must submit at the Debtors' request, as part of its Overbid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors) demonstrating such Qualified Bidder's ability to close the transaction at the purchase price contemplated by such Overbid.

Identification of Successful Bid and Back-Up Bid

At the conclusion of the Auction, the Debtors, in the exercise of their reasonable business judgment, in consultation with the Consultation Parties, will select (i) the highest or otherwise best bid submitted by a Qualified Bidder during the Auction that the Debtors believe is most beneficial to the Debtors (the "Successful Bid"), and (ii) at the Debtors' discretion, the next highest or otherwise best bid after the Successful Bid (the "Back-Up Bid"); *provided* that the Stalking Horse Bidder may only be selected as the Back-Up Bid on the condition that the Outside Date (as defined in the Stalking Horse Agreement) shall remain applicable. In selecting the Successful Bid and the Back-Up Bid, if any, the Debtors shall take into account the projected percentage recovery to general unsecured creditors and the certainty of such recovery and

~~7~~[9] The Debtors may, upon consultation with the Consultation Parties, approve joint bids in their reasonable business judgment on a case-by-case basis.

whether all administrative, priority and secured claims will be paid in full and may also consider, among other things: (i) the number, type and nature of any changes to the Stalking Horse Agreement which may delay closing of the contemplated transaction and the cost to the Debtors of such modifications or delay; (ii) the liabilities being assumed; (iii) the likelihood of the Qualified Bidder's ability to close its proposed transaction and the timing thereof; (iv) the expected net benefit of the transaction to the Debtors' estates and (v) any other factors the Debtors may reasonably deem relevant. The Qualified Bidder that submits the Successful Bid will be deemed the "Successful Bidder," and the purchase agreement with respect to such Successful Bid will be deemed the "Successful Bidder Purchase Agreement." The Qualified Bidder that submits the Back-Up Bid, if any, will be deemed the "Back-Up Bidder." The successful Bidder and Back-Up Bidder, following the completion of the Auction, must increase their Good Faith Deposits so that they equal 10% of such Successful Bid or Back-Up Bid, as applicable. For the avoidance of doubt, the Stalking Horse Bidder shall not be required to increase its Good Faith Deposit.

The Auction will close when the Debtors announce that the Auction has concluded and a Successful Bid and, to the extent the Debtors determine in consultation with the Consultation Parties, a Back-Up Bid, has been selected. Notwithstanding anything herein to the contrary, the Debtors are authorized, but not required, to select a Back-Up Bidder and a Back-Up Bid. For the avoidance of doubt, the Debtors will not consider or support any bid for any of the SH Acquired Assets ~~(~~, and to the extent applicable, the Expanded Assets~~)~~, whether or not such bid is made by a Qualified Bidder, received after the close of the Auction.

The Back-Up Bid, if any, will remain open and binding on the Back-Up Bidder until consummation of the Successful Bid with the Successful Bidder. If the Successful Bidder fails to consummate the Successful Bid within the time set forth therein, the Debtors, in consultation with the Consultation Parties, will be authorized, but not required, to select the Back-Up Bidder, if any, as the new Successful Bidder, and shall proceed to consummate the Successful Bid of the new Successful Bidder.

Implementation of the Sale

The hearing to authorize the sale of the SH Acquired Assets ~~(~~, and to the extent applicable, the Expanded Assets~~)~~ or any subset of the SH Acquired Assets or Expanded Assets, to the Successful Bidder pursuant to the Successful Bid (the "Sale Hearing") will be held before the Court on November ~~11~~12, 2024, at ~~[__:__ _.m.]~~2:00 p.m. (Prevailing Eastern Time). The Sale Hearing may be adjourned or rescheduled by the Debtors to a time and date consistent with the Court's calendar, as set forth in notice on the docket of the Cases, a notice of agenda or stated orally on the record at a hearing before the Court. Upon the Court's approval of the Successful Bid, the Successful Bid will be deemed accepted by the Debtors, and the Debtors will be bound to the terms of that Successful Bid with no further opportunity for an auction or other process.

