IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

DISCLOSURE STATEMENT FOR JOINT CHAPTER 11 PLAN OF LIQUIDATION

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Dated: February 3, 2025
Wilmington, DE

[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 Debtors' service address is: Fulcrum BioEnergy Inc., P.O. Box 220 Pleasanton, CA 94566.

THIS IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF THE PLAN. THE DEBTOR MAY NOT SOLICIT ACCEPTANCES OR REJECTIONS UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THE DEBTOR IS SUBMITTING THIS DISCLOSURE STATEMENT FOR APPROVAL, BUT THE BANKRUPTCY COURT HAS NOT YET APPROVED THIS DISCLOSURE STATEMENT. THE DEBTOR MAY REVISE THIS DISCLOSURE STATEMENT TO REFLECT EVENTS THAT OCCUR AFTER THE DATE HEREOF, BUT PRIOR TO THE BANKRUPTCY COURT'S APPROVAL OF THIS DISCLOSURE STATEMENT.

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This Disclosure Statement contains only a summary of the Plan. The Disclosure Statement is not intended to replace careful and detailed review and analysis of the Plan, but to aid and supplement such review. This Disclosure Statement is qualified in its entirety by reference to the more detailed provisions set forth in the Plan (which is included as Exhibit A to this Disclosure Statement). In the event of a conflict between the Plan and the Disclosure Statement, the provisions of the Plan will govern. All holders of Claims and Interests are encouraged to review the full text of the Plan and to read carefully this entire Disclosure Statement, including all exhibits annexed hereto, before deciding whether to vote to accept or reject the Plan.

The statements contained in this Disclosure Statement are made as of the date hereof, and the delivery of this Disclosure Statement will not, under any circumstances, create any implication that the information contained herein is correct at any time after the date hereof.

This Disclosure Statement has been prepared in accordance with section 1125 of the Bankruptcy Code and Rule 3016(b) of the Federal Rules of Bankruptcy Procedure. Dissemination of this Disclosure Statement is controlled by Bankruptcy Rule 3017. This Disclosure Statement was prepared to provide parties in interest in these Chapter 11 Cases with "adequate information" (as defined in section 1125 of the Bankruptcy Code) so that those creditors who are entitled to vote with respect to the Plan can make an informed judgment regarding such vote on the Plan.

Holders of Claims and Interests should not construe the contents of this Disclosure Statement as providing any legal, business, financial, or tax advice. Each such holder should, therefore, consult with his or her own legal, business, financial and tax advisors as to any such matters concerning the solicitation, the Plan and the transactions contemplated thereby.

Information contained herein is subject to completion or amendment. The Debtors reserve the right to file an amended plan and related disclosure statement from time to time, subject to the terms of the Plan. This Disclosure Statement does not constitute an offer to sell, or the solicitation of an offer to buy, any securities.

The effectiveness of the Plan is subject to several conditions precedent. There is no assurance that these conditions will be satisfied or waived.

No person has been authorized by the Debtors in connection with the Plan or the solicitation to give any information or to make any representation other than as contained in this Disclosure Statement, the Plan and the Exhibits, Notices and Schedules attached to or incorporated by reference or referred to in this Disclosure Statement and/or the Plan, and, if given or made, such information or representation may not be relied upon as having been authorized by the Debtors.

Except where specifically noted, the financial information contained herein has not been audited by a certified public accountant and has not been prepared in accordance with generally accepted accounting principles.

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I. INTRODUCTION

A. General

On September 9, 2024, Fulcrum BioEnergy, Inc. ("Fulcrum"), Fulcrum Sierra Holdings, LLC ("Holdings"), Fulcrum Sierra Finance Company, LLC ("Finance"), and Fulcrum Sierra BioFuels, LLC ("BioFuels," together with Fulcrum, Holdings, and Finance, the "Debtors" or "Company") each filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court").

The Debtors jointly submit this *Disclosure Statement for Chapter 11 Plan of Liquidation* (the "Disclosure Statement"), pursuant to section 1125 of the Bankruptcy Code, in connection with the solicitation of acceptances or rejections of the joint Chapter 11 Plan of Liquidation, filed concurrently herewith (the "Plan") from certain holders of Claims against the Debtors. A copy of the Plan is annexed hereto as **Exhibit A**.

All capitalized terms used in this Disclosure Statement that are not otherwise defined herein shall have the meanings ascribed to them in the Plan.

The Debtors urge all parties in interest to read this Disclosure Statement and the Plan carefully. This Disclosure Statement does not include a description of each and every term of the Plan. Accordingly, the description of the Plan set forth herein is qualified by the entirety of the Plan, which is incorporated by reference into this Disclosure Statement.

The overall purpose of the Plan is to provide for the liquidation of the Debtors in a manner designed to maximize recovery to stakeholders.

Generally, the Plan provides the following:[2]

a) Payment in full of all Allowed Administrative Expense Claims, Fee Claims, U.S. Trustee Fees, Priority Tax Claims and Other Priority Claims;

b) Funding of a Liquidation Trust to govern the liquidation of the Debtors' estates and remaining assets following the Effective Date;

c) Holders of General Unsecured Claims shall receive an interest in the Liquidation Trust;

d) Liquidation Trust Assets shall be liquidated to provide a distribution to Liquidation Trust Beneficiaries; and

e) No recovery to the holders of Interests on account of their Interests.

[2] The summary of the Plan contained herein is qualified in its entirety by the terms the Plan, and in the event of any inconsistency, the Plan shall control in all respects. Undefined terms used in this Disclosure Statement shall have the meanings ascribed to them in the Plan.

B. Disclosure Statement Enclosures

Accompanying this Disclosure Statement is a copy of the Plan.

II. FREQUENTLY ASKED QUESTIONS

A. What is Chapter 11?

Chapter 11 is a chapter of the Bankruptcy Code permitting bankrupt companies a period in which to organize their affairs and to review their assets and obligations in order to reorganize or liquidate their businesses.

The commencement of the Debtors' Chapter 11 Cases triggered the application of the "automatic stay" under section 362 of the Bankruptcy Code. The automatic stay halts, with certain exceptions, nearly all attempts to collect prepetition claims from debtors or to otherwise interfere with or control the debtors' property.

B. What is a Plan?

A primary purpose of a chapter 11 case is to permit the formulation of a plan of reorganization or liquidation. A plan of reorganization provides for the emergence of one or more of the debtors as a reorganized, functional business entity that is solvent. To that end, a plan may provide for distribution of an estate's assets to creditors, and sometimes, to equity holders in order to satisfy the reorganized debtor's prepetition obligations. The Plan proposed by the Debtors is a plan of liquidation that provides for the Debtors' orderly liquidation which will be accomplished principally through the sale of the Debtors' assets, the winding down of the Debtors' Estates, and the distribution of cash to the Debtors' creditors as set forth in the Plan and described below.

C. What is a Disclosure Statement?

After a plan has been proposed, the holders of claims against, or equity interests in, the debtors that are impaired by and entitled to receive distributions under the plan are entitled to vote on whether to accept or reject the plan. Section 1125 of the Bankruptcy Code requires disclosure of "adequate information" to all such voting creditors and equity holders by way of a court-approved "disclosure statement" before the debtors may solicit any votes on a plan. Section 1125 of the Bankruptcy Code provides that a disclosure statement must contain "information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan."

D. How Does One Vote?

THIS DISCUSSION OF THE SOLICITATION AND VOTING PROCESS IS ONLY A SUMMARY. PLEASE REFER TO THE SOLICITATION PROCEDURES ORDER FOR A MORE COMPREHENSIVE DESCRIPTION OF THE SOLICITATION AND VOTING PROCESS.

To vote on the Plan, a holder of an Allowed Claim in a Class that is entitled to vote on the Plan must complete the Ballot (enclosed with this Disclosure Statement) and comply with the voting instructions outlined in Article VIII of this Disclosure Statement.

Pursuant to the Bankruptcy Code, only Classes of Claims and Interests that are "impaired" under the Plan may vote to accept or reject the Plan. Generally, a claim or interest is impaired under a plan if the holder's legal, equitable or contractual rights are changed under such plan. Holders of claims or interests that are not impaired are presumed to accept the plan. Holders of claims or interests in an impaired class that will not receive or retain any property under a plan on account of such claims or interests are deemed to have rejected the plan. The Bankruptcy Code defines "acceptance" of a plan by a class of claims as acceptance by creditors in that class that hold at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the claims that cast ballots for acceptance or rejection of the plan.

This Disclosure Statement, along with a Ballot used for voting on the Plan, is being distributed to the holders of Claims that are entitled to vote to accept or reject the Plan. For a summary of the treatment of each Class of Claims and Interests, see Article VI of this Disclosure Statement.

Under the Plan, Claims in Classes 2A-2C (Secured Claims), Classes 3A-3C (Deficiency Claims), and Classes 4A-4C (Undersecured and General Unsecured Claims) are impaired and entitled to vote to accept or reject the Plan. Holders of Interests in Class 5 (Interests) will receive no distribution and, accordingly, the holders of Interests in such Class are deemed to reject the Plan. Therefore, their votes are not being solicited.

Accordingly, ballots to accept or reject the Plan are being provided only to holders of Claims in Classes 2A-2C, Classes 3A-3C, and Classes 4A-4C, and only such holders who held their Claims on the Voting Record Date are entitled to vote to accept or reject the Plan.

The Bankruptcy Court has fixed March 6, 2025 as the "Voting Record Date."

Pursuant to section 502 of the Bankruptcy Code and Bankruptcy Rule 3018, the Bankruptcy Court may temporarily allow a Claim for voting or other purposes. Pursuant to the Solicitation Procedures Order, voting tabulation procedures have been established, which include certain vote tabulation rules, that provide for temporary allowance or disallowance of certain Claims for voting purposes only. These voting procedures, including the tabulation rules, are described in the solicitation materials provided with your Ballot.

The Ballots have been specifically designed for the purpose of soliciting votes on the Plan from holders of Claims within Classes 2A-2C (Secured Claims), Classes 3A-3C (Deficiency Claims), and Classes 4A-4C (Undersecured and General Unsecured Claims) who are entitled to a vote with respect thereto. Accordingly, in voting on the Plan, please use only the Ballot sent to you with this Disclosure Statement:

To be counted, please complete and sign your Ballot, and submit it to the Voting Agent (defined below) so as to be received by the Voting Deadline of 4:00 p.m. (Prevailing Eastern Time), on March 31, 2025 using *one* of the following methods:

If by First Class Mail, Overnight Courier or Hand Delivery:

Fulcrum BioEnergy, Inc.
c/o Kurtzman Carson Consultants, LLC dba Verita Global
222 N Pacific Coast Highway, Suite 300
El Segundo, CA 90245

If you would like to coordinate hand delivery of your Ballot, please email FulcrumInfo@veritaglobal.com with a reference to "Fulcrum Solicitation" in the subject line, and at least twenty-four (24) hours in advance and provide the anticipated date and time of your delivery.

If by Online Submission:

Visiting the Debtors' restructuring website at: https://www.veritaglobal.net/fulcrum, click the "Submit Electronic Ballot" button on the landing page, and follow the directions to submit your Ballot online.

ANY BALLOTS RECEIVED AFTER THE VOTING DEADLINE WILL NOT BE COUNTED. NO BALLOTS RECEIVED BY TELECOPY, FACSIMILE, EMAIL, OR OTHER MEANS WILL BE ACCEPTED.

Following the Voting Deadline, the Claims Agent will prepare and file with the Bankruptcy Court a certification of the results of the balloting with respect to the Plan. Ballots submitted to the Debtors or any of their agents and advisors (other than the Voting Agent) will not be counted.

If you have any questions regarding the Ballot, did not receive a return envelope with your Ballot, did not receive an electronic copy of the Disclosure Statement and the Plan, or need physical copies of the Ballot or other enclosed materials, please contact the Debtors' solicitation and claims agent, ("Verita") or (the "Voting Agent"), in writing at Fulcrum BioEnergy, Inc., c/o Kurtzman Carson Consultants, LLC dba Verita Global, 222 N Pacific Coast Highway, Suite 300, El Segundo, CA 90245, or by email at FulcrumInfo@veritaglobal.com with a reference to "Fulcrum Solicitation" in the subject line, or by calling (866) 967-0676 (U.S./Canada) or (310) 751-2676 (International) and request to speak with a member of the solicitation team.

E. Confirmation Hearing

The Bankruptcy Court has scheduled a hearing to consider Confirmation of the Plan for **April 14, 2025 at 10:00 a.m. (ET)**, before the Honorable Thomas M. Horan at the United States Bankruptcy Court, 824 Market Street, 5th Floor, Courtroom #4, Wilmington, Delaware 19801 (the "Confirmation Hearing"). The Bankruptcy Court has directed that objections, if any, to Confirmation of the Plan be filed and served on or before **March 31, 2025, at 4:00 p.m. (ET)**, in the manner described in the Confirmation Hearing Notice accompanying this Disclosure Statement. The date of the Confirmation Hearing may be adjourned from time to time without further notice except for an in-court announcement at the Confirmation Hearing of the date and time as to which the Confirmation Hearing has been adjourned.

F. Recommendation of the Debtors and the Committee

THE DEBTORS AND THE COMMITTEE BELIEVE THAT THE PLAN PROVIDES THE GREATEST POSSIBLE RECOVERY TO CREDITORS.

THE DEBTORS AND THE COMMITTEE URGE ALL CREDITORS ENTITLED TO VOTE, TO VOTE IN FAVOR OF THE PLAN.

III. OVERVIEW OF THE PLAN

The following is a brief summary of the treatment of Claims and Interests under the Plan. Creditors and other parties in interest are urged to review the more detailed description of the Plan contained in this Disclosure Statement and the Plan itself, which is annexed as **Exhibit A** to this Disclosure Statement.

Set forth below is a table summarizing the classification and treatment of Claims and Interests under the Plan and the estimated distributions to be received by the Holders of such Claims and Interests thereunder. The actual distributions may differ from the estimates set forth in the table depending on, among other things, variations in the amounts of Allowed Claims, and the existence of Disputed Claims.

SUMMARY OF ESTIMATED DISTRIBUTIONS UNDER THE PLAN

Class	Estimated Allowed Amounts	Treatment under the Plan	Estimated Recovery	Impaired
Class 1: Other Priority Claims	$15,342	Except to the extent that a holder of an Allowed Other Priority Claim against any of the Debtors has agreed to less favorable treatment of such Claim, each such holder shall receive, in full and final satisfaction of such Claim, Cash in an amount equal to such	100%	Unimpaired Not entitled to vote Deemed to accept Plan

Class	Estimated Allowed Amounts	Treatment under the Plan	Estimated Recovery	Impaired
		Claim, payable on the later of (i) forty-five (45) calendar days after the Effective Date (or as soon as reasonably practicable thereafter) and (ii) the first Business Day after thirty (30) days from the date on which such Other Priority Claim becomes an Allowed Priority Claim, or as soon as reasonably practical thereafter.		
Class 2A: Fulcrum Prepetition Loan Secured Claims	$ 102,058,488	Except to the extent that a holder of an Allowed Fulcrum Prepetition Loan Secured Claim, on the Effective Date, has agreed to less favorable treatment of such Claim, each holder of an allowed Fulcrum Prepetition Loan Secured Claim will receive: • the proceeds of any collateral securing the Prepetition Loan Secured Claims; *provided* that the Remaining Catalyst Proceeds shall be deemed applied to the Fulcrum Prepetition Loan Secured Claim in partial satisfaction of the obligations under the Prepetition Fulcrum Credit Agreement and then made available for distribution by the Fulcrum Estate to creditors in Class 4A; • the return (to the extent agreed by the Prepetition Agent) or abandonment of	9%[3] - Unknown	Yes (entitled to vote)

[3] The 9% recovery for Holders of Claims in Class 2A in the form of a credit bid was approved pursuant to the Agent Sale Order (as defined herein).

Class	Estimated Allowed Amounts	Treatment under the Plan	Estimated Recovery	Impaired
		the collateral securing such holder's claim; • the applicable net proceeds from the Liquidation Trust with respect to the Prepetition Agent's collateral transferred to the Liquidation Trust; and/or • such other treatment as may otherwise be agreed to by such holder and the Liquidation Trustee. Notwithstanding the foregoing, holders of the Fulcrum Prepetition Loan Secured Claim agree that the first additional $1.1 million of available recovery to which the holders of the Fulcrum Prepetition Loan Secured Claim would otherwise be entitled in satisfaction of the Fulcrum Prepetition Loan Secured Claim shall be deemed applied to the Fulcrum Prepetition Loan Secured Claim in partial satisfaction thereof and then made available for distribution by the Fulcrum Estate to creditors in Class 4A pursuant to the terms of the Plan.		
Class 2B: Holdings Prepetition Bond Secured Claims	$113,955,468	Except to the extent that a holder of an Allowed Holdings Prepetition Bond Secured Claim has agreed to less favorable treatment of such Claim, each such holder shall receive delivery of the collateral securing such Allowed Holdings Prepetition Bond Secured Claim, which	Unknown	Yes (entitled to vote)

Class	Estimated Allowed Amounts	Treatment under the Plan	Estimated Recovery	Impaired
		was not otherwise released in accordance with any court order or sale process.		
Class 2C: BioFuels Prepetition Bond Secured Claims	$127,616,691	Except to the extent that a holder of an Allowed BioFuels Prepetition Bond Secured Claim has agreed to less favorable treatment of such Claim, each such holder shall receive delivery of the collateral securing such Allowed BioFuels Prepetition Bond Secured Claim, which was not otherwise released in accordance with any court order or sale process.	35%[4] - Unknown	Yes (entitled to vote)
Class 3A: Fulcrum Deficiency Claims	N/A	Holders of the Fulcrum Deficiency Claim agree that they will not recover from (a) the Remaining Catalyst Proceeds or (b) the first additional $1.1 million of available recovery to which the holders of the Fulcrum Prepetition Loan Secured Claim would otherwise be entitled in satisfaction of the Fulcrum Deficiency Claim. Thereafter, each holder of an Allowed Fulcrum Deficiency Claim shall receive in full satisfaction, settlement, and release of, and in exchange for such Allowed Fulcrum Deficiency Claim the Pro Rata Share of the Cash, if any, to be	Unknown[5]	Yes (entitled to vote)

[4] The 35% recovery for Holders of Claims in Class 2C in the form of a distribution of sale proceeds was approved pursuant to the Biorefinery Sale Order.

[5] The recovery for Holders of Claims in Classes 3A-3C and 4A-4C depends on the ultimate amount of distributable proceeds the Liquidating Trust receives from the Liquidation Trust Assets. As is true for all litigation, any potential recoveries from the Liquidation Trust Assets are uncertain at this time due to difficulty in assessing the likelihood of success in connection with the Liquidation Trust Assets.

Class	Estimated Allowed Amounts	Treatment under the Plan	Estimated Recovery	Impaired
		distributed from the Fulcrum Liquidation Trust Account.		
Class 3B: Holdings Deficiency Claims	$ 113,955,468	Each holder of an Allowed Holdings Deficiency Claim shall receive in full satisfaction, settlement, and release of, and in exchange for such Allowed Holdings Deficiency Claim the Pro Rata Share of the Cash, if any, to be distributed from the Holdings Liquidation Trust Account.	Unknown	Yes (entitled to vote)
Class 3C: BioFuels Deficiency Claims	$124,710,200	As provided for is section 5.25(b) of the Amended Final DIP Order [D.I. 177], the holders of BioFuels Deficiency Claims have agreed to waive any distribution on account of their BioFuels Deficiency Claims.	Unknown	Yes (entitled to vote)
Class 4A: Fulcrum Undersecured and General Unsecured Claims	$93,863,401	Each holder of an Allowed Fulcrum Undersecured and General Unsecured Claim shall receive in full satisfaction, settlement, and release of, and in exchange for such Allowed Fulcrum Undersecured and General Unsecured Claim the Pro Rata Share of the Cash, if any, to be distributed from the Fulcrum Liquidation Trust Account.	Unknown	Yes (entitled to vote)
Class 4B: Holdings Undersecured and General Unsecured Claims	N/A	Each holder of an Allowed Holdings Undersecured and General Unsecured Claim shall receive in full satisfaction, settlement, and release of, and in exchange for such Allowed Holdings Undersecured and General Unsecured Claim the Pro Rata Share of the Cash, if any, to be distributed from the	Unknown	Yes (entitled to vote)

Class	Estimated Allowed Amounts	Treatment under the Plan	Estimated Recovery	Impaired
		Holdings Liquidation Trust Account.		
Class 4C: BioFuels Undersecured and General Unsecured Claims	$80,863,858	Each holder of an Allowed BioFuels Undersecured and General Unsecured Claim shall receive in full satisfaction, settlement, and release of, and in exchange for such Allowed BioFuels Undersecured and General Unsecured Claim the Pro Rata Share of the Cash, if any, to be distributed from the BioFuels Liquidation Trust Account.	Unknown	Yes (entitled to vote)
Class 5: Interests	N/A	Interests shall be extinguished, cancelled and released on the Effective Date. Holders of Interests shall not receive or retain any distribution under the Plan on account of such Interests.	0%	No (deemed to reject)

The treatment and distribution provided to holders of Allowed Claims and Interests pursuant to the Plan are in full and complete satisfaction of the Allowed Claims and Interests, as the case may be.

The Plan contemplates certain releases by the Debtors, which includes the Debtors' release of, among other things, any and all Claims and Causes of Action asserted or assertable on behalf of the Debtors against each of the Debtors, the Debtors' directors and officers that have served in such capacity postpetition, as set forth on Exhibit A of the Plan, and certain other parties in connection with or related to, among other things, any Sale Transaction, the Plan, the Liquidation Trust, and these Chapter 11 Cases. Consistent with the Debtors' fiduciary duties, the Debtors and their advisors have evaluated the propriety of the releases under the Plan, including the Debtors' release of the directors and officers that have served postpetition. After conducting this review, the Debtors have determined such releases are proper and justified.

As described in greater detail below, the Plan also contemplates consensual releases by non-Debtor parties, including (i) all holders of Secured Claims in Classes 2A-2C; (ii) all holders of Deficiency Claims in Classes 3A-3C; and (iii) all holders of Undersecured and General Unsecured Claims in Classes 4A-4C, who vote in favor of the Plan and do not opt out of the voluntary release contained in Section 12.5 of the Plan by checking the "opt out" box on the ballot and returning it in accordance with the instructions set forth thereon.

IV. BACKGROUND OF THE DEBTORS AND CERTAIN EVENTS PRECEDING THE FILING OF THEIR CHAPTER 11 CASES

A. General Background and History

Founded in July 2007, the Company was a pioneer in the clean energy space that conceptualized a first-of-its-kind "waste-to-fuel" process whereby municipal solid waste—an abundant, low-cost feedstock source that does not need to be grown or pulled from a well—is converted into drop-in fuels through the utilization of gasification, Fischer-Tropsch and other technologies. Through its proprietary process that incorporates commercially proven technologies, the Company set out to simultaneously solve two environmental challenges—reducing the amount of waste going to landfills and reducing carbon emissions in the aviation industry. BioFuels' Plant (the "Sierra Plant") located approximately twenty miles east of Reno, Nevada, first brought this "waste-to-fuel" process to life in December 2022, successfully producing low-carbon synthetic crude oil from landfill waste.

B. Events Leading to the Chapter 11 Cases

Despite the Company's successful proof of concept at the Sierra Plant and substantial progress with ongoing research and development, the Company faced significant challenges that strained the its liquidity profile and ability to invest in the business. Among other difficulties, the Sierra Plant experienced certain equipment issues following its initial operations in December 2022, which delayed the Sierra Plant's full-scale operations. As a result, the Company was unable to counteract its cash burn.

Given the novel nature of the Company's business, significant costs were incurred because of delays in operations and the inability to anticipate issues based on prior ventures and experiences. While the Company achieved proof of concept through the initial operations at the Sierra Plant, such achievement also illuminated certain equipment and operational needs that the Company attempted to address. Due to the custom nature of the equipment and parts required for the Sierra Plant's operations, changes to the process and equipment required significant investments of time and capital. Macroeconomic issues also impacted certain necessary supply chains, which in turn compounded the delays with respect to securing the equipment required to achieve full operational status at the Sierra Plant.

As a result of the delays to reach operational status, the Debtors also encountered challenges within their capital structure. The Company entered into the Fulcrum Senior Secured Term Loan Facility in June 2023 to provide the Company with the requisite liquidity necessary to raise capital and to identify holistic, long-term solutions for the Company's capital structure. The Company initiated capital raise efforts during the second and third quarters of 2023 that were intended to yield approximately $200 million to $250 million in new liquidity to, among other things, provide additional runway to address the Sierra Plant's operational issues. As part of its equity raise efforts, the Company launched a marketing process that included outreach to more than twenty strategic parties. The capital raise outreach resulted in many management presentations, due diligence questions and follow-up calls with the Company with various potential investors. However, these external capital raising efforts unfortunately coincided with a period of significant macroeconomic headwinds and global volatility. Rampant inflation and interest rate

"hikes" by the U.S. Federal Reserve contributed to fears of a global recession and pullback in consumer spending, which created a difficult market environment for raising capital. Ultimately, the capital raise process did not result in definitive investment documents.

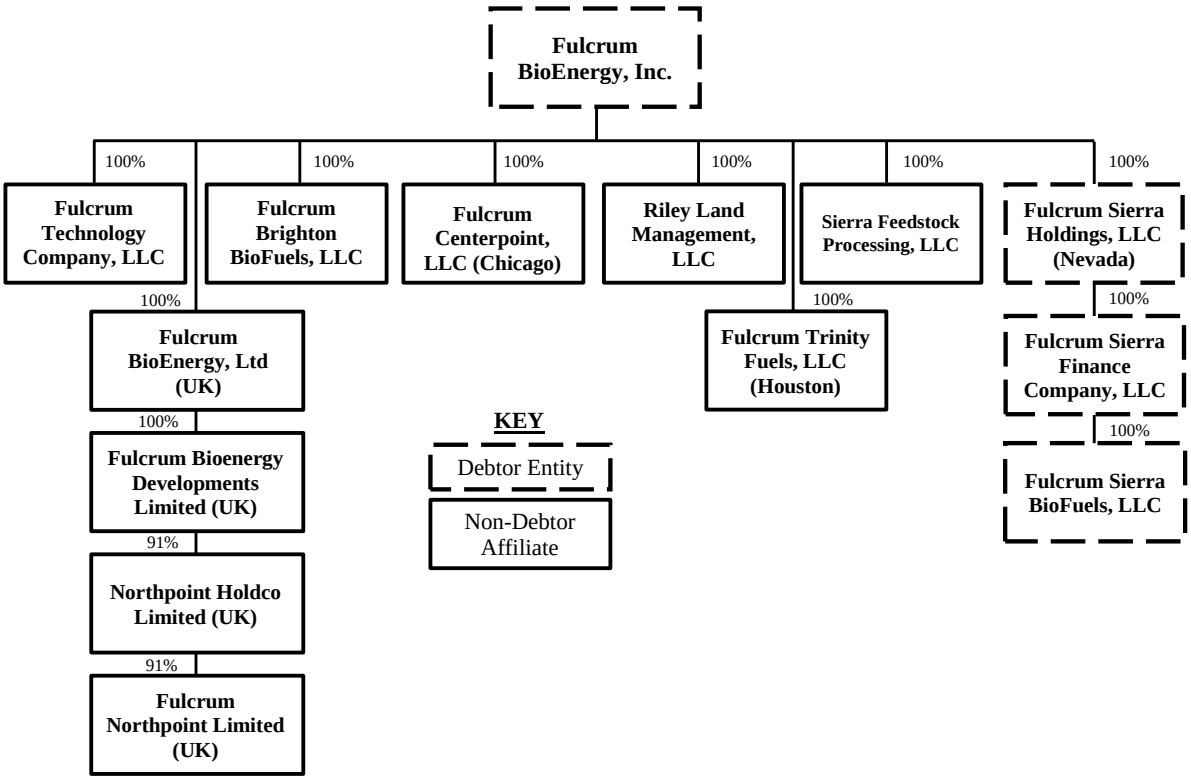
Without any additional, immediate capital infusion, the Debtors were forced to seek potential strategic alternatives. The Company worked with certain of its existing stakeholders to receive an incremental upsize of the Fulcrum Senior Secured Term Loan Facility to provide additional runway towards a solution. However, after the Debtors failed to implement a strategic alternative or reach a solution with its existing stakeholders, the Company failed to make monthly deposits to the Bonds Trustee (defined below) on behalf of the BioFuels Bonds and the Holdings Bonds. The Company and the Bonds Trustee entered into a forbearance agreement related to that default dated as of September 29, 2023 (the "Sept. 2023 Forbearance"). At the same time, the Bonds Trustee's counsel engaged a financial advisor and investment banker, RPA Advisors, to assist the Bonds Trustee and its counsel in assessing the carrying costs of the Sierra Plant and to explore options in marketing the Sierra Plant should the Bonds Trustee have sought to foreclose on the Sierra Plant.

On October 13, 2023 BioFuels obtained additional bridge financing from certain existing lenders through the BioFuels Unsecured Term Loan Facility to fund immediate needs. On October 16, 2023, following the expiration of the Sept. 2023 Forbearance, the Bonds Trustee delivered to the relevant parties a notice of default and acceleration of the bonds and related obligations (the "Default Notice"). Despite delivery of the Default Notice, the Bonds Trustee continued to defer commencing any foreclosure action after the Company executed three additional forbearance agreements, one with the Bonds Trustee and two with PCL Administration LLC ("PCL"), as administrative agent and as collateral agent, under the Fulcrum Senior Secured Term Loan Facility and the BioFuels Unsecured Term Loan Facility, each dated as of October 25, 2023. The BioFuels Unsecured Term Loan Facility was subsequently upsized to provide nearly $40 million, in the aggregate, of additional financing over the following seven months to help the Company develop its technology.

As of May 2024, the Company was unable to raise additional capital to support company operations or repairs to the Sierra Plant. However, RPA Advisors' efforts to market the Sierra Plant continued. By June 10, 2024, RPA Advisors began reaching out to potentially interested buyers and alerted them of the existence of the data room with relevant company information. As a result of RPA Advisors' efforts, thirty-six (36) potential purchasers had discussions with RPA Advisors and/or the Company regarding the Sierra Plant, one of which included Switch Ltd. ("Switch"), who ultimately agreed to serve as the stalking horse for an in-court sale process and executed an asset purchase agreement (the "Stalking Horse APA") with the Company. The Stalking Horse APA contemplated a total purchase price of $15 million and the provision of a debtor-in-possession loan of up to $5 million to fund the Company's bankruptcy cases.

C. The Debtors' Prepetition Corporate Structure

The following chart depicts the relationship among the Debtors (shaded in blue) and their Non-Debtor affiliates:



D. The Debtors' Prepetition Capital Structure

As of the Petition Date, the prepetition capital structure included approximately $456.589,993 in outstanding principal on its funded debt. The Debtors' financing facilities include: the (a) Fulcrum Senior Secured Term Loan Facility; (b) Fulcrum Secured Convertible Promissory Notes; (c) Fulcrum Unsecured Convertible Promissory Notes; (d) Holdings Bonds; (e) BioFuels Bonds; and (f) BioFuels Unsecured Term Loan Facility.

DEBTOR FINANCING FACILITIES (AS OF THE PETITION DATE)		
Facility	**Maturity**	**Outstanding Principal Amount (Approximate)**
Fulcrum BioEnergy, Inc. Debt		
Senior Secured Term Loan Facility	May 20, 2024	$93,134,423
2021 A&R Secured Convertible Promissory Notes	December 31, 2023	$30,000,000
2020 Secured Convertible Promissory Notes	December 31, 2023	$34,500,000
Unsecured Convertible Promissory Note	June 23, 2024	$5,000,000
Paycheck Protection Program Loan	May 6, 2025	$169,896
Fulcrum Sierra Holdings, LLC Debt		
6.950% Series 2018 Sierra Holdings Bonds	February 15, 2038	$39,638,065
5.750% Series 2019 Sierra Holdings Bonds	February 15, 2038	$46,002,680
6.750% Series 2020 Sierra Holdings Bonds	February 15, 2038	$18,426,837

DEBTOR FINANCING FACILITIES (AS OF THE PETITION DATE)		
Facility	**Maturity**	**Outstanding Principal Amount (Approximate)**
Fulcrum Sierra BioFuels, LLC Debt		
5.875% Series 2017 Sierra BioFuels Bonds	December 15, 2027	$29,203,151
6.250% Series 2017 Sierra BioFuels Bonds	December 15, 2037	$101,769,499
5.125% Series 2017B Sierra BioFuels Bonds	December 15, 2037	$18,971,740
5.250% Series 2018 Sierra BioFuels Bonds	December 15, 2037	$2,633,702
Unsecured Term Loan Facility	December 31, 2023	$39,774,423
Total Outstanding Debt (as of the Petition Date):		**$459,224,416**

1. Fulcrum Senior Secured Term Loan Facility

On June 23, 2023, Fulcrum, as borrower, and certain of its subsidiaries as guarantors thereto entered into that certain credit agreement (as amended by the Second Amendment to Credit Agreement dated as of May 20, 2024, the "Prepetition Term Loan Credit Agreement") with PCL, providing for a term loan facility in an initial aggregate principal amount of $84,500,000, which was subsequently increased on September 29, 2023, by that certain Assignment and Assumption Agreement and on May 20, 2024 by that certain Second Amendment to Credit Agreement to a total aggregate principal amount of $94,140,475 (the "Fulcrum Senior Secured Term Loan Facility"). Certain of the Debtors' obligations under the Fulcrum Senior Secured Term Loan Facility are guaranteed by eight of Fulcrum's direct and indirect subsidiaries. The Fulcrum Senior Secured Term Loan Facility is secured on a first lien basis by substantially all of the personal and real property assets of Fulcrum and those subsidiaries which provided a guaranty thereunder. The Fulcrum Senior Secured Term Loan Facility has an interest rate of twenty percent (20.00%) and matured on December 23, 2023. As of the Petition Date, $93,134,423 in principal amount of the Fulcrum Senior Secured Term Loan Facility remained outstanding.

2. Fulcrum Secured Convertible Promissory Notes

Fulcrum is also the issuer of the following secured convertible promissory notes (the "Fulcrum Secured Convertible Promissory Notes"):

(a) those certain secured convertible promissory notes issued to Crestline Praeter, L.P. – Fulcrum ("Crestline"), BP Technology Ventures Limited ("BP"), Rustic Canyon Ventures III, L.P. ("Rustic Canyon"), and Cathay Pacific Airways Limited ("Cathay") pursuant to that certain Securities Purchase Agreement, dated as of November 13, 2020 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time) in the principal amount of $23,500,000 with respect to Crestline, $5,000,000 with respect to BP, and $1,000,000 with respect to Cathay.

Certain of the Fulcrum's secured convertible promissory notes were converted pre-petition to equity or abandoned and relinquished postpetition (the "Cancelled Fulcrum Secured Convertible Promissory Notes"):

(b) those certain secured promissory notes, as amended, issued to BP and Marubeni America Corporation ("Marubeni"), dated as of March 15, 2023, and February 15, 2023, respectively, in the principal amount of $10,000,000 with respect to BP and $4,500,000 with respect to Marubeni. Pursuant to the terms of the amended secured promissory notes, the outstanding principal and accrued interest on these secured promissory notes were converted into shares of Fulcrum's Series D-8 Preferred Stock on December 31, 2023;

(c) those certain secured convertible promissory notes issued to Newtop Partners and Newtop Partners II pursuant to that certain Securities Purchase Agreement, dated as of July 29, 2014 (as amended, restated, supplemented or otherwise modified from time to time) in the principal amount of $15,000,000 with respect to Newtop Partners and $15,000,000 with respect to Newtop Partners II. On December 23, 2024, Newtop Partners and Newtop Partners II abandoned and relinquished their interests in the foregoing secured convertible promissory notes; and

(d) those certain secured convertible promissory notes issued to Rustic Canyon Ventures III, L.P. ("Rustic Canyon") pursuant to that certain Securities Purchase Agreement, dated as of November 13, 2020 (as amended, restated, supplemented or otherwise modified from time to time) in the amount of $2,500,000. On December 14, 2024, Rustic Canyon abandoned and relinquished its interests in the foregoing secured convertible promissory notes.

Certain of the Debtors' obligations under the Fulcrum Secured Convertible Promissory Notes are guaranteed by several of Fulcrum's direct and indirect subsidiaries and secured on a first lien basis by substantially all of the personal and real property assets, subject to the lien granted to PCL, as administrative agent, pursuant to the Fulcrum Senior Secured Term Loan Facility. The Fulcrum Secured Convertible Promissory Notes bear interest ranging up to fifty percent (50%). As of the Petition Date, $64,500,000 of the principal amount of the Fulcrum Secured Convertible Promissory Notes remained outstanding.

3. Fulcrum Unsecured Convertible Promissory Notes

Fulcrum is party to the unsecured convertible promissory note (the "Fulcrum Unsecured Convertible Promissory Note") dated as of June 23, 2023, issued to Rustic Canyon Ventures III, L.P., in the principal amount of $5,000,000. This Fulcrum Unsecured Convertible Promissory Note remained outstanding as of the Petition Date.

In late 2022 and early 2023, Fulcrum issued the following additional unsecured convertible promissory notes:

a. that certain convertible promissory note issued to BP, dated as of September 8, 2022 and November 23, 2022 in the principal amount of $14,500,000 and $10,500,000, respectively;

b. that certain convertible promissory note issued to CDP Infrastructures Fund G.P., dated as of September 8, 2022, in the principal amount of $4,500,000;

c. that certain convertible promissory note issued to Marubeni Corporation, dated as of October 26, 2022, in the principal amount of $10,500,000;

d. that certain convertible promissory note issued to OCI Fuels USA Inc., dated as of January 13, 2023, in the principal amount of $9,000,000; and

e. that certain convertible promissory note issued to SK Innovation Co., Ltd., dated as of February 27, 2023, in the principal amount of $10,000,000.

Through the terms of these unsecured promissory notes, the outstanding principal and accrued interest on these unsecured promissory notes were converted into shares of the Fulcrum's Series D-8 Preferred Stock on December 31, 2023.

4. Holdings Bonds

On September 1, 2018, the Director of the State of Nevada Department of Business and Industry (the "Bond Issuer") issued $44,000,000 in aggregate principal amount of bonds (the "Series 2018 Holdings Bonds") and loaned the proceeds of such issuance to Holdings, pursuant to a certain financing agreement (as amended, restated, amended and restated, supplemented or otherwise modified, the "Holdings Financing Agreement"). The Series 2018 Holdings Bonds were issued pursuant to a certain trust indenture, dated as of September 1, 2018 (as amended, restated, amended and restated, supplemented or otherwise modified, the "Holdings Trust Indenture") by and between the Bond Issuer, as issuer, and the Bank of New York Mellon Trust Company, N.A., as trustee ("BNY"), as trustee.

Then, on September 1, 2019, the Bond Issuer issued an additional $50,000,000 in bonds on a parity basis with the Series 2018 Holdings Bonds (the "Series 2019 Holdings Bonds"), as authorized by the Holdings Trust Indenture (as amended and supplemented in connection with this issuance) and loaned the proceeds of such issuance to Holdings pursuant to the Holdings Financing Agreement.

In December 2020, the Bond Issuer issued an additional $20,000,000 in bonds on a parity basis with the Series 2018 Holdings Bonds and the Series 2019 Holdings Bonds (the "Series 2020 Holdings Bonds," and together with the Series 2018 Holdings Bonds and the Series 2019 Holdings Bonds, the "Holdings Bonds"), as authorized by the Holdings Trust Indenture (as amended and supplemented in connection with this issuance) and loaned the proceeds of such issuance to Holdings pursuant to the Holdings Financing Agreement. UMB Bank, N.A. ("UMB"), is successor trustee for the Holdings Bonds (in such capacity, the "Holdings Trustee," and together with the BioFuels Trustee (as defined below), the "Bonds Trustee").

The Holdings Bonds are secured by (a) all of Holdings' and Finance's personal property and (b) the revenues and other moneys and rights that constitute the Trust Estate (as defined in the Holdings Trust Indenture), (c) all of Holdings' membership interests in Finance, (d) all of

Fulcrum's membership interests in Holdings, and (e) all funds held in certain accounts. The Holdings Bonds are also guaranteed by Fulcrum.

For the Series 2018 Holdings Bonds, $39,638,065.21 of remaining principal bears default interest at a rate of 9.95% and had an initial stated maturity of February 15, 2038. For the Series 2019 Holdings Bonds, $46,002,680.90 of remaining principal bears interest at a default rate of 8.75% and had an initial stated maturity of February 15, 2038. For the Series 2020 Holdings Bonds, $18,426,837.29 of remaining principal bears interest at a default rate of 9.75% and had an initial stated maturity of February 15, 2038. All principal, interest, and other amounts owed under the Holdings Bonds became immediately due and payable upon delivery of the notices of default, events of default, and acceleration by the Holdings Trustee, on October 16, 2023. As noted herein, after delivering such notice, the Holdings Trustee forbore from continuing or taking additional enforcement actions pursuant to the Bond Forbearance Agreement, until the Bond Forbearance Agreement expired on May 8, 2024.

5. BioFuels Bonds

On October 2017, the Bond Issuer issued $150,000,000 in aggregate principal amount of bonds (the "Series 2017A BioFuels Bonds") and loaned the proceeds of such issuance to BioFuels pursuant to a certain financing agreement (as amended, restated, supplemented or otherwise modified, the "BioFuels Financing Agreement"). The Series 2017A BioFuels Bonds were issued pursuant to a certain trust indenture, dated as of October 1, 2017 (as amended and supplemented as of December 1, 2017, and again as of March 1, 2018, the "BioFuels Trust Indenture") by and between the Bond Issuer, as issuer, and BNY.

Then, in December 2017, the Bond Issuer issued an additional $21,960,000 in bonds on a parity basis with the Series 2017A BioFuels Bonds (the "Series 2017B BioFuels Bonds," and together with the Series 2017A BioFuels Bonds, the "2017 BioFuels Bonds"), as authorized by the BioFuels Trust Indenture (as amended and supplemented in connection with this issuance) and loaned the proceeds to BioFuels pursuant to the BioFuels Financing Agreement.

Again, in March 2018, the Bond Issuer issued an additional $3,040,000 in bonds on a parity basis with the 2017 BioFuels Bonds, (the "Series 2018A BioFuels Bonds," and together with the 2017 BioFuels Bonds, the "BioFuels Bonds"), as authorized by the BioFuels Trust Indenture (as amended and supplemented in connection with this issuance) and loaned the proceeds to BioFuels pursuant to the BioFuels Financing Agreement. UMB is successor trustee for the BioFuels Bonds (in such capacity, the "BioFuels Trustee").

The BioFuels Bonds are secured by (a) all of BioFuels' personal property, (b) all of Finance's membership interests in BioFuels, (c) the revenues and other moneys and rights Trust Estate (as defined in the BioFuels Trust Indenture), (d) the BioFuels' Sierra Plant through a deed of trust recorded with the County Recorder of Storey County, Nevada on October 26, 2017, and (e) all funds held in certain accounts. The BioFuels Bonds are also guaranteed by Fulcrum. For the Series 2017A BioFuels Bonds, $29,203,151.29 of remaining principal bears interest at a default rate of 8.875% and had an initial stated maturity of December 15, 2027, and $101,796,499.63 of remaining principal bears interest at a rate of 9.250% and had an initial stated maturity of December 15, 2037. For the Series 2017B BioFuels Bonds, $18,971,740.83 of remaining principal

bears interest at a rate of 8.125% and had an initial stated maturity of December 15, 2037. For the 2018 BioFuels Bonds, $2,633,702.82 of remaining principal bears interest at a default rate of 8.250% and had an initial stated maturity of December 15, 2037.

All principal, interest, and other amounts owed under the Biofuels Bonds became immediately due and payable upon delivery of the notice of defaults, events of default, and acceleration by the BioFuels Trustee, on October 16, 2023. After delivering such notice, the BioFuels Trustee forbore from continuing or taking additional enforcement actions pursuant the 2023 Forbearance Agreement, between the BioFuels Trustee, Holdings Trustee, certain holders of BioFuels Bonds and Holdings Bonds, BioFuels, Holdings, and certain other Debtors, until the Bond Forbearance Agreement expired on May 8, 2024.

6. **BioFuels Unsecured Term Loan Facility**

On October 13, 2023, BioFuels, as borrower, entered into that certain senior unsecured term loan agreement (as amended, restated, supplemented or otherwise modified in accordance with the terms thereof, the "BioFuels Term Loan Agreement") with PCL, as administrative agent, providing for a term loan facility in an initial aggregate principal amount of $2,400,000, which has been subsequently increased by amendments thereto on October 25, 2023, November 17, 2023, December 8, 2023, December 22, 2023, January 19, 2024, February 8, 2024, March 5, 2024, March 25, 2024 and April 5, 2024 to a total aggregate principal amount of $40,900,000 (the "BioFuels Unsecured Term Loan Facility").

The BioFuels Unsecured Term Loan Facility is unsecured and BioFuels' obligations under the BioFuels Unsecured Term Loan Facility are not guaranteed by any other Debtors. The BioFuels Unsecured Term Loan Facility has an interest rate of twenty percent (20.00%) and matured on December 31, 2023, and amounts loaned after such maturity date were payable on demand. As of the Petition Date, $39,774,423 of the principal amount of the BioFuels Unsecured Term Loan Facility remained outstanding.

V. EVENTS DURING THE CHAPTER 11 CASES

A. Commencement of the Chapter 11 Cases

The Debtors filed their voluntary chapter 11 petitions on September 9, 2024 (the "Petition Date"). The Chapter 11 Cases were assigned to Bankruptcy Judge Thomas M. Horan. The Debtors have continued in the management and possession of their business and properties as debtors in possession since the Petition Date. Set forth below is a summary of material events that have occurred since the Petition Date.

B. First-Day Relief

Upon the commencement of the Chapter 11 Cases, the Debtors filed several motions seeking typical "first-day" relief in their Chapter 11 Cases (collectively, the "First Day Motions"), as well as the *Declaration of Mark J. Smith, Restructuring Advisor to Fulcrum BioEnergy, Inc., in Support of the Chapter 11 Petitions and First Day Motions* [D.I. 9], in order to ensure a smooth transition into chapter 11 and to allow the Debtors to continue to operate their business and

administer their estates. The Debtors obtained the following orders approving the First Day Motions and granting various forms of relief that the Debtors deemed essential to facilitating their transition into chapter 11:

- *Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [D.I. 45];
- *Order Appointing Kurtzman Carson Consultants, LLC dba Verita Global as Claims and Noticing Agent, Effective Nunc Pro Tunc to the Petition Date* [D.I. 50];
- *Final Order (I) Authorizing the Debtors to Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses, and (II) Granting Related Relief* [D.I. 129];
- *Final Order (I) Authorizing the Debtors to Continue to Operate Their Cash Management System and Maintain Existing Bank Accounts and (II) Granting Related Relief* [D.I. 130];
- *Final Order (I) Approving the Debtors' Proposed Adequate Assurance of Payment for Future Utility Services, (II) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Services, (III) Approving the Debtors' Proposed Procedures for Resolving Adequate Assurance Requests, and (IV) Granting Related Relief* [D.I. 131];
- *Final Order Authorizing Debtors to (A) Continue Insurance Policies and Agreements Relating Thereto, (B) Honor Certain Prepetition Obligations in Respect Thereof, and (C) Continue to Honor Insurance Premium Financing Obligations* [D.I. 132];
- *Amended Final Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, 503 and 507 (I) Authorizing the Debtors to Obtain Senior Secured Superpriority Postpetition Financing; (II) Granting (A) Liens and Superpriority Administrative Expense Claims and (B) Adequate Protection to Certain Prepetition Bondholders; (III) Authorizing Use of Cash Collateral; (IV) Scheduling a Final Hearing; and (V) Granting Related Relief* [D.I. 177].

C. Appointment of Official Committee of Unsecured Creditors

On September 19, 2024, the Office of the Unites States Trustee (the "U.S. Trustee") filed the *Notice of Appointment of Committee of Unsecured Creditors* [D.I. 74], notifying parties in interest that the U.S. Trustee appointed the Official Committee of Unsecured Creditors (the "Committee") in the Chapter 11 Cases. The Committee is currently comprised of the following members: (i) Linde Inc.; (ii) Johnson Matthey Davy Technologies Ltd.; (iii) Washington Mills Electro Minerals Corporation; (iv) Aquatech International, LLC; and (v) Apex Grading. The Committee serves as a representative and fiduciary for the interests of all unsecured creditors.

On October 16, 2024, the U.S. Trustee held a meeting of creditors pursuant to section 341(a) of the Bankruptcy Code.

D. Retention of Professionals

On the Petition Date, the Debtors filed an application [D.I. 4] to retain Kurtzman Carson Consultants, LLC dba Verita Global ("Verita") as claims and noticing agent for the Debtors. On September 12, 2024, the Court entered an order [D.I. 50] approving the Veritas retention application.

On September 24, 2024, the Debtors filed applications to retain and employ the following professionals: (1) Morris, Nichols, Arsht & Tunnell LLP ("MNAT"), as bankruptcy counsel to the Debtors [D.I. 89], which was approved by the Court on October 15, 2024 [D.I. 169]; (2) Verita, as administrative agent to the Debtors [D.I. 88], which was approved by the Court on October 15, 2024 [D.I. 168]; and (3) Development Specialists, Inc. ("DSI"), as financial advisor and investment banker to the Debtors [D.I. 87], which was approved by the Court on October 15, 2024 [D.I. 167].

Following the Committee's formation, the Committee retained and the Court approved the retention of (1) Eversheds Sutherland (US) LLP ("Eversheds"), as co-counsel to the Committee [D.I. 108, 188], (2) Morris James LLP ("Morris James") as co-counsel to the Committee [D.I. 107, 187], (3) Dundon Advisors LLC as financial advisor to the Committee [D.I. 109, 189]; and (4) Layer 7 Capital LLC as investment banker to the Committee [D.I. 190, 233].

An order establishing procedures for interim compensation and reimbursement of expenses for all retained professionals was also entered on October 15, 2024 [D.I. 170].

On December 20, 2024, the Debtors filed a *Motion for an Order Authorizing the Retention and Employment of Professionals Used in the Ordinary Course of Business Nunc Pro Tunc to the Petition Date* [D.I. 323] (the "OCP Motion") for the retention of (i) Henderson & Morgan, LLC, as local Nevada real estate counsel, and (ii) Kieckhafer Schiffer LLP, as accountants. On January 2, 2025, the Court entered an *Order Authorizing Procedures to Retain, Compensate and Reimburse Professionals Utilized in the Ordinary Course of Business Nunc Pro Tunc to the Petition Date* [D.I. 355] (the "OCP Order"). On January 6, 2025, the Debtors filed the *Declaration of Disinterestedness of James L. Morgan in Support of Employment of Henderson & Morgan, LLC as a Professional Used in the Ordinary Course of Business* [D.I. 368].

E. Schedules of Assets and Liabilities and Statements of Financial Affairs, and Establishment of Bar Dates

On September 19, 2024, the Debtors filed their Schedules of Assets and Liabilities (the "Schedules"), for (i) Fulcrum BioEnergy, Inc. [D.I. 66, 67], (ii) Fulcrum Sierra BioFuels, LLC [D.I. 68, 69], (iii) Fulcrum Sierra Finance Company, LLC. [D.I. 70, 71] and (iv) Fulcrum Sierra Holdings, LLC [D.I. 72, 73]. On December 6, 2024, Fulcrum BioEnergy, Inc. [D.I. 303] and Fulcrum Sierra BioFuels, LLC [D.I. 304] amended their Schedules.

On December 2, 2024, the Debtors filed a motion (the "Bar Date Motion") [D.I. 297] seeking entry of an order establishing certain bar dates (together, the "Bar Dates") for filing proofs of claim against the Debtors. On December 18, 2024, the Bankruptcy Court entered an order approving the Bar Date Motion (the "Bar Date Order") [D.I. 320], which established (i) January 23, 2024, 5:00 p.m. (prevailing Eastern Time) as the last date by which creditors asserting

prepetition claims (including claims based on section 503(b)(9) of the Bankruptcy Code) were required to file proofs of claim, with certain exceptions (the "General Bar Date"); (ii) March 10, 2025, 5:00 p.m. (prevailing Eastern Time) as the bar date for governmental units (the "Governmental Bar Date"); (iii) the later of (x) the General Bar Date or Governmental Bar Date, as applicable, and (y) 11:59 p.m. (prevailing Eastern Time) on the date that is 30 days following service of an order approving rejection of an executory contract or unexpired lease of the Debtors as the deadline for an entity asserting a claim for damages against any of the Debtors arising from such rejection to file a proof of claim on account of such damages; and (iv) the later of (x) the General Bar Date or Governmental Bar Date, as applicable, and (y) 5:00 p.m. (Prevailing Eastern Time) on the date that is 30 days following service of notice of an amendment to the Debtors' Schedules as the deadline for an entity whose claim is affected by such amendment to file, amend, or supplement a proof of claim with respect to such claim, provided that any amendment to the Schedules to include the intercompany amount owed among the Debtor entities shall not extend the General Bar Date. In accordance with the Bar Date Order, on December 18, 2024, the Debtors filed and served a notice of the Bar Dates and accompanying materials on known creditors [D.I. 329]. The Debtors also published notice of the Bar Dates in the national edition of *the Wall Street Journal* on December 20, 2024.

F. Debtor-in-Possession Financing

On September 11, 2024, the Debtors filed the *Debtors' Emergency Motion for Interim and Final Orders Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, 503 and 507 (I) Authorizing the Debtors to Obtain Senior Secured Superpriority Postpetition Financing; (II) Granting (A) Liens and Superpriority Administrative Expense Claims and (B) Adequate Protection to Certain Prepetition Bondholders* (the "DIP Motion") [D.I. 11]. Under the DIP Motion, the Debtors requested authorization for BioFuels to obtain postpetition financing from Switch in the amount of $5,000,000 (the "DIP Facility"). Attached as Exhibit A to the DIP Motion were the terms and conditions of the DIP Facility (the "DIP Note"). On September 12, 2024, the Court entered an interim order granting the DIP Motion [D.I. 52].

On October 2, 2024, the Committee filed an objection to the DIP Motion (the "Committee Objection") [D.I. 103]. The Debtors' filed a motion for leave to file a late reply to the Committee Objection on October 7, 2025 [D.I. 125]. Shortly thereafter, on October 7, 2025, the Debtors filed their reply in support of the DIP Motion [D.I. 127]. On October 7, 2025, the Debtors filed a revised, proposed final order to the DIP Motion [D.I. 124].

On October 9, 2024, the Court held a final hearing on the DIP Motion. On October 10, 2024, the Debtors filed a certification of counsel and revised final form of order to the DIP Motion (the "Initial DIP Order COC") [D.I. 148]. Attached as Exhibit A to the Initial DIP Order COC was a proposed final DIP order (the "Revised Final Order"). The Revised Final Order resolved the Committee Objection and incorporated certain comments from the Office of the United States Trustee, the Committee, and other stakeholders. The Revised Final Order included a settlement between the Debtors, the Committee, and the Bonds Trustee, on behalf of the BioFuels Bonds, and provided a carveout of certain of the BioFuels Bonds collateral to the BioFuels estate. On October 10, 2024, the Court entered the Revised Final Order.

G. The Debtors' Sale Process

1. Filing of the Bidding Procedures Motion

The Debtors commenced these chapter 11 cases to conduct a court-supervised sale process with the assistance of its professionals to maximize the value of their estates for the benefit of their stakeholders. To that end, prior to the Petition Date, the Debtors received a bid (the "Stalking Horse Bid") from Switch for the purchase of certain of the Debtors' assets (the "Switch Acquired Assets"). Thereafter, the Debtors, through their professionals, engaged in extensive negotiations with Switch at arms-length.

In connection with the Stalking Horse Bid, the Debtors and Switch entered into the Stalking Horse APA, which provided for a purchase price of $15,000,000, plus the assumption or elimination of certain liabilities associated with the Switch Acquired Assets. Among other assets, the Switch Acquired Assets included the Debtors' (1) real property at assessor's parcel number 005-071-49 (the "Biorefinery Real Property") and certain utility rights, including electrical and water, easements, improvements, and other rights and credits appurtenant to the Biorefinery Real Property (together, the "Biorefinery Assets") and (2) real property at assessor's parcel number 004-111-37 (the "Feedstock Real Property"), as well as certain utility rights, including electrical and water, easements, improvements, and other rights and credits appurtenant to the Feedstock Real Property, including any and all fixtures, improvements, and appurtenances thereto (the "Feedstock Assets").

Thereafter, on the Petition Date, the Debtors filed a *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* [D.I. 12] (the "Bidding Procedures Motion").

2. Entry of Bidding Procedures Order and Filing of Cure Notice

On October 11, 2024, the Court entered an order (the "Bidding Procedures Order"), by which the Court, among other things, approved procedures (the "Bidding Procedures") to be used in connection with (i) one or more sales of the Debtors' Assets free and clear of all liens, claims, encumbrances, and other interests and (ii) the auction pursuant to section 363 of the Bankruptcy Code [D.I. 153]. The Bidding Procedures set a bid deadline of November 4, 2024, at 5:00 p.m. (ET) (the "Bid Deadline").

On October 14, 2024, pursuant to the Bidding Procedures Order, the Debtors filed the *Notice of (I) Possible Treatment of Contracts and Leases, (II) Fixing of Cure Amounts, and (III)*

Deadline to Object Thereto [D.I. 157] (the "Cure Notice"). On October 15, 2024, the Debtors filed a *Revised Notice of (I) Possible Treatment of Contracts and Leases, (II) Fixing of Cure Amounts, and (III) Deadline to Object Thereto* [D.I. 175] (the "Revised Cure Notice"). On October 30, 2024, the Debtors filed a *Supplemental Notice of (I) Possible Treatment of Contracts and Leases, (II) Fixing of Cure Amounts, and (III) Deadline to Object Thereto* [D.I. 203] (the "Supplemental Cure Notice").

3. The Debtors' Postpetition Marketing Process and Auction

Following the Petition Date and the filing of the Bidding Procedures Motion, DSI promptly initiated the preparation of a sale teaser in collaboration with company management to engage prospective buyers. The teaser was distributed to potential interested parties, including competing Sustainable Aviation Fuel ("SAF") producers and financial buyers, distressed private equity firms, clean energy companies and data center providers.

In addition to the sale teaser, DSI executed a robust mass marketing strategy through numerous publications:

a. Daily DAC (September 19, 2024): Reached 38,800 parties, generating 392 interactive clicks.

b. Biomass Magazine (September 24, 2024): Distributed to 78,403 parties, with over 12,000 recipients opening the email and 1,500 clicking through for more information.

c. SAF Magazine (September 19, 2024): Exposed 159,902 parties to the sale, leading to over 26,000 openings and 550 clicks on the provided link.

d. Press Release (September 19, 2024): Solicited bids and reached an additional 22,000 parties.

As a result of this comprehensive marketing approach, DSI received thirty-five (35) signed NDAs. The Committee's investment banker, Layer 7 Capital, brought further parties into the sale process, resulting in two (2) additional NDAs for a total of thirty-seven (37). Upon signing the NDAs, DSI facilitated access to the data room for these parties, actively responded to inquiries and continually updated the data room with pertinent information to assist interested bidders with due diligence. Throughout this process, DSI conducted eleven (11) site visits with interested bidders and coordinated meetings with former company management to address additional due diligence questions.

Five (5) bid packages with deposits; two (2) non-qualifying bids; and one (1) Credit Bid for the Expanded Assets were received by the Debtors by the Bid Deadline. The Debtors conducted an Auction on November 7, 2024, which ultimately encompassed a total of fifty-seven (57) rounds of bidding from the Qualified Bidders, which covered multiple lots and included one hundred and twenty-two (122) separate bids. At the conclusion of the Auction and in consultation with the Consultation Parties, the Debtors selected Switch and Refuse, Inc. ("Refuse") as the Successful Bidders. Switch's prevailing bid consisted of a $55 million bid for the Biorefinery Assets. Refuse's

prevailing bid consisted of a $3 million bid for the Debtors' Feedstock Assets. The Debtors continued the Auction with respect to the Expanded Assets.

4. Sale Hearing and Entry of Sale Orders

On November 12, 2024, the Court held a hearing (the "Sale Hearing") to consider approval of the sales to Switch and Refuse. Prior to the Sale Hearing, the Debtors filed a *Notice of Revised Proposed Sale Orders (I) Approving the Sale of the Debtors' Biorefinery and Feedstock Assets Free and Clear of Claim, Liens, and Encumbrances, (II) Approving the Assumption and Assignment of Designated Executory Contracts and Unexpired Leases, and (III) Granting Related Relief* (the "Revised Sale Orders") [D.I. 244]. At the Sale Hearing, the only outstanding objection to the sale was *Johnson Matthey Davy Technologies Ltd.'s (A) Limited Objection to Assumption and Assignment of Contracts and (B) Limited Objection and Request for Adequate Protection in Connection with Any Sale of the Debtors' Assets* [D.I. 235] (the "JMD Objection"). In order to give the Debtors, Switch, and Johnson Matthey Davy Technologies Ltd. ("JMD") an opportunity to resolve the JMD Objection, the Sale Hearing was adjourned to November 13, 2024 (the "Adjourned Sale Hearing").

At the Adjourned Sale Hearing, the Court approved the sales to Switch and Refuse subject to the submission of revised sale orders under certification of counsel. On November 14, 2024, the Debtors filed the (i) *Certification of Counsel Regarding (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' Biorefinery 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* [D.I. 261] (the "Biorefinery Sale COC") and (ii) *Certification of Counsel Regarding (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' Feedstock 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* [D.I. 262] (the "Feedstock Sale COC") attaching thereto the Biorefinery Sale Order and the Feedstock Sale Order.

7. Bid of PCL for certain of the Debtors' Assets // Sale and Plan Agreement Term Sheet

Pursuant to the Bidding Procedures, PCL sought to bid (the "Agent Bid") a portion of its debt under the Fulcrum Senior Secured Term Loan Facility for certain of the Expanded Assets. The Bankruptcy Court set a hearing on the Agent Bid for November 21, 2024, at 3:00 p.m. (Prevailing Eastern Time) (the "Fulcrum Asset Hearing") [D.I. 260]. Shortly thereafter, the Debtors adjourned the Fulcrum Asset Hearing to a later time and date [D.I. 269].

On January 3, 2025, the Debtors filed a *Notice of Hearing on Bid of PCL Administration LLC for Certain of Debtor Fulcrum Bioenergy, Inc's Assets* [D.I. 367] (the "Fulcrum Asset Hearing Notice") setting January 17, 2025 for the adjourned Fulcrum Asset Hearing. The Fulcrum Asset Hearing Notice highlighted, among other things, that PCL sought to acquire through the Agent Bid (A) certain of the Debtors' assets and (B) all of the Debtors' claims and causes of action (of any kind or nature whatsoever, whether individually or collectively, arising on or prior to the date of closing of the sale, whether arising at law or in equity, known or unknown, direct or indirect, actual or potential, liquidated or unliquidated, absolute or contingent, foreseen or unforeseen, asserted or unasserted) against: (i) PCL (in its capacity as agent under the Prepetition Term Loan Credit Agreement and as agent under the BioFuels Unsecured Term Loan Facility (ii) each lender under the Fulcrum Senior Secured Term Loan Facility and each lender under the BioFuels Unsecured Term Loan Facility, and (iii) each Related Party (as defined in the Fulcrum Asset Hearing Notice) of those listed in (i) and (ii) above (collectively, the "Acquired Causes of Action"). Attached to the Fulcrum Asset Hearing Notice as Exhibit B was that certain asset purchase agreement (the "Agent Transaction APA"), which memorialized the sale of the foregoing assets. On January 17, 2025, the Bankruptcy Court entered an Order approving the Agent Bid [D.I. 394] (the "Agent Sale Order").

Additionally, in conjunction with the filing of the Fulcrum Asset Hearing Notice, the Debtors filed a *Notice of Filing of Sale and Plan Agreement Term Sheet* [D.I. 366] (the "Term Sheet Notice"). Attached as Exhibit A to the Term Sheet Notice was that certain *Sale and Plan Agreement Term Sheet* (the "Term Sheet"), which set forth (i) the terms by which certain of Fulcrum's assets would be sold to PCL, as reflected in and pursuant to the Agent Transaction APA and (ii) the terms by which the Prepetition Loan Secured Parties and the Consenting Bondholders (each as defined in the Term Sheet) agreed to support a chapter 11 liquidating plan in the Debtors' Chapter 11 Cases.

8. Private Sale of the Catalyst to Johnson Matthey PLC

BioFuels entered into that certain Master Catalyst Supply Agreement (the "Catalyst Agreement"), dated as of July 19, 2018, with JMD. Pursuant to the Catalyst Agreement, JMD sold Fulcrum FT CANs, which are filled with FT Catalyst.

Prior to the Petition Date, the Debtors possessed approximately 36,540 spare FT CANs which are being stored at a leased warehouse facility in Sparks, Nevada, and prior to the proposed sale of the FT CANs to JMD, none of the bids throughout the Debtors' sale process described herein sought to acquire the FT Cans. As a result, JMD expressed an interest in purchasing the

spare FT CANs pursuant to section 363 of the Bankruptcy Code, and the Debtors engaged in good faith, arm's-lengths negotiations with JMD on the terms of a sale.

At the conclusion of negotiations, on December 24, 2024, Fulcrum entered into an asset purchase agreement (the "Catalyst APA") with Johnson Matthey PLC for the purchase of 36,540 filled FT CANs. Then on December 27, 2024, the Debtors filed a *Motion for Entry of an 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* [D.I. 334] (the "Catalyst Sale Motion"). On January 15, 2025, the Bankruptcy Court entered an Order approving the Catalyst sale [D.I. 385]. The Catalyst sale closed on February 3, 2025.

VI. THE JOINT CHAPTER 11 PLAN OF LIQUIDATION

In general, a chapter 11 plan (a) divides claims and equity interests into separate classes, (b) specifies the consideration that each class is to receive under the plan and (c) contains other provisions necessary to implement the plan. Under the Bankruptcy Code, "claims" and "equity interests," rather than "creditors" and "shareholders," are classified because creditors and shareholders may hold claims and equity interests in more than one class.

A. Overview of the Plan

THE FOLLOWING IS A SUMMARY OF SOME OF THE SIGNIFICANT ELEMENTS OF THE PLAN. THIS DISCLOSURE STATEMENT IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE MORE DETAILED INFORMATION SET FORTH IN THE PLAN AND THE EXHIBITS AND SCHEDULES THERETO. IN THE EVENT OF ANY INCONSISTENCY BETWEEN THE SUMMARY CONTAINED HEREIN AND THE PLAN, THE PLAN SHALL GOVERN AND CONTROL IN ALL RESPECTS.

The Plan constitutes a joint plan of liquidation for all of the Debtors. The Plan does not seek the substantive consolidation of the Debtors.

This Section summarizes the treatment of each of the Classes of Claims and Interests under the Plan and describes other provisions of the Plan. Only holders of Allowed Claims — Claims that are not in dispute, contingent, or unliquidated in amount and are not subject to an objection or an estimation request — are entitled to receive distributions under the Plan. For a more detailed description of the definition of "Allowed," see Section 1 of the Plan. Until a Claim becomes Allowed, no distributions will be made to the holder of such Claim. The Debtors believe that they will be able to perform their obligations under the Plan. The Debtors also believe that the Plan permits fair and equitable recoveries.

Other than as specifically provided in the Plan, the treatment under the Plan of each Claim and Interest will be in full satisfaction, settlement, and release of all Claims or Interests. The Debtors will make all payments and other distributions to be made under the Plan on or at the Effective Date unless otherwise specified.

B. Administrative Expense and Priority Claims

1. Administrative Expense Claims

Except to the extent that a holder of an Allowed Administrative Expense Claim and the Debtors or the Liquidation Trustee, as applicable, agree to different treatment, the Debtors or the Liquidation Trustee, as applicable, shall pay to each holder of an Allowed Administrative Expense Claim, other than Fee Claims, Cash in an amount equal to such Claim on or at the first Business Day after, or as soon thereafter as is reasonably practicable, the later of (i) the Effective Date and (ii) the date such Administrative Expense Claim is Allowed.

Holders of Administrative Expense Claims, other than Fee Claims, that were required to file and serve a request for payment of such Administrative Expense Claims and that did not file and serve such a request by the Administrative Expense Claims Bar Date shall be forever barred, estopped, and enjoined from asserting such Administrative Expense Claims against the Debtors or their property, or the Liquidation Trust or the Liquidation Trust Assets. The Debtors or the Liquidation Trustee, as applicable, may file and serve objections to Administrative Expense Claims on or before the Claims Objection Bar Date.

2. Fee Claims

a) *Professional Fees Account.* On the Effective Date, the Debtors or the Liquidation Trustee, as appropriate, shall fund the Professional Fees Account. Fee Claims shall be paid in Cash from funds held in the Professional Fees Account when such Fee Claims are Allowed by a Final Order of the Bankruptcy Court. Neither the Debtors' nor the Liquidation Trust's obligations to pay Fee Claims shall be limited nor be deemed limited to funds held in the Professional Fees Account.

b) *Estimation of Fee Claims*. No later than five (5) days before the anticipated Effective Date, Professionals shall provide a good faith estimate of their Fee Claims projected to be outstanding as of the Effective Date and shall deliver such estimate to the Debtors. With respect to Fee Claims, Professionals shall use their best efforts to allocate fees and expenses incurred after December 1, 2024 between Fulcrum and Biofuels. Such estimate shall not be considered an admission or limitation with respect to the fees and expenses of such Professional and such Professionals are not bound to any extent by the fee estimates. If a Professional does not provide an estimate, the Debtors may estimate the unbilled fees and expenses of such Professional. The total amount so estimated shall be utilized by the Debtors to determine the amount to be funded to the Professional Fees Account. The Debtors or the Liquidation Trustee shall use Cash on hand to increase the amount of the Professional Fees Account to the extent fee applications are filed after the Effective Date in excess of the amount held in the Professional Fees Account based on such estimates.

c) *Payment of Fee Claims.* All entities seeking an award by the Bankruptcy Court of Fee Claims (i) shall file their respective final applications for allowance of compensation for services rendered and reimbursement of expenses incurred by the date that is forty-five (45) days after the Effective Date, and (ii) shall be paid in full from the Professional Fees Account in such amounts as are Allowed by the Bankruptcy Court (A) in accordance with an order entered by the

Bankruptcy Court approving the interim compensation of Professionals, (B) upon the later of the Effective Date and the date upon which the order relating to any such Allowed Fee Claim is entered or (C) upon such other terms as may be mutually agreed upon between the holder of such an Allowed Fee Claim and the Debtors or the Liquidation Trustee, as applicable. Objections to such Fee Claims, if any, must be filed and served no later than twenty (20) calendar days after the filing of such fee application or such other date as established by the Bankruptcy Court.

The Liquidation Trustee is authorized to pay compensation for services rendered or reimbursement of expenses incurred by any Professional after the Effective Date in the ordinary course and without the need for Bankruptcy Court approval in accordance with the Liquidation Trust Agreement. When all Allowed Fee Claims have been paid in full, any remaining amount in the Professional Fees Account shall promptly be released from such escrow and revert to, and ownership thereof shall vest in, the Liquidation Trust without any further action or order of the Bankruptcy Court.

d) *Professional Fee Account Not Property of the Liquidation Trust*. Until payment in full of all Allowed Fee Claims, funds held in the Professional Fees Account shall not be considered Liquidation Trust Assets or otherwise property of the Liquidation Trust, the Debtors, or their Estates. The Professional Fees Account shall be treated as a trust account for the benefit of holders of Fee Claims and for no other parties until all Allowed Fee Claims have been paid in full in Cash. No other Liens, claims, or interests shall encumber the Professional Fees Account or Cash held in the Professional Fees Account in any way.

3. Priority Tax Claims

Except to the extent that a holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, each holder of an Allowed Priority Tax Claim shall receive, at the sole option of the Debtors or the Liquidation Trustee, as applicable, (i) Cash in an amount equal to such Allowed Priority Tax Claim on the later of (a) forty five (45) calendar days after the Effective Date (or as soon as reasonably practicable thereafter), (b) the first Business Day after the date that is thirty (30) days after the date such Priority Tax Claim becomes an Allowed Priority Tax Claim, and (c) the date such Allowed Priority Tax Claim is due and payable in the ordinary course, or as soon thereafter as is reasonably practicable, or (b) equal annual Cash payments in an aggregate amount equal to the amount of such Allowed Priority Tax Claim, together with interest at the applicable rate under section 511 of the Bankruptcy Code, over a period not exceeding five (5) years from and after the Petition Date. The holders of Allowed Priority Tax Claims shall retain their tax liens on their collateral to the same validity, extent and priority as existed on the Petition Date until all validly determined taxes and related interest, penalties, and fees (if any) have been paid in full. To the extent a holder of an Allowed Priority Tax Claim is not paid in the ordinary course of business, payment of the Allowed Priority Tax Claim shall include interest through the date of payment at the applicable state statutory rate, as set forth in sections 506(b), 511, and 1129 of the Bankruptcy Code.

4. U.S. Trustee Fees

All U.S. Trustee Fees due and payable on or prior to the Effective Date shall be paid by the Debtors in full in Cash on the Effective Date or as soon as is reasonably practicable thereafter. On

and after the Effective Date, the Liquidation Trustee shall pay any and all U.S. Trustee Fees in full in Cash when due and payable. Each Debtor or the Liquidation Trustee shall remain obligated to pay U.S. Trustee Fees until the earliest of that particular Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code. All U.S. Trustee Fees are Allowed. The U.S. Trustee shall not be required to file any Administrative Claim in the case and shall not be treated as providing any release under the Plan with respect to the payment of the U.S. Trustee Fees.

The Debtors shall file all monthly operating reports due on or prior to the Effective Date when they become due, using UST Form 11-MOR. After the Effective Date, the Liquidation Trustee shall file with the Bankruptcy Court separate UST Form 11-PCR reports on behalf of each of the Wind-Down Estates when they become due.

C. Classification of Claims and Interests

1. Classification in General

The Plan classifies Claims and Interests separately in accordance with the Bankruptcy Code and provides different treatment for different Classes of Claims and Interests. The Plan classifies Claims and Interests (other than those that do not need to be classified) into five (5) separate Classes. These Classes take into account the differing nature and priority of Claims against and Interests in the Debtors. Unless otherwise indicated, the characteristics and amounts of the Claims and Interests are based on the books and records of the Debtors. A Claim or Interest is placed in a particular Class only to the extent that such Claim or Interest falls within the description of that Class and qualifies for inclusion within such Class. Such Claim or Interest is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. A Claim or Interest also is placed in a particular Class for all purposes, including voting, confirmation and distribution under the Plan and under sections 1122 and 1123(a)(1) of the Bankruptcy Code. However, a Claim or Interest is placed in a particular Class for the purpose of receiving distributions pursuant to the Plan only to the extent that such Claim or Interest is an Allowed Claim or Allowed Interest in that Class.

2. Formation of Debtor Groups for Convenience Only

The Plan constitutes a separate chapter 11 plan for each Debtor. The Plan is not premised upon, and will not cause, the substantive consolidation of any of the Debtors. For brevity and convenience, the classification and treatment of Claims and Equity Interests have been arranged into one chart. Such classification shall not affect any Debtor's status as a separate legal entity, change the organizational structure of the Debtors' business enterprise, constitute a change of control of any Debtor for any purpose, cause a merger or consolidation of any legal entities, or cause the consolidation of assets that vest in the Liquidation Trust. A Holder of an Allowed Claim against more than one Debtor on a theory of joint and several liability shall only be entitled to a single recovery in distribution.

3. Summary of Classification

The following table designates the Classes of Claims against and Interests in each of the Debtors and specifies which of those Classes are (i) Impaired or Unimpaired by the Plan, (ii)

entitled to vote to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code and (iii) deemed to reject the Plan. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims and Priority Tax Claims have not been classified and thus, are excluded from the Classes of Claims and Interests set forth in Section 3 of the Plan. All of the potential Classes for the Debtors are set forth herein.

Only holders of Claims in Classes 2A-2C; 3A-3C; and 4A-4C are Impaired and entitled to vote on the Plan. The Estates will not be substantively consolidated.

Class	Designation	Treatment	Entitled to Vote
1	Other Priority Claims	Unimpaired	No (Presumed to accept)
2A	Fulcrum Prepetition Loan Secured Claims	Impaired	Yes
2B	Holdings Prepetition Bond Secured Claims	Impaired	Yes
2C	BioFuels Prepetition Bond Secured Claims	Impaired	Yes
3A	Fulcrum Deficiency Claims	Impaired	Yes
3B	Holdings Deficiency Claims	Impaired	Yes
3C	BioFuels Deficiency Claims	Impaired	Yes
4A	Fulcrum Undersecured and General Unsecured Claims	Impaired	Yes
4B	Holdings Undersecured and General Unsecured Claims	Impaired	Yes
4C	BioFuels Undersecured and General Unsecured Claims	Impaired	Yes
5	Interests	Impaired	No (Deemed to reject)

4. Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan shall affect the rights of the Debtors or the Liquidation Trustee, as applicable, in respect of any Unimpaired Claims, including all rights in respect of legal and equitable defenses to, or setoffs or recoupments against, any such Unimpaired Claims.

D. Treatment of Claims and Interests

1. OTHER PRIORITY CLAIMS (CLASS 1)

a) *Classification*: Class 1 consists of Allowed Other Priority Claims against the Debtors.

b) *Treatment*: Except to the extent that a holder of an Allowed Other Priority Claim against any of the Debtors has agreed to less favorable treatment of such Claim, each such holder shall receive, in full and final satisfaction of such Claim, Cash in an amount equal to such Claim, payable on the later of (i) forty-five (45) calendar days after the Effective Date (or as soon as reasonably practicable thereafter) and (ii) the first Business Day after thirty (30) days from the date on which such Other Priority Claim becomes an Allowed Priority Claim, or as soon as reasonably practical thereafter.

c) *Voting*: Class 1 is Unimpaired, and the holders of Other Priority Claims are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, holders of Other Priority Claims are not entitled to vote to accept or reject the Plan, and the votes of such holders will not be solicited with respect to Other Priority Claims.

2. FULCRUM PREPETITION LOAN SECURED CLAIMS (CLASS 2A)

a) *Classification*: Class 2A consists of Fulcrum Prepetition Loan Secured Claims.

b) *Treatment:* Except to the extent that a holder of an Allowed Fulcrum Prepetition Loan Secured Claim has agreed to less favorable treatment of such Claim, on the Effective Date, each such holder shall receive:

- the proceeds of any collateral securing the Prepetition Loan Secured Claims; provided that the Remaining Catalyst Proceeds shall be deemed applied to the Fulcrum Prepetition Loan Secured Claim in partial satisfaction of the obligations under the Prepetition Fulcrum Credit Agreement and then made available for distribution by the Fulcrum Estate to creditors in Class 4A;
- the return (to the extent agreed by the Prepetition Agent) or abandonment of the collateral securing such holder's claim;
- the applicable net proceeds from the Liquidation Trust with respect to the Prepetition Agent's collateral transferred to the Liquidation Trust; and/or
- such other treatment as may otherwise be agreed to by such holder and the Liquidation Trustee.

Notwithstanding the foregoing, holders of the Fulcrum Prepetition Loan Secured Claim agree that the first additional $1.1 million of available recovery to which the holders of the Fulcrum Prepetition Loan Secured Claim would otherwise be entitled in satisfaction of the Fulcrum Prepetition Loan Secured Claim shall be deemed applied to the Fulcrum Prepetition Loan Secured Claim in partial satisfaction thereof and then made available for distribution to creditors in Class 4A pursuant to the terms of the Plan.

[For the avoidance of doubt, the Claim numbered on the Debtors' claim register as claim number 46 is an Allowed class 2A claim, as set forth the Agent Sale Order][6].

[6] Allowance of Claims in Class 2A subject to sale closing.

c) *Voting*: Class 2A is Impaired, and the holders of Fulcrum Prepetition Loan Secured Claims are entitled to vote to accept or reject the Plan.

3. HOLDINGS PREPETITION BOND SECURED CLAIMS (CLASS 2B)

a) *Classification*: Class 2B consists of the Holdings Prepetition Bond Secured Claims.

b) *Treatment*: Except to the extent that a holder of an Allowed Holdings Prepetition Bond Secured Claim has agreed to less favorable treatment of such Claim, each such holder shall receive delivery of the collateral securing such Allowed Holdings Prepetition Bond Secured Claim, which was not otherwise released in accordance with any court order or sale process.

For the avoidance of doubt, the Holdings Prepetition Bond Secured Claims are Allowed.

c) *Voting*: Class 2B is Impaired, and the holders of Holdings Prepetition Bond Secured Claims are entitled to vote to accept or reject the Plan.

4. BIOFUELS PREPETITION BOND SECURED CLAIMS (CLASS 2C)

a) *Classification*: Class 2C consists of the BioFuels Prepetition Bond Secured Claims.

b) *Treatment*: Except to the extent that a holder of an Allowed BioFuels Prepetition Bond Secured Claim has agreed to less favorable treatment of such Claim, each such holder shall receive delivery of the collateral securing such Allowed BioFuels Prepetition Bond Secured Claim, which was not otherwise released in accordance with any court order or sale process.

For the avoidance of doubt, the BioFuels Prepetition Bond Secured Claims are Allowed.

c) *Voting*: Class 2C is Impaired, and the holders of BioFuels Prepetition Bond Secured Claims are entitled to vote to accept or reject the Plan.

5. FULCRUM DEFICIENCY CLAIMS (CLASS 3A)

a) *Classification*: Class 3A consists of Fulcrum Deficiency Claims.

b) *Treatment*: Holders of the Fulcrum Deficiency Claim agree that they will not recover from (a) the Remaining Catalyst Proceeds or (b) the first additional $1.1 million of available recovery to which the holders of the Fulcrum Prepetition Loan Secured Claim would otherwise be entitled in satisfaction of the Fulcrum Deficiency Claim.

Thereafter, except to the extent that a holder of an Allowed Fulcrum Deficiency Claim has agreed to less favorable treatment of such Claim, each such holder shall receive in full satisfaction, settlement, and release of, and in exchange for such Allowed Fulcrum Deficiency Claim the Pro Rata Share of the Cash, if any, to be distributed from the Fulcrum Liquidation Trust Account. The Fulcrum Deficiency Claims shall be treated Pro Rata with the Claims in Class 4A.

c) *Voting:* Class 3A is Impaired, and the holders of Fulcrum Deficiency Claims are entitled to vote to accept or reject the Plan.

6. HOLDINGS DEFICIENCY CLAIMS (CLASS 3B)

a) *Classification*: Class 3B consists of Holdings Deficiency Claims.

b) *Treatment*: Except to the extent that a holder of an Allowed Holdings Deficiency Claim has agreed to less favorable treatment of such Claim, each such holder shall receive in full satisfaction, settlement, and release of, and in exchange for such Allowed Holdings Deficiency Claim the Pro Rata Share of the Cash, if any, to be distributed from the Holdings Liquidation Trust Account. The Holdings Deficiency Claims shall be treated Pro Rata with the Claims in Class 4B.

c) *Voting:* Class 3B is Impaired, and the holders of Holdings Deficiency Claims are entitled to vote to accept or reject the Plan.

7. BIOFUELS DEFICIENCY CLAIMS (CLASS 3C)

a) *Classification*: Class 3C consists of BioFuels Deficiency Claims.

b) Treatment: As provided for is section 5.25(b) of the Amended Final DIP Order [D.I. 177], the holders of BioFuels Deficiency Claims have agreed to waive any distribution on account of their BioFuels Deficiency Claims.

c) *Voting:* Class 3C is Impaired, and the holders of BioFuels Deficiency Claims are entitled to vote to accept or reject the Plan.

8. FULCRUM UNDERSECURED AND GENERAL UNSECURED CLAIMS (CLASS 4A)

a) *Classification*: Class 4A consists of Fulcrum Undersecured and General Unsecured Claims.

b) *Treatment*: Except to the extent that a holder of an Allowed Fulcrum Undersecured and General Unsecured Claim has agreed to less favorable treatment of such Claim, each such holder shall receive in full satisfaction, settlement, and release of, and in exchange for such Allowed Fulcrum Undersecured and General Unsecured Claim the Pro Rata Share of the Cash, if any, to be distributed from the Fulcrum Liquidation Trust Account. The Fulcrum Undersecured and General Unsecured Claim shall be treated Pro Rata with the Claims in Class 3A.

c) *Voting*: Class 4A is Impaired, and the holders of Fulcrum Undersecured and General Unsecured Claims are entitled to vote to accept or reject the Plan.

9. HOLDINGS UNDERSECURED AND GENERAL UNSECURED CLAIMS (CLASS 4B)

a) *Classification*: Class 4B consists of Holdings Undersecured and General Unsecured Claims.

b) *Treatment*: Except to the extent that a holder of an Allowed Holdings Undersecured and General Unsecured Claim has agreed to less favorable treatment of such Claim, each such holder shall receive in full satisfaction, settlement, and release of, and in exchange for such Allowed Holdings Undersecured and General Unsecured Claim the Pro Rata Share of the Cash, if any, to be distributed from the Holdings Liquidation Trust Account. The Holdings Undersecured and General Unsecured Claim shall be treated Pro Rata with the Claims in Class 3B.

c) *Voting:* Class 4B is Impaired, and the holders of Holdings Undersecured and General Unsecured Claims are entitled to vote to accept or reject the Plan.

10. BIOFUELS UNDERSECURED AND GENERAL UNSECURED CLAIMS (CLASS 4C)

a) *Classification*: Class 4C consists of Undersecured and General Unsecured Claims against BioFuels.

b) Treatment: Except to the extent that a holder of Allowed BioFuels Undersecured and General Unsecured has agreed to less favorable treatment of such Claim, each such holder shall receive in full satisfaction, settlement, and release of, and in exchange for such Allowed BioFuels Undersecured and General Unsecured Claim the Pro Rata Share of the Cash, if any, to be distributed from the BioFuels Liquidation Trust Account.

c) *Voting:* Class 4C is Impaired, and the holders of BioFuels Undersecured and General Unsecured Claims are entitled to vote to accept or reject the Plan.

[For the avoidance of doubt, the Claim numbered on the Debtors' claim register as claim number 47 is an Allowed class 4(c) claim, as set forth in the Agent Sale Order][7].

11. INTERESTS (CLASS 5)

a) *Classification*: Class 5 consists of Interests in the Debtors.

b) *Treatment*: Interests shall be extinguished, cancelled and released on the Effective Date. Holders of Interests shall not receive or retain any distribution under the Plan on account of such Interests.

c) *Voting*: Class 5 is Impaired, and the holders of Interests are conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, the holders of Interests are not entitled to vote to accept or reject the Plan, and the votes of such holders will not be solicited with respect to such Interests.

[7] Allowance of Claim subject to sale closing.

E. Means for Implementation

1. Joint Chapter 11 Plan

The Plan is a joint chapter 11 plan for each of the Debtors, with the Plan for each Debtor being non-severable and mutually dependent on the Plan for each other Debtor. The Plan does not seek substantive consolidation of the Debtors.

2. Liquidation Trust

Execution of the Liquidation Trust Agreement. On or before the Effective Date, the Liquidation Trust Agreement shall be executed, and all other necessary steps shall be taken to establish the Liquidation Trust to hold the Liquidation Trust Assets, which shall be for the benefit of the Liquidation Trust Beneficiaries. Section 6.3 of the Plan sets forth certain of the rights, duties, and obligations of the Liquidation Trustee. In the event of any conflict between the terms of Section 6.3 of the Plan and the terms of the Liquidation Trust Agreement, unless otherwise specified in the Plan, the terms of the Liquidation Trust Agreement shall govern. In the event of any conflict between the terms of the Liquidation Trust Agreement and the Confirmation Order, the Confirmation Order shall govern.

Purpose of the Liquidation Trust. The Liquidation Trust shall be established in accordance with the Liquidation Trust Agreement to administer post-Effective Date responsibilities of the Debtors and Wind-Down Estates under the Plan, including, but not limited to, (i) being vested with, and liquidating, the Liquidation Trust Assets, (ii) making Distributions to holders of Allowed Claims in accordance with the terms of the Plan and the Liquidation Trust Agreement, (iii) resolving all Disputed Claims and effectuating the Claims reconciliation process pursuant to the procedures prescribed in the Plan, (iv) prosecuting, settling, and resolving Causes of Action that are Liquidation Trust Assets, (v) recovering, through enforcement, resolution, settlement, collection, or otherwise, assets on behalf of the Liquidation Trust (which assets shall become part of the Liquidation Trust Assets), (vi) winding down the affairs of the Debtors and their subsidiaries, if and to the extent necessary, including taking any steps to dissolve, liquidate, bankrupt or take other similar action with respect to each Debtor and their subsidiaries, including by terminating the corporate or organizational existence of each such Debtor and subsidiary, and (vii) performing all actions and executing all agreements, instruments and other documents necessary to effectuate the purpose of the Liquidation Trust.

Liquidation Trust Assets. The Liquidation Trust shall consist of the Liquidation Trust Assets. Except as otherwise provided in the Plan or the Confirmation Order, on the Effective Date, the Debtors shall be deemed to have transferred all of the Liquidation Trust Assets held by the Debtors to the Liquidation Trust, and all Liquidation Trust Assets shall vest in the Liquidation Trust on the Effective Date, to be administered by the Liquidation Trustee, in accordance with the Plan and the Liquidation Trust Agreement, free and clear of all Liens, Claims, encumbrances and other Interest. For the avoidance of doubt, the Plan does not provide for the substantive consolidation of the Debtors' estates and assets from each Debtor's estate that vest in the Liquidation Trust will not be consolidated. The Liquidation Trustee shall separately account for and administer Trust assets and claims with respect to each Debtor's estate. The Debtors and the Liquidation Trustee may take all actions as may be necessary or appropriate to effectuate the Plan

that are consistent with and pursuant to the terms and conditions of the Plan and the Liquidation Trust Agreement.

Liquidation Trustee. The initial Liquidation Trustee shall be selected by the Committee in consultation with the Debtors, the BioFuels Trustee and the Prepetition Agent. The Liquidation Trustee will be designated, and may be replaced, in accordance with the Liquidation Trust Agreement. The Liquidation Trustee shall have no duties until the occurrence of the Effective Date, and on and after the Effective Date shall be the sole fiduciary of each of the Wind-Down Estates. The powers, rights and responsibilities of the Liquidation Trustee shall be as specified in the Liquidation Trust Agreement and Plan and shall include the authority and responsibility to fulfill the items identified in Section 6.3 of the Plan. Other rights and duties of the Liquidation Trustee and the Liquidation Trust Beneficiaries shall be as set forth in the Liquidation Trust Agreement. Pursuant to section 1123 of the Bankruptcy Code, the Liquidation Trustee shall be deemed to be the representative of the Debtors' Estates for all purposes under the Plan.

Functions of the Liquidation Trustee. On and after the Effective Date, the Liquidation Trustee shall carry out the functions set forth Section 6.3 of the Plan and may take such actions without further approval by the Bankruptcy Court, in accordance with the Liquidation Trust Agreement. Such functions may include any and all powers and authority to

i. take all steps and execute all instruments and documents necessary to make Distributions to holders of Allowed Claims and to perform the duties assigned to the Liquidation Trustee under the Plan or the Liquidation Trust Agreement;

ii. comply with and effectuate the Plan and the obligations thereunder;

iii. employ, retain or replace professionals to represent him or her with respect to his or her responsibilities pursuant to the Liquidation Trust Agreement;

iv. wind up the affairs of the Debtors and their subsidiaries, if and to the extent necessary, including taking any steps to dissolve, liquidate, bankrupt, or take other similar action with respect to each Debtor and subsidiary, including by terminating the corporate or organizational existence of each such Debtor or subsidiary;

v. take any actions necessary to (A) resolve all matters related to the Liquidation Trust Assets and (B) vest such assets in the Liquidation Trust;

vi. establish and maintain one or more Cash reserves in his or her reasonable discretion to ensure sufficient funding to pay all current and future Liquidation Trust Expenses;

vii. make Distributions of the Cash in the Liquidation Trust and any proceeds thereof, in excess of any amounts necessary to pay Liquidation Trust Expenses, in accordance with the terms of the Plan;

viii. prepare and file appropriate tax returns and other reports on behalf of the Debtors and pay taxes or other obligations owed by the Debtors (including, without limitation, any Allowed Administrative Expense Claims, Allowed Priority Tax Claims asserted by taxing authorities and Fee Claims);

ix. file, prosecute, settle or dispose of any and all objections to asserted Claims;

x. file, prosecute, settle or dispose of any and all Causes of Action;

xi. establish and maintain the Disputed Claims Reserve;

xii. enter into and consummate any transactions for the purpose of dissolving the Debtors and their subsidiaries;

xiii. take such actions as are necessary or appropriate to close any of the Debtors' Chapter 11 Cases;

xiv. maintain the books and records and accounts of the Debtors;

xv. publish quarterly reports on aggregate receipts and disbursements;

xvi. take any other actions not inconsistent with the provisions of the Plan or Liquidation Trust Agreement that the Liquidation Trustee deems reasonably necessary or desirable in connection with the foregoing functions.

Fees and Expenses of the Liquidation Trust. From and after the Effective Date, Liquidation Trust Expenses shall be paid from the Liquidation Trust Assets in the ordinary course of business, in accordance with the Plan and the Liquidation Trust Agreement. Without any further notice to any party or action, order or approval of the Bankruptcy Court, the Liquidation Trustee, on behalf of the Liquidation Trust, may employ professionals and pay in the ordinary course of business the reasonable fees of any employed professional (including professionals previously employed by the Debtors or the Committee) for services rendered or expenses incurred on and after the Effective Date that, in the discretion of the Liquidation Trustee, are necessary to assist the Liquidation Trustee in the performance of the Liquidation Trustee's duties under the Plan and the Liquidation Trust Agreement, subject to any limitations and procedures established by the Liquidation Trust Agreement.

Liquidation Trust's Obligation to Provide Periodic Reporting. The Liquidation Trustee will provide or publish quarterly reports on aggregate receipts and disbursements from the Liquidation Trust.

Creation and Maintenance of Trust Accounts. On or prior to the Effective Date, or as soon as reasonably practical thereafter, appropriate trust accounts will be established and maintained in one or more federally insured domestic banks in the name of the Liquidation Trust. Cash deposited in the trust accounts will be invested, held and used solely as provided in the Liquidation Trust Agreement. The Liquidation Trustee is authorized to establish additional trust accounts after the Effective Date, consistent with the terms of the Liquidation Trust Agreement, as applicable. After the funding of the trust accounts on the Effective Date or as soon as reasonably practical thereafter, the trust accounts will be funded, as applicable, by Cash proceeds obtained through litigation, settlement, disposition, or other monetization of the of Liquidation Trust Assets. Upon obtaining an order of the Bankruptcy Court authorizing a final Distribution or closure of all of the Debtors' Chapter 11 Cases, any funds remaining in the trust accounts shall be distributed in accordance with the Plan and the Liquidation Trust Agreement, and the trust accounts may be closed.

Indemnification of Liquidation Trustee. The Liquidation Trustee and its agents and professionals shall not be liable for actions taken or omitted in their respective capacities as, or on behalf of, the Liquidation Trustee or the Liquidation Trust, except those acts arising out of its or their, gross negligence, actual fraud or willful misconduct, each as determined by a Final Order from a court of competent jurisdiction. The Liquidation Trustee (and its agents and professionals) shall be entitled to indemnification and reimbursement for fees and expenses incurred in defending any and all of its or their actions or inactions in its or their capacity as, or on behalf of, the Liquidation Trustee or the Liquidation Trust, except for any actions or inactions involving gross negligence, actual fraud or willful misconduct, each as determined by a Final Order from a court of competent jurisdiction. Any indemnification claim of the Liquidation Trustee and the other parties entitled to indemnification under the Liquidation Trust Agreement shall be satisfied from the Liquidation Trust Assets, as provided in the Liquidation Trust Agreement. The Liquidation Trustee shall be entitled to rely, in good faith, on the advice of its professionals.

Insurance. The Liquidation Trustee shall be authorized, but not required, to obtain any reasonably necessary insurance coverage, at the Liquidation Trust's sole expense, for itself and its respective agents, including coverage with respect to the liabilities, duties and obligations of the Liquidation Trustee, which insurance coverage may, at the sole option of the Liquidation Trustee, be extended for a reasonable period after the termination of the Liquidation Trust Agreement.

Records. On the Effective Date, all records of the Debtors shall vest in and become property of the Liquidation Trust and shall be Liquidation Trust Assets. Further, the Liquidation Trustee shall be provided with originals or copies of or access to all documents and business records of the Debtors necessary for the Liquidation Trustee to full his or her duties as set forth in the Liquidation Trust Agreement, including, but not limited to, the disposition of Liquidation Trust Assets and objections to Disputed Claims.

3. Elimination of Duplicate Claims

Any duplicate Claim or Interest or any Claim that has been paid or satisfied, or any Claim that has been amended or superseded, may be adjusted or expunged on the claims register by the Debtors or the Liquidation Trustee, as applicable, (i) upon stipulation between the parties in interest without a Claim objection having to be filed and without any further notice or action, order, or approval of the Bankruptcy Court, or (ii) a notice of satisfaction filed on the docket and served on the applicable claimant, provided, that such modification shall become effective only after fourteen days' notice to parties in interest and an opportunity to object.

4. Corporate Action

Upon the Effective Date, all actions contemplated by the Plan (including any action to be undertaken by the Liquidation Trustee or the Debtors) shall be deemed authorized, approved, and, to the extent taken prior to the Effective Date, ratified without any requirement for further action by holders of Claims or Interests, the Debtors' Estates, the Liquidation Trustee or any other Entity or Person. All matters provided for in the Plan involving the corporate structure of the Debtors (including the filing of a certificate of cancellation for Finance), and any corporate action required by the Debtors or the Liquidation Trustee in connection therewith, shall be deemed to have occurred and shall be in effect, without any requirement of further action by the Debtors, the

Debtors' Estates, or the Liquidation Trustee. Following the Effective Date, the Liquidation Trustee shall be deemed to be the representative of the Debtors and the Debtors' Estates for all purposes under section 1123 of the Bankruptcy Code.

5. Directors, Officers, Managers, Members and Authorized Persons of the Debtors

On the Effective Date, each of the Debtors' directors and officers shall be discharged from their duties and terminated automatically without the need for any corporate action or approval and without the need for any corporate filings, and, unless subject to a separate agreement with the Liquidation Trustee, shall have no continuing obligations to the Debtors following the occurrence of the Effective Date.

6. D&O Policy

As of the Effective Date, the Debtors shall be deemed to have assumed all of the D&O Policies pursuant to sections 105(a) and 365(a) of the Bankruptcy Code, and coverage for defense and indemnity under any of the D&O Policies shall remain in full force and effect subject to the terms and conditions of the D&O Policies and the D&O Policies shall become Liquidation Trust Assets. Entry of the Confirmation Order will constitute the Bankruptcy Court's approval of the Debtors' foregoing assumption of each D&O Policy. Notwithstanding anything to the contrary contained in the Plan, and except as otherwise may be provided in an order of the Bankruptcy Court, confirmation of the Plan shall not impair or otherwise modify any obligations assumed by the foregoing assumption of the D&O Policies, and each such obligation will be deemed and treated as an executory contract that has been assumed by the Debtors under the Plan as to which no proof of Claim need be filed. For the avoidance of doubt, the D&O Policies provide coverage for those insureds currently covered by such policies for the remaining term of such policies and runoff or tail coverage after the Effective Date to the fullest extent permitted by such policies. On and after the Effective Date, the Debtors, the Wind-Down Estates, or the Liquidation Trustee shall not terminate or otherwise reduce the coverage under any of the D&O Policies in effect or purchased as of the Petition Date, and all directors and officers of the Debtors at any time shall be entitled to the full benefits of any such policy for the full term of such policy regardless of whether such directors and/or officers remain in such positions after the Effective Date. For the avoidance of doubt, nothing in the Plan shall be construed as the Debtors assuming any obligation with respect to any self-insured retention for which the applicable insurer has the ability to assert a prepetition Claim against the applicable Debtor in accordance with the order setting the Bar Date or other order of the Bankruptcy Court.

7. Indemnification of Directors, Officers and Employees

For purposes of the Plan, the obligation of the Debtors to indemnify and reimburse any Person serving at any time on or after the Petition Date for actions taken on or after the Petition Date, as one of their directors, officers or employees by reason of such Person's service in such capacity, to the extent provided in such Debtor's constituent documents, a written agreement with the Debtor(s), in accordance with any applicable law, or any combination of the foregoing, shall survive confirmation of the Plan and the Effective Date.

8. Withholding and Reporting Requirements

a) *Withholding Rights*. In connection with the Plan, any party issuing any instrument or making any distribution described in the Plan shall comply with all applicable withholding and reporting requirements imposed by any federal, state, provincial or local taxing authority, and all distributions pursuant to the Plan and all related agreements shall be subject to any such withholding or reporting requirements. Notwithstanding the foregoing, each holder of an Allowed Claim or any other Person that receives a distribution pursuant to the Plan shall be liable for any taxes imposed by any Governmental Unit, including, without limitation, income, withholding, and other taxes, on account of such distribution. Any party issuing any instrument or making any distribution pursuant to the Plan has the right, but not the obligation, to not make a distribution until such holder has made arrangements satisfactory to such issuing or disbursing party for payment of any such tax obligations.

b) *Forms*. Any party entitled to receive any property as an issuance or distribution under the Plan shall, upon request, deliver to the Debtors or Liquidation Trustee, as applicable or such other Person designated by the Debtors or the Liquidation Trustee (which entity shall subsequently deliver to the Debtors or the Liquidation Trustee any applicable IRS Form W-8 or Form W-9 received) an appropriate Form W-9 or (if the payee is a foreign Person) Form W-8 or any other form or document as reasonably requested by the Debtors or Liquidation Trustee or such other Person designated by either of them to eliminate or reduce any tax (including withholding tax), unless the Debtors or Liquidation Trustee or such other Person designated by them determines it is not required to eliminate or reduce any tax (including withholding tax). If such request is made by the Debtors or Liquidation Trustee or such other Person designated by the Debtors or the Liquidation Trustee and the holder fails to comply before the date that is 150 days after the request is made, the amount of such distribution shall irrevocably revert to the Liquidation Trust, and any Claim in respect of such Distribution shall be forever barred from assertion against any Debtor and its respective property.

9. Exemption From Certain Transfer Taxes

To the maximum extent provided by section 1146 of the Bankruptcy Code, under the Plan, (i) the issuance, distribution, transfer or exchange of any debt, equity security or other interest in the Debtors; or (ii) the making, delivery or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be taxed under any law imposing a stamp tax or similar tax. To the extent that the Debtors or Liquidation Trustee elects to sell any property after the Confirmation Date, such sales of property will be exempt from any transfer taxes in accordance with section 1146(a) of the Bankruptcy Code. All subsequent issuances, transfers or exchanges of securities, or the making or delivery of any instrument of transfer by the Debtors or the Liquidation Trustee in the Chapter 11 Cases shall be deemed to be or have been done in furtherance of the Plan.

10. Effectuating Documents; Further Transactions

On and after the Effective Date, the Liquidation Trustee and the Debtors are authorized to and may issue, execute, deliver, file or record such contracts, securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement and further evidence the terms and conditions of the Plan in the name of and on behalf of the Debtors, without the need for any approvals, authorizations, or consents except for those expressly required pursuant to the Plan.

11. Preservation of Rights of Action

Other than Causes of Action against an Entity that are expressly waived, relinquished, exculpated, released, sold pursuant to the Agent Sale Order, compromised, or settled in the Plan or by a Bankruptcy Court order entered prior to the Effective Date, the Debtors reserve any and all Causes of Action, and on the Effective Date, such Causes of Action shall vest in the Liquidation Trust, free and clear of all Claims, Liens, encumbrances and other interests, and shall become Liquidation Trust Assets. On and after the Effective Date, the Liquidation Trustee shall have sole and exclusive discretion to pursue and dispose of any such Causes of Action that are or become Liquidation Trust Assets. No Entity may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any Cause of Action against them as any indication that the Debtors, and on and after the Effective Date, the Liquidation Trustee, will not pursue any and all available Causes of Action against them. No preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation. Prior to the Effective Date, the Debtors (and on and after the Effective Date, the Liquidation Trustee) shall retain and shall have, including through its authorized agents or representatives, the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court.

For the avoidance of doubt, any claims sold pursuant to Agent Salee Order are not property of the Debtors' estate and therefore not preserved pursuant to this section.

12. Closing of the Chapter 11 Cases

On or after the Effective Date, the Liquidation Trustee shall be authorized to file a motion requesting entry of one or more orders of this Court closing any of the remaining Chapter 11 Cases. Such motion may be heard by the Court on fourteen days' notice to the U.S. Trustee and all other parties entitled to notice under Local Rule 2002-1(b). Each Wind-Down Estate shall be entitled to appoint the Liquidation Trustee to prosecute claims and defenses and through the Disbursing Agent, make distributions, and attend to other wind down affairs on behalf of each of the other prior Debtors as if such Wind-Down Estates continued to exist solely for that purpose. The Liquidation Trustee shall, promptly after the full administration of the Chapter 11 Cases, file with this Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court. Upon the filing of such a motion, the Liquidation Trustee shall file a final report with respect to all of the Chapter 11 Cases pursuant to Local Rule 3022-1(c).

14. Dissolution of the Committee

On the Effective Date, the Committee shall dissolve, and the members thereof and the professionals retained by the Committee thereof shall be released and discharged from all rights and duties arising from, or related to, these Chapter 11 Cases; *provided*, however, that following the Effective Date, the Committee shall continue in existence and have standing and a right to be heard for the following limited purposes: (a) applications, and any relief related thereto, for compensation and requests for allowance of fees and/or expenses under sections 330, 331 and 503(b) of the Bankruptcy Code including Fee Claims and any Committee member reimbursement requests, (b) to enforce the releases and exculpations under Section 12 of the Plan of the Committee, the Committee's members (solely in their capacity as such), and the Committee's Related Parties, and (c) any appeals of the Confirmation Order, the Sale Order, or any other appeal to which the Committee is or was a party in interest.

F. Distributions

1. Distribution Record Date

The Debtors and the Liquidation Trustee shall have no obligation to recognize any transfer of the Claims or Interests (i) occurring on or after the Effective Date, or (ii) that does not comply with Bankruptcy Rule 3001(e) or otherwise does not comply with the Bankruptcy Code or Bankruptcy Rules.

2. Date of Distributions

Except as otherwise provided in the Plan, the Liquidation Trustee shall direct the Initial Distribution to holders of Allowed Claims no later than the Initial Distribution Date. After the Initial Distribution Date, the Liquidation Trustee shall, from time to time, determine the subsequent Distribution Dates.

3. Delivery of Distributions

The Disbursing Agent shall make all distributions, allocations, and/or issuances required under the Plan. In the event that any Distribution to any holder is returned as undeliverable, no Distribution to such holder shall be made unless and until the Liquidation Trustee has determined the then current address of such holder, at which time such Distribution shall be made to such holder without interest; *provided, however*, that such Distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of six months from the date such Distribution was made. After such date, all unclaimed property or interests in property shall revert (notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws to the contrary) to the Liquidation Trust automatically and without need for a further order by the Bankruptcy Court for Distribution in accordance with the Plan, and the Claim of any such holder to such property or interest in property shall be released, settled, compromised, and forever barred.

4. Manner of Payment Under Plan

At the option of the Debtors, the Liquidation Trustee or the Disbursing Agent, as applicable, any Cash payment to be made pursuant to the Plan may be made by a check or wire transfer from the Disbursing Agent. Any wire transfer fees incurred in connection with the transmission of a wire transfer shall be deducted from the amount of the Distribution a holder of an Allowed Claim would otherwise receive. The Debtors, the Liquidation Trustee, or the Disbursing Agent, as applicable, will, to the extent practicable, make aggregate Distributions on account of all the Allowed Claims held by a particular holder.

5. Minimum Cash Distributions

No intermediate Distribution shall be required to be made to any holder of an Allowed Claim on any Distribution Date of Cash less than $100; *provided, however*, that if any Distribution is not made pursuant to Section 7.5 of the Plan, such Distribution shall be added to any subsequent Distribution to be made on behalf of the holder's Allowed Claim. The Liquidation Trustee through the Disbursing Agent shall not be required to make any final Distributions of Cash less than $50 to any holder of an Allowed Claim.

6. Setoffs

The Debtors or the Liquidation Trustee may, but shall not be required to, set off against any Claim, any Claims of any nature whatsoever that the Debtors or the Liquidation Trustee have against the holder of such Claim; *provided* that neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors or the Liquidation Trustee of any such Claim the Debtors or the Liquidation Trustee may have against the holder of such Claim.

7. Allocation of Distributions Between Principal and Interest

Except as otherwise provided in the Plan, to the extent that any Allowed Claim entitled to a Distribution under the Plan is comprised of indebtedness and accrued but unpaid interest thereon, such Distribution shall be allocated to the principal amount (as determined for U.S. federal income tax purposes) of the Claim first, and then to accrued but unpaid interest.

8. No Postpetition Interest on Claims

Except as otherwise provided in the Plan, the Confirmation Order, or another order of the Bankruptcy Court, or required by the Bankruptcy Code, postpetition interest shall not accrue or be paid on any Claims and no holder of a Claim shall be entitled to interest accruing on or after the Petition Date.

9. No Distribution in Excess of Amount of Allowed Claim

Notwithstanding anything to the contrary in the Plan, no holder of an Allowed Claim shall, on account of such Allowed Claim, receive a Distribution in excess of the Allowed amount of such Claim.

G. Procedures for Disputed Claims

1. Objections to Claims

As of the Effective Date, objections to, and requests for, estimation of Claims against the Debtors may be interposed and prosecuted by the Liquidation Trustee. Such objections and requests for estimation shall be served and filed on or before the Claims Objection Bar Date.

2. Allowance of Claims

After the Effective Date, the Liquidation Trust shall have and shall retain any and all rights and defenses that the Debtors had with respect to any Claim against a Debtor, except with respect to any Claim expressly Allowed under the Plan. Except as expressly provided in the Plan or in any order entered in the Chapter 11 Cases prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim shall become an Allowed Claim unless and until such Claim is expressly Allowed under the Plan or the Bankruptcy Code or the Bankruptcy Court has entered a Final Order, including, without limitation, the Confirmation Order, in the Chapter 11 Cases allowing such Claim.

3. Estimation of Claims

The Debtors or the Liquidation Trustee, as applicable, may at any time request that the Bankruptcy Court estimate any contingent, unliquidated, or Disputed Claim, pursuant to section 502(c) of the Bankruptcy Code regardless of whether any party in interest previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection. In the event that the Bankruptcy Court estimates any contingent, unliquidated, or Disputed Claim, the amount so estimated shall constitute either the Allowed amount of such Claim or the maximum limit of such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the Liquidation Trustee may pursue supplementary proceedings to object to the allowance of such Claim. All of the aforementioned objection, estimation and resolution procedures are intended to be cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

4. No Distributions Pending Allowance

No payment or