IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

ORDER (I) AUTHORIZING THE SALE OF CERTAIN OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL ENCUMBRANCES; (II) APPROVING THE DEBTORS' ENTRY INTO THE ASSET PURCHASE AGREEMENT; (III) AUTHORIZING THE USE OF PROCEEDS AS CASH COLLATERAL; AND ((IV) GRANTING RELATED RELIEF

Upon the motion (the "Motion")[2] of the Debtors seeking entry of an order (this "Order"): (i) authorizing the sale (the "Sale") of certain of the Debtors' assets free and clear of all Encumbrances; (ii) approving the Debtors' entry into the Catalyst APA; (iii) authorizing the use of proceeds as cash collateral; and (iv) granting related relief, all as more fully set forth in the Motion; and this Court having found it has jurisdiction over the relief requested in the Motion under 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 February 29, 2012; and this being a core proceeding under 28 U.S.C. § 157(b); and venue being proper under 28 U.S.C. §§ 1408 and 1409; and due and sufficient notice of the Motion having been given under the circumstances; and it appearing that the relief requested by this Motion is in the best interests of the Debtors, their

[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); Fulcrum Sierra Holdings, LLC (8498). The location of the Debtors' service address is: Fulcrum BioEnergy Inc., P.O. Box 220 Pleasanton, CA 94566.

[2] Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Motion or the Catalyst APA.

estates, and their creditors and other parties in interest; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Sale Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:

A. The legal and factual bases set forth in the Motion and the Sale Hearing establish just and sufficient cause to grant the relief set forth herein.

B. On December 24, 2024, Debtor Fulcrum BioEnergy, Inc. ("Fulcrum Parent") and Johnson Matthey PLC, a company incorporated under the laws of England and Wales under company number 00033774 and having its main place of business at 10 Eastbourne Terrace, London W2 6LG England (together with its successors and permitted assigns, the "Purchaser") entered into that certain Asset Purchase Agreement (such agreement, together with all schedules and exhibits attached thereto, the "Catalyst APA" attached as **Exhibit B** to the Motion and the transactions contemplated therein, collectively, the "Sale Transaction").

C. **Jurisdiction and Venue.** This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

D. **Statutory Predicates.** The statutory predicates for the relief sought in the Motion are sections 105, 363 and 365 of title 11 of the United States Code ("Bankruptcy Code"), Rules 2002, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules"),

and Rules 2002-1, 6004-1, and 9013-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware ("Local Rules").

E. **Final Order**. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h), and to any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, this Court expressly finds that there is no just reason for delay in the implementation of this Order, and expressly directs entry of judgment as set forth herein.

F. **Notice.** Notice of the Motion, the time and place of the Sale Hearing and the time for filing objections to the Motion (the "Sale Notice") was reasonably calculated to provide all interested parties with timely and proper notice of the Sale and the Sale Hearing.

G. As evidenced by the certificates of service previously filed with the Court, proper, timely, adequate, and sufficient notice of the Motion, Sale Hearing, Sale and transactions contemplated thereby, has been provided, sections 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 9007 and 9008, and no other or further notice of the Motion or Sale Hearing is or shall be required. The disclosures made by the Debtors concerning the Motion and Sale Hearing were good, complete, and adequate.

H. **Corporate Authority.** Subject to the entry of this Order, the Debtors (i) have the requisite corporate power and authority to execute, deliver, and perform its obligations under the Catalyst APA and all other documents contemplated thereby, and has taken all requisite corporate or other organizational action and formalities necessary to authorize and approve the execution, delivery and performance of its obligations under the Catalyst APA and to consummate the Sale, including as required by its organizational documents, and upon execution thereof, the Catalyst APA and the related documents were or will be duly executed and delivered by the

Debtors and enforceable against the Debtors in accordance with their terms and, assuming due authorization, execution and delivery thereof by the other parties thereto, constituted or will constitute a valid and binding obligation of the Debtors. No government, regulatory, or other consents other than those expressly provided for in the Catalyst APA were required for the execution, delivery and performance by the Debtors of the Catalyst APA or the consummation of the Sale contemplated thereby. No consents or approvals of the Debtors' Board of Directors, other than those expressly provided for in the Catalyst APA or this Sale Order, are required for the Debtors to consummate the Sale.

I. The Catalyst APA was negotiated in good faith and at arm's-length. The Purchaser participated in good faith in these chapter 11 cases. The consideration to be paid by the Purchaser under the Catalyst APA was negotiated at arm's-length and constitutes (i) fair, adequate, and reasonable consideration for the Catalyst and (ii) reasonably equivalent value for the Catalyst. The terms and conditions set forth in the Catalyst APA are fair and reasonable under these circumstances and were not entered into for the purpose of, nor do they have the effect of, hindering, delaying, or defrauding the Debtors or their creditors under any applicable laws.

J. **Free and Clear.** The Catalyst is property of Fulcrum Parent's estate and title thereto is vested in Fulcrum Parent's estate within the meaning of section 541(a) of the Bankruptcy Code. Subject to sections 363(f) and 365(a) of the Bankruptcy Code, the transfer of the Catalyst to Purchaser, in accordance with the Catalyst APA will be, as of the closing date, a legal, valid, and effective transfer of the Catalyst, which transfer vests or will vest Purchaser with all right, title, and interest of Fulcrum Parent to the Catalyst free and clear of all Encumbrances. Purchaser would not have entered into the Catalyst APA and would not consummate the

transactions contemplated thereby if the Sale to Purchaser was not free and clear of all Encumbrances.

K. **Sale in Best Interests of the Debtors' Estate; Consideration**. Good and sufficient reasons for approval of the Catalyst APA and the transactions to be consummated in connection therewith have been articulated, and the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest. The Debtors have demonstrated both (a) good, sufficient and sound business purposes and justifications and (b) compelling circumstances for the Sale other than in the ordinary course of business, pursuant to section 363(b) of the Bankruptcy Code, outside of a plan of reorganization, in that, among other things, the immediate consummation of the Sale to Purchaser is necessary and appropriate to maximize the value of the Debtors' estate.

L. The total consideration provided by the Purchaser for the Catalyst as reflected in the Catalyst APA is the highest and otherwise best offer received by, and available to, the Debtors for the Catalyst. The offer of the Purchaser, upon the terms and conditions set forth in the Catalyst APA, including the total consideration to be realized by the Debtors thereunder, (i) is the highest and otherwise best offer received by Fulcrum Parent after an extensive marketing process, and (ii) is in the best interests of the Debtors, their creditors, their estates, and other parties in interest. Taking into consideration all relevant factors and circumstances, no other entity has submitted a higher or otherwise better offer to purchase the Catalyst from Fulcrum Parent, and the Sale Transaction is the best alternative for the Debtors.

M. **The Good Faith of Purchaser and Sellers.** Purchaser is purchasing the Catalyst, in accordance with the Catalyst APA, in good faith and is a good faith buyer within the meaning of section 363(m) of the Bankruptcy Code, and is therefore entitled to all of the

protections afforded by such provision, and otherwise has proceeded in good faith in all respects in connection with the Debtors' chapter 11 cases. As demonstrated by (i) evidence proffered or adduced at the Sale Hearing and (ii) the representations of counsel made on the record at the Sale Hearing, appropriate marketing efforts were conducted and, among other things: (a) the Purchaser in no way coerced the chapter 11 filing by the Debtors; and (b) all payments to be made by Purchaser in connection with the Sale have been disclosed. Based on the record in these cases and at the Hearing on this Motion, neither the Debtors, nor Purchaser has engaged in any conduct that would cause or permit the Catalyst APA to be avoided under Bankruptcy Code section 363(n).

N. **No Merger.** By virtue of the Sale Transaction, Purchaser is not a mere continuation of the Debtors and there is no continuity of enterprise between the Debtors and Purchaser. By virtue of the Sale Transaction, Purchaser is not a mere continuation of the Debtors or their estates by any reason or any theory of law or equity, and the transactions contemplated under the Catalyst APA do not amount to a consolidation, merger or de facto merger of Purchaser and the Debtors.

O. **Not an Insider.** Prior to the closing date, the Purchaser was not an "insider" or "affiliate" of the Debtors, as those terms are defined in the Bankruptcy Code, and no common identity of incorporators, directors, or controlling stockholders existed between the Debtors and Purchaser.

P. **No Successor.** Purchaser is not, and shall not be considered or deemed, as result of any action taken in connection with the Sale Transaction, to be a successor in interest of the Debtors or their estates for any purpose, including but not limited to under any federal, state, or local statute or common law, or revenue, pension, ERISA, tax, labor, employment, environmental, escheat or unclaimed property laws, or other law, rule, or regulation (including

without limitation filing requirements under any such laws, rules or regulations), or under any products liability law or doctrine with respect to the Debtors' liability under such law, rule, or regulation or doctrine or common law, or under any product warranty liability law or doctrine with respect to the Debtors' liability under such law, rule or regulation or doctrine. Except for the transfer of the Catalyst to Purchaser, the Sale Transaction will not subject Purchaser to any liability whatsoever with respect to the operation of the Debtors' business before the closing date or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, on any theory of law or equity.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED as set forth herein, and the proposed sale of Catalyst to the Purchaser upon the terms and conditions set forth in the Catalyst APA is hereby approved in all respects. For the avoidance of doubt, and as stated in the Catalyst APA, the Purchase Price shall be $900,000.00.

2. Any objections or reservation of rights filed or asserted in response to the Motion and the relief granted herein, to the extent not resolved as set forth herein or on the record at the Sale Hearing, are hereby overruled on the merits in their entirety with prejudice.

3. The Catalyst APA, and all other ancillary documents, and all of the terms and conditions thereof, are hereby approved in all respects.

4. Pursuant to sections 105 and 363(f) of the Bankruptcy Code, upon consummation of the Sale, the Catalyst shall be transferred to the Purchaser as set forth in the Catalyst APA. Upon such transfer, the Purchaser shall be vested with all right, title and interest of Fulcrum Parent in and to the Catalyst free and clear of any and all Encumbrances, which

Encumbrances, if any, shall attach to the proceeds of the Sale, with the same validity, extent, and priority, and subject to the same defenses (including, without limitation, any defenses under chapter 5 of the Bankruptcy Code), as had attached to such asset immediately prior to the sale.

5. Pursuant to sections 363(b) and 363(f) of the Bankruptcy Code, Fulcrum Parent is hereby authorized without the need of further approval from this Court to (a) execute any additional instruments or documents that may be reasonably necessary or appropriate to implement the Catalyst APA, *provided* that such additional documents do not materially change the Catalyst APA's terms adversely as to the Debtors' estates; (b) consummate the Sale in accordance with the terms and conditions of the Catalyst APA and the instruments to the Catalyst APA contemplated thereby; and (c) execute and deliver, perform under, consummate, implement, and close fully the transactions contemplated by the Catalyst APA, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Catalyst APA and the Sale. Purchaser shall not be required to seek or obtain relief from the automatic stay under section 362 of the Bankruptcy Code to enforce any of its remedies under the Catalyst APA or any other Sale-related document. The automatic stay imposed by section 362 of the Bankruptcy Code is modified solely to the extent necessary to implement the preceding sentence and the other provisions of this Order, *provided, however*, that this Court shall retain exclusive jurisdiction over any and all disputes with respect thereto.

6. This Order and terms and provisions of the Catalyst APA shall be binding in all respects upon the Debtors, their estates, all creditors of, and holders of equity interests in, the Debtors, any holders of encumbrances in, against, or on all or any portion of the Catalyst (whether known or unknown), Purchaser and all successors and assigns of Purchaser, the Catalyst. This Order and the Catalyst APA shall inure to the benefit of the Debtors, their estates and

creditors, Purchaser, and the respective successors and assigns of each of the foregoing. The Catalyst APA shall not be subject to rejection or avoidance by the Debtors, their estates, their creditors, their equity holders, or any trustee, examiner, or receiver.

7. Pursuant to sections 105(a), 363(b), 363(f), 365(b) and 365(f) of the Bankruptcy Code, Fulcrum Parent is authorized to transfer the Catalyst to Purchaser in accordance with the Catalyst APA and such transfer shall constitute a legal, valid, binding, and effective transfer of such Catalyst. Such transfer of the Catalyst in accordance with the Catalyst APA shall vest Purchaser with title in and to the Catalyst and, Purchaser shall take title to and possession of the Catalyst free and clear of all Encumbrances of any kind or nature whatsoever, including but not limited to successor or successor in interest liability, with all such Encumbrances to attach to the sale proceeds, if any, with the same validity, force and effect, and in the same order of priority, which such Encumbrance had prior to the Sale, subject to any rights, claims and defenses of the Debtors or their estates in connection therewith.

8. On the closing date, each of the Debtors' creditors is authorized to execute such documents and take all other actions as may be reasonably necessary to release its Encumbrances or other interests in the Catalyst, if any, as such Encumbrances may have been recorded or may otherwise exist.

9. If any person or entity which has filed statements or other documents or agreements evidencing Encumbrances on, against, or in, all or any portion of the Catalyst shall not have delivered to the Debtors prior to the closing date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens and easements, and any other documents necessary for the purpose of documenting the release of all Encumbrances of any kind or other interests which the person or entity has or may assert with

respect to all or any portion of the Catalyst, the Debtors are hereby authorized, and Purchaser is hereby authorized, to execute and file such statements, instruments, releases, and other documents on behalf of such person or entity with respect to the Catalyst.

10. Purchaser shall not have any liability or other obligation of the Debtors arising under or related to any of the Catalyst. Without limiting the generality of the foregoing, and as expressly permitted in the Catalyst APA, Purchaser shall not be liable for any Encumbrances including, but not limited to, any liability for any liabilities whether known or unknown as of the closing, now existing or hereafter arising, whether fixed or contingent, with respect to the Debtors or any obligations of the Debtors, including, but not limited to, liabilities on account of any taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to the operation of the Debtors' business prior to the closing date.

11. **Successor Liability.** Except as expressly permitted by this Order, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax and regulatory authorities, parties to executory contracts, customers, lenders, trade and other creditors, holding or asserting any claim of any kind or nature with respect to, arising under or out of, in connection with, or in any way relating to, the Debtors, any asset sold pursuant to this Order, the operation of the Debtors' business, shall be, and hereby are forever barred, estopped and permanently enjoined from asserting such claim against the Purchaser, its successors and assigns, or the Catalyst. The entry of this Order and consequent approval of the Catalyst APA shall mean that the Purchaser shall not be deemed to, by virtue of the Sale Transaction, (i) be the successor of (under any state, territorial, or federal law) or successor employer to the Debtors and shall instead be, and be deemed to be, a new employer with respect to any and all federal or state unemployment laws; (ii) have, de facto, or otherwise, merged or

consolidated with or into the Debtors; (iii) be a mere continuation or substantial continuation of the Debtors or the enterprise(s) of the Debtors; or (iv) be liable for any acts or omissions of the Debtors in the conduct of their business or arising under or related to the Catalyst other than as set forth in the Catalyst APA and this Order. Without limiting the generality of the foregoing, the Purchaser shall not be liable for any liability against any Debtor, or any of its predecessors or affiliates, and the Purchaser shall have no successor or vicarious liability of any kind or character whatsoever with respect to the Catalyst. The Purchaser would not have acquired the Catalyst but for the foregoing protections against potential claims based upon "successor liability" theories.

12. **Consideration.** The consideration provided by Purchaser under the Catalyst APA constitutes (i) reasonably equivalent value under the Bankruptcy Code, the Uniform Fraudulent Transfer Act, and the Uniform Voidable Transactions Act, (ii) fair consideration under the Uniform Fraudulent Conveyance Act, and (iii) reasonably equivalent value, fair consideration and fair value under any other applicable Laws of the United States, any state, territory or possession thereof, or the District of Columbia. The consideration provided by Purchaser for the Catalyst under the Catalyst APA is fair and reasonable and may not be avoided under section 363(n) of the Bankruptcy Code.

13. **Use of Proceeds as Cash Collateral.** In accordance with this Order and subject to the entry of the *Order (I) Approving the Sale of Certain of the Debtors' Assets Free and Clear of Claims, Liens, and Encumbrances, (II) Approving the Assumption and Assignment of Designated Executory Contracts and Unexpired Leases, and (III) Granting Related Relief* [D.I. •] (the "Agent Sale Order"), the Prepetition Agent has consented to the use of cash collateral, and the Prepetition Agent and the BioFuels Trustee have waived any adequate protection liens or claims in, on, or related to the Catalyst Proceeds. Therefore, the Catalyst Proceeds, which constitute the Prepetition

Agent's cash collateral, may be used for the satisfaction of the costs and expenses of administering Fulcrum Parent's chapter 11 case with any remaining Catalyst Proceeds to be distributed according to Fulcrum Parent's chapter 11 plan of liquidation. For the avoidance of doubt, nothing herein preapproves any term of a chapter 11 plan.

14. **Good Faith.** The transactions contemplated by the Catalyst APA are undertaken by Purchaser without collusion and in "good faith," as that term is used in section 363(m) of the Bankruptcy Code and, accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale with Purchaser, unless such authorization is duly stayed pending such appeal. Purchaser is a good faith purchaser of the Catalyst and is entitled to all of the benefits and protections afforded by section 363(m) of the Bankruptcy Code.

15. **Failure to Specify Provisions**. The failure specifically to include any particular provisions of the Catalyst APA in this Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court that the Catalyst APA be authorized and approved in its entirety; *provided*, *however*, that this Order shall govern if there is any inconsistency between the Catalyst APA (including all ancillary documents executed in connection therewith) and this Order. Likewise, all of the provisions of this Order are non-severable and mutually dependent. To the extent that this Order is inconsistent with any prior order or pleading with respect to the Motion, the terms of this Order shall control.

16. **Non-Material Modifications**. The Catalyst APA and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto, in writing signed by such parties, and in accordance with the terms thereof, without further

order of the Court, provided that any such modification, amendment, or supplement does not have a material adverse effect on the Debtors' estates.

17. **No Stay of Order**. Notwithstanding the provisions of Bankruptcy Rules 6004(h) and 6006(d), this Order shall be effective and enforceable immediately upon its entry. Time is of the essence in closing the transactions referenced herein, and the Debtors and Purchaser are hereby authorized to close the Sale as soon as practicable.

18. **Calculation of Time**. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006.

19. **Further Assurances**. From time to time, as and when requested by any party, each party shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions as such other party may reasonably deem necessary or desirable to consummate the transactions contemplated by the Catalyst APA including such actions as may be necessary to vest, perfect, or confirm, of record or otherwise, in Purchaser its right, title and interest in and to the Catalyst.

Thomas M. Horan

Dated: January 15th, 2025
Wilmington, Delaware

THOMAS M. HORAN
UNITED STATES BANKRUPTCY JUDGE