If the Successful Bidder or the Back-Up Bidder (if the Successful Bidder fails to consummate the proposed transaction) fails to enter into an asset purchase agreement as promptly as practicable or consummate the proposed transaction consistent with the Successful Bid or Back-Up Bid (if applicable), because of a breach or failure to perform on the part of the Successful Bidder or Back-Up Bidder (if applicable), all parties in interest reserve the right to seek all available damages from the defaulting Successful Bidder or Back-Up Bidder (if

applicable), including specific performance and retention of the Good Faith Deposit; *provided* that the foregoing shall not expand the available damages or other remedies available to be sought against the Stalking Horse Bidder, which shall be limited to such damages and remedies explicitly set forth in the Stalking Horse Agreement.

Consent to Jurisdiction as Condition to Bidding

All Qualified Bidders at the Auction will be deemed to have consented to the jurisdiction of the Court with respect to all matters relating to the Auction~~,~~ and waived any right to a jury trial in connection with any disputes relating to the Auction.

Return of Good Faith Deposit

All Good Faith Deposits will be held by the Debtors in a non-interest-bearing escrow or trust account. Good Faith Deposits of Qualified Bidders, other than the Successful Bidder and the Back-Up Bidder, if any, will be returned to the unsuccessful bidders within seven (7) days after selection of the Successful Bidder and Back-Up Bidder, if any, in accordance with these Bidding Procedures. The Successful Bidder's Good Faith Deposit will be applied to the Purchase Price of the Successful Bid at closing, and the Debtors will be entitled to retain such Good Faith Deposit as part of their damages if the Successful Bidder fails to meet its obligations to close the transaction contemplated by the Successful Bid. The Good Faith Deposit of the Back-Up Bidder, if any, will be returned to the Back-Up Bidder, if any, within seven (7) days after the consummation of the sale with the Successful Bidder.

Reservation of Rights

The Debtors reserve the right, after consultation with the Consultation Parties, in their reasonable discretion and subject to the exercise of their business judgment, to alter or modify any Auction rules or procedures, to waive terms and conditions set forth herein with respect to all potential bidders, extend the deadlines set forth herein, alter the assumptions set forth herein, and/or to terminate discussions with any and all prospective acquirers and investors at any time and without specifying the reasons therefor, in each case to the extent not materially inconsistent with these Bidding Procedures, the Bidding Procedures Order and the Stalking Horse Agreement; provided that the Debtors shall only be permitted to modify or amend the terms of any Stalking Horse Agreement in accordance with the applicable Stalking Horse Agreement. Notwithstanding the foregoing, the Debtors may not alter or modify any provisions that permit a Qualified Package Bid if it does not include cash consideration sufficient to pay, in full, in cash, the Payoff Amount (as defined in the Stalking Horse Purchase Agreement) from the proceeds of such bid at the initial closing of the transaction absent the written consent of the Stalking Horse Bidder. Additionally, if the Debtors select a Bid for Expanded Assets as the Successful Bid or Back-Up Bid, the Debtors reserve the right to seek a surcharge under 506(c) of the Bankruptcy Code for the reasonable and necessary costs and expenses of preserving~~,~~ or disposing of such Expanded Assets.

EXHIBIT 2 To Bidding Procedures Order

Cure Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
FULCRUM BIOENERGY, INC., *et al.*,	Case No. 24-12008 (TMH)
Debtors.[1]	(Jointly Administered)

NOTICE OF (I) POSSIBLE TREATMENT OF CONTRACTS AND LEASES, (II) FIXING OF CURE AMOUNTS, AND (III) DEADLINE TO OBJECT THERETO

PLEASE TAKE NOTICE that, on September 11, 2024, the above-captioned debtors and debtors in possession (the "Debtors") filed the *Debtors' Motion for (I) an Order Pursuant to Sections 105, 363, 364, 365 and 541 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9007 and Del. Bankr. L.R. 2002-1 and 6004-1 (A) Approving Bidding Procedures and Bid Protections for the Sale of Substantially All of the Debtors' Assets; (B) Approving the Debtors' Entry Into Stalking Horse Agreement and Related Bid Protections; (C) Approving Procedures for the Assumption and Assignment or Rejection of Designated Executory Contracts and Unexpired Leases; (D) Scheduling an Auction and Sale Hearing; (E) Approving Forms and Manner of Notice of Respective Dates, Times, and Places In Connection Therewith; and (F) Granting Related Relief; (II) an Order (A) Approving the Sale of the Debtors' Assets Free and Clear of Claims, Liens, and Encumbrances; and (B) Approving the Assumption and Assignment or Rejection of Designated Executory Contracts and Unexpired Leases; and (III)*

[1] The Debtors and Debtors in possession in these chapter 11 cases, along with each debtor's federal tax identification numbers are: Fulcrum BioEnergy, Inc. (3733); Fulcrum Sierra BioFuels, LLC (1833); Fulcrum Sierra Finance Company, LLC (4287); and Fulcrum Sierra Holdings, LLC (8498). The location of the Debtors' service address is: Fulcrum BioEnergy Inc., P.O. Box 220 Pleasanton, CA 94566. All Court filings can be accessed at: https://www.veritaglobal.net/Fulcrum.

Certain Related Relief D.I. 12 (the "Bidding Procedures Motion")[2], 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 (the "Sale") of the SH Acquired Assets~~(~~, and to the extent applicable, the Expanded Assets~~)~~ (each as defined in the Bidding Procedures Motion) free and clear of all liens, claims, encumbrances, and other interests (other than Permitted Post-Closing Encumbrances), with all such liens, claims, encumbrances, and other interests attaching with the same validity and priority to the Sale proceeds, to Switch, Ltd. (the "Stalking Horse Bidder"), except as set forth in the Stalking Horse Agreement and subject to higher or otherwise better offers; and (b) certain procedures for the assumption and assignment of executory contracts (the "Contracts") and unexpired leases (the "Leases") in connection with the Sale.

PLEASE TAKE FURTHER NOTICE that, on October [•], 2024, the Court entered an order [D.I. ~~_____~~ •] (the "Bidding Procedures Order"), granting certain of the relief sought in the Bidding Procedures Motion, including, among other things, approving: (a) the bidding procedures (the "Bidding Procedures") for the Sale of the SH Acquired Assets~~(~~, and to the extent applicable, the Expanded Assets~~)~~ or any subset of the SH Acquired Assets or Expanded Assets; and (b) procedures for the designation of the assumption and assignment of the Contracts and Leases.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Bidding Procedures Order, a hearing will be held before the Honorable Thomas M. Horan, United States Bankruptcy

[2] Capitalized terms not defined are defined in the Bidding Procedures Motion, Bidding Procedures Order, or Bidding Procedures

Judge, on **November ~~11~~12, 2024, at ~~[__:__ _.m.]~~2:00 p.m. (Prevailing Eastern Time)**, in Courtroom ~~[~~7~~]~~ of the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801 to consider approval of the Sale (the "Sale Hearing"). The Sale Hearing may be rescheduled or continued from time to time without further notice other than the announcement of the adjourned date(s) at the Sale Hearing or any continued hearing or on the applicable hearing agenda or other notice filed on the docket of these chapter 11 cases.

PLEASE TAKE FURTHER NOTICE that you are receiving this notice (the "Cure Notice") because you or one of your affiliates may be a counterparty to one or more of the Contracts and Leases with one or more of the Debtors as set forth on Exhibit A attached hereto (the "Contract and Lease Schedule").[3] If the Court enters the Sale Order, the Debtors may assume and assign to the Stalking Horse Bidder (or to another Successful Bidder selected at the Auction, if any) or reject the Contract and/or Lease listed on the Contract and Lease Schedule, to which you are a counterparty, either as of the date of Closing ~~Date~~ or a later date pursuant to the Stalking Horse Agreement or the Successful Bidder Purchase Agreement, as applicable.

PLEASE TAKE FURTHER NOTICE that the Debtors have determined that the cure amounts necessary to cure all defaults, if any, and to pay all actual or pecuniary losses that have resulted from such defaults under the Contracts and Leases (the "Cure Amounts") are in the total amount as set forth on the Contract and Lease Schedule attached hereto as **Exhibit A**.

[3] This Cure Notice is being sent to counterparties to contracts and leases that may be executory contracts and unexpired leases. This Cure Notice is not an admission by the Debtors that such contract or lease is executory or unexpired.

PLEASE TAKE FURTHER NOTICE that if you disagree with the proposed Cure Amounts, object to the ability of the Debtors to provide adequate assurance of future performance with respect to the Contract or Lease, or otherwise object to the potential assumption and assignment of the Contract or Lease to the Stalking Horse Bidder or other Successful Bidder, as applicable, you must file with the Court and serve an objection (an "Objection") on the following parties so as to be actually received before **4:00 p.m. (prevailing Eastern Time) on October [•], 2024** (the "Cure Notice Objection Deadline"): (a) the Debtors, P.O. Box 220 Pleasanton, CA 94566, Attn: Mark Smith; (b) proposed counsel to the Debtors, Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street. 16th Floor, P.O. Box 1347, Wilmington, DE 19899-1347, Attn: Robert J. Dehney Sr. (rdehney@morrisnichols.com); Curtis S. Miller (cmiller@morrisnichols.com); Daniel B. Butz (dbutz@morrisnichols.com); Clint M. Carlisle (ccarlisle@morrisnichols.com); Avery Jue Meng (ameng@morrisnichols.com); (c) the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"): 844 King Street, Room 2207, Wilmington, Delaware 19801, Attn: Rosa Sierra-Fox (rosa.sierra-fox@usdoj.gov); (d) counsel to the Committee: (i) Eversheds Sutherland (US) LLP, The Grace Building, 40th Floor, 1114 Avenue of the Americas, New York, NY 10036, Attn: Todd C. Meyers (ToddMeyers@eversheds-sutherland.com), Jennifer B. Kimble (JenniferKimble@eversheds-sutherland.com), Eversheds Sutherland (US) LLP, 999 Peachtree Street NE, Suite 2300, Atlanta, GA 30309, Attn: Todd C. Meyers (toddmeyers@eversheds-sutherland.com) and (ii) Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, DE 19801, Attn: Jeffrey R. Waxman (jwaxman@morrisjames.com), Eric J. Monzo (emonzo@morrisjames.com); (e) counsel to Switch, Ltd.: (i) Latham & Watkins

LLP, 1271 Avenue of the Americas, New York, NY 10020, Attn: Adam Goldberg (Adam.Goldberg@lw.com) and Brian S. Rosen (Brian.Rosen@lw.com) and (ii) Richards, Layton & Finger, P.A., 920 N. King Street, Wilmington, DE 19801, Attn: Michael J. Merchant (Merchant@RLF.com); and (f) counsel to UMB Bank, N.A.: (A) Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, NY 10065, Attn: Alexander Woolverton (awoolverton@kramerlevin.com); Douglas Buckley (dbuckley@kramerlevin.com), and (B) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Andrew Magaziner (amagaziner@ycst.com). All Objections must: (i) be in writing; (ii) comply with the applicable provisions of the Bankruptcy Rules, Local Rules and any orders of the Court; and (iii) state with specificity the nature of the objection and, if the objection pertains to the Cure Amount, the correct cure amount alleged by the objecting counterparty, together with any applicable and appropriate documentation in support thereof.

PLEASE TAKE FURTHER NOTICE that if and only if the Stalking Horse Bidder is **not** the Successful Bidder, counterparties to the Contracts and Leases shall have until ~~**November 6, 2024 at 4:00 p.m. ET**~~**the Sale Hearing** to object to the assumption and assignment of the Contracts and Leases **solely** on the issue of whether the Successful Bidder can provide adequate assurance of further performance as required by section 365 of the Bankruptcy Court. For the avoidance of doubt, if the Stalking Horse Bidder is the Successful Bidder, all adequate assurance Objections must be filed by the Cure Notice Objection Deadline.

PLEASE TAKE FURTHER NOTICE that any party that fails to timely file an Objection shall be deemed to have consented to the assumption and assignment of the Contract or Lease to the Stalking Horse Bidder or Successful Bidder, as applicable, and the Cure Amounts

proposed by the Debtors in this Cure Notice, and shall be forever enjoined and barred from seeking any additional amount(s) on account of the Debtors' cure obligations under section 365 of the Bankruptcy Code or otherwise from the Debtors or their estates (except, to the extent applicable, with respect to matters arising after the Closing and that are not otherwise paid in the ordinary course).

PLEASE TAKE FURTHER NOTICE that any objection to the proposed assumption and assignment or related cure of a Contract or Lease in connection with the Sale that remains unresolved as of the Sale Hearing shall be heard at the Sale Hearing (or at a later date as fixed by the Court) provided that any such objection may be adjourned, in full or in part, by the Debtors to a later date by listing such adjournment in a notice of agenda or other notice filed on the docket of the cases and served on the affected counterparty.

PLEASE TAKE FURTHER NOTICE that the Debtors hereby reserve all rights to amend, revise or supplement any documents relating to the Sale and/or to be executed, delivered, assumed and/or performed in connection with the Sale or the Stalking Horse Agreement or Successful Bidder Purchase Agreement, as applicable, including the Contract and Lease Schedule.

PLEASE TAKE FURTHER NOTICE that notwithstanding anything herein, this Cure Notice shall not be deemed to be an assumption, rejection, or termination of any of the Contracts and Leases. Moreover, the Debtors explicitly reserve their rights to reject or assume any of the Contracts and Leases pursuant to section 365(a) of the Bankruptcy Code and nothing herein (a) alters in any way the prepetition nature of the Contracts and Leases or the validity, priority, or amount of any claims of counterparties to the Contracts and Leases against the

Debtors that may arise under such Contracts and Leases, (b) creates a postpetition contract or agreement, or (c) elevates to administrative expense priority any claims of counterparties to the Contracts and Leases against the Debtors that may arise under such Contracts and Leases.

PLEASE TAKE FURTHER NOTICE that copies of the Bidding Procedures Motion (and all exhibits thereto), the Bidding Procedures Order, the Bidding Procedures, and proposed Sale Order (and all exhibits thereto) are available for review free of charge by accessing https://www.veritaglobal.net/Fulcrum.

Dated: ~~September~~ October[•], 2024
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Draft
Robert J. Dehney, Sr. (No. 3578)
Curtis S. Miller (No. 4583)
Daniel B. Butz (No. 4227)
Clint M. Carlisle (No. 7313)
Avery Jue Meng (No. 7238)
1201 N. Market Street, 16th Floor
P.O. Box 1347
Wilmington, Delaware 19899-1347
Telephone: (302) 658-9200
Facsimile: (302) 658-3989
Email: rdehney@morrisnichols.com
cmiller@morrisnichols.com
dbutz@morrisnichols.com
ccarlisle@morrisnichols.com
ameng@morrisnichols.com

Proposed Counsel to the Debtors and Debtors in Possession

EXHIBIT 3 To Bidding Procedures Order

Sale Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
FULCRUM BIOENERGY, INC., *et al.*,	Case No. 24-12008 (TMH)
Debtors.[1]	(Jointly Administered)

NOTICE OF SALE, BIDDING PROCEDURES, AUCTION AND SALE HEARING

PLEASE TAKE NOTICE that, on September 11, 2024, the above-captioned debtors and debtors in possession (the "Debtors") filed the *Debtors' Motion for (I) an Order Pursuant to Sections 105, 363, 364, 365 and 541 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9007 and Del. Bankr. L.R. 2002-1 and 6004-1 (A) Approving Bidding Procedures for the Sale of Substantially All Assets of Debtors; (B) Approving the Debtors' Entry Into the Stalking Horse Agreement and Related Bid Protections; (C) Approving Procedures for the Assumption and Assignment or Rejection of Designated Executory Contracts and Unexpired Leases; (D) Scheduling the Auction and Sale Hearing; (E) Approving Forms and Manner of Notice of Respective Dates, Times, and Places In Connection Therewith; and (F) Granting Related Relief; (II) an Order (A) Approving the Sale of the Debtors' Assets Free and Clear of Claims, Liens, and Encumbrances; (B) Approving the Assumption and Assignment or Rejection of Designated Executory Contracts and Unexpired Leases; and (III) Certain Related Relief* [D.I. 12] (the "Bidding Procedures Motion")[2], with the United States Bankruptcy Court for the District

[1] The Debtors and Debtors in possession in these chapter 11 cases, along with each debtor's federal tax identification numbers are: Fulcrum BioEnergy, Inc. (3733); Fulcrum Sierra BioFuels, LLC (1833); Fulcrum Sierra Finance Company, LLC (4287); and Fulcrum Sierra Holdings, LLC (8498). The location of the Debtors' service address is: Fulcrum BioEnergy Inc., P.O. Box 220 Pleasanton, CA 94566. All Court filings can be accessed at: https://www.veritaglobal.net/Fulcrum.

[2] Capitalized terms not defined herein are defined in the Bidding Procedures Motion or Bidding Procedures.

of Delaware (the "Court"), seeking, among other things, entry of an order (the "Sale Order") authorizing and approving: (a) the sale (the "Sale") of certain assets (the "SH Acquired Assets"), to Switch, Ltd. (the "Stalking Horse Bidder"), except as set forth in the Stalking Horse Agreement and subject to higher or otherwise better offers; and (b) certain procedures for the assumption and assignment of executory contracts (the "Contracts") and unexpired leases (the "Leases") in connection with the Sale.

PLEASE TAKE FURTHER NOTICE THAT THE DEBTORS ARE PROPOSING TO SELL THE SH ACQUIRED ASSETS, AND TO THE EXTENT APPLICABLE, THE EXPANDED ASSETS OR ANY SUBSET OF THE SH ACQUIRED ASSETS OR EXPANDED ASSETS, FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS (OTHER THAN PERMITTED POST-CLOSING ENCUMBRANCES). IN CONNECTION WITH THE SALE, THE STALKING HORSE BIDDER AND/OR OTHER ~~PURCHASERS~~SUCCESSFUL BIDDERS OR BACKUP BIDDERS WILL ALSO BE SEEKING A FINDING FROM THE COURT THAT THEY ARE NOT LIABLE UNDER THEORIES OF "SUCCESSOR LIABILITY" FOR ANY LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS ARISING BEFORE THE ~~CLOSING~~ DATE OF CLOSING.

PLEASE TAKE FURTHER NOTICE THAT ANY PARTY OR ENTITY WHO FAILS TO TIMELY MAKE AN OBJECTION TO THE SALE 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, AND THE ABSENCE OF SUCCESSOR LIABILITY.

PLEASE TAKE FURTHER NOTICE that the Debtors are soliciting offers for the purchase of the SH Acquired Assets~~(~~, and to the extent applicable, the Expanded Assets or any subset of the SH Acquired Assets or Expanded Assets~~)~~, and assumption of the Assumed Liabilities (as defined in the Stalking Horse Agreement) of the Debtors consistent with the bidding procedures (the "Bidding Procedures") approved by the Court by entry of an order on October [~~•~~9], 2024 [D.I. •] (the "Bidding Procedures Order"). The deadline for each Potential Bidder to submit a proposal to purchase the SH Acquired Assets~~(~~, and to the extent applicable, the Expanded Assets or any subset of the SH Acquired Assets or Expanded Assets~~)~~, is ~~**October 25**~~**November 4, 2024 at ~~4:00 p.m~~5:00 p.m. (Prevailing Eastern Time)** (the "Bid Deadline"). **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.

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 SH Acquired Assets~~(~~, and to the extent applicable, the Expanded Assets or any subset of the SH Acquired Assets or Expanded Assets~~)~~, on **November ~~1~~7, 2024 at 10:00 a.m. (prevailing Eastern Time)** at the offices of **Morris**

Nichols Arsht & Tunnell LLP, 1201 North Market Street, Wilmington, DE 19801 (or virtually, or at any other location as the Debtors may hereafter provide notice of in accordance with the Bidding Procedures and Bidding Procedures Order).

PLEASE TAKE FURTHER NOTICE that, pursuant to the Bidding Procedures Order, a hearing will be held before the Honorable Thomas M. Horan, United States Bankruptcy Judge, on **November ~~11~~12, 2024 at ~~_:00 _.m~~2:00 p.m. (prevailing Eastern Time)**, in Courtroom ~~[•]~~7 of the United States Bankruptcy Court for the District of Delaware, 824 Market Street, ~~[•]th~~3rd Floor, Wilmington, Delaware 19801, to consider approval of the Sale (the "Sale Hearing"). The Sale Hearing may be rescheduled or continued from time to time without further notice other than the announcement of the adjourned date(s) at the Sale Hearing or any continued hearing or on the applicable hearing agenda or other notice filed on the docket of these chapter 11 cases.

2. **PLEASE TAKE FURTHER NOTICE** that, except as otherwise set forth in the Bidding Procedures or Stalking Horse Agreement with respect to (i) matters arising under Contracts and Leases following the Closing or (ii) the assignment of Contracts and Leases to parties other than the Stalking Horse Bidder, the deadline to file objections, if any, to the transactions contemplated by the Stalking Horse Agreement or to entry of the Sale Order is **October 25, 2024 at 4:00 p.m. (Prevailing Eastern Time)**; *provided* that an objection to the Sale of the Expanded Assets, including any Expanded Assets consisting of intellectual property, may be filed up to and including the Sale Hearing (the "Sale Objection Deadline"). Objections, ~~if any~~other than those that may be properly raised at the Sale Hearing, **must**: (i) be in writing, (ii)

conform to the applicable provisions of the Bankruptcy Rules, the Local Rules and any orders of the Court, (iii) state with particularity the legal and factual basis for the objection and the specific grounds therefor and (iv) be filed with the Court and served so as to be actually received no later than the Sale Objection Deadline by the following parties: (a) the Debtors, P.O. Box 220 Pleasanton, CA 94566, Attn: Mark Smith; (b) proposed counsel to the Debtors, Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street. 16th Floor, P.O. Box 1347, Wilmington, DE 19899-1347, Attn: Robert J. Dehney Sr. (rdehney@morrisnichols.com); Curtis S. Miller (cmiller@morrisnichols.com); Daniel B. Butz (dbutz@morrisnichols.com); Clint M. Carlisle (ccarlisle@morrisnichols.com); Avery Jue Meng (ameng@morrisnichols.com); (c) the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"): 844 King Street, Room 2207, Wilmington, Delaware 19801, Attn: Rosa Sierra-Fox (rosa.sierra-fox@usdoj.gov); (d) counsel to the Committee: (i) Eversheds Sutherland (US) LLP, The Grace Building, 40th Floor, 1114 Avenue of the Americas, New York, NY 10036, Attn: Todd C. Meyers (ToddMeyers@eversheds-sutherland.com), Jennifer B. Kimble (JenniferKimble@eversheds-sutherland.com), Eversheds Sutherland (US), LLP, 999 Peachtree St NE, Suite 2300, Atlanta, GA 30309, Attn: Todd C. Meyers (toddmeyers@eversheds-sutherland.com) and (ii) Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, DE 19801, Attn: Jeffrey R. Waxman (jwaxman@morrisjames.com), Eric J. Monzo (emonzo@morrisjames.com); (e) counsel to Switch, Ltd.: (i) Latham & Watkins LLP, 1271 Avenue of the Americas, New York, NY 10020, Attn: Brian S. Rosen (Brian.Rosen@lw.com) and Adam Goldberg (Adam.Goldberg@lw.com) and (ii) Richards Layton & Finger, P.A., 920 N. King Street, Wilmington, DE 19801, Attn: Michael J. Merchant

(Merchant@RLF.com); (f) counsel to UMB Bank, N.A.: (i) Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, NY 10065, Attn: Alexander Woolverton (awoolverton@kramerlevin.com); Douglas Buckley (dbuckley@kramerlevin.com), and (ii) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Andrew Magaziner (amagaziner@ycst.com); and (g) counsel to PCL Administration LLC: Katten Muchin Rosenman LLP, 525 West Monroe Street, Chicago, Illinois 60661, Attn: Steven J. Reisman (sreisman@katten.com); Peter P. Knight (peter.knight@katten.com); and Joshua M. Altman, (josh.altman@katten.com), and (ii) Klehr Harrison Harvey Branzburg LLP, 919 N. Market Street, Suite 1000, Wilmington, DE 19801, Attn: Domenic Pacitti (DPacitti@klehr.com).

PLEASE TAKE FURTHER NOTICE that copies of the Bidding Procedures Motion (and all exhibits thereto), the Bidding Procedures Order, the Bidding Procedures, and proposed Sale Order (and all exhibits thereto) are available for review free of charge by accessing https://www.veritaglobal.net/Fulcrum.

PLEASE TAKE FURTHER NOTICE that, in accordance with the Bidding Procedures Order, a separate notice will be provided to the counterparties to executory contracts and unexpired leases that may be assumed and assigned in connection with the Sale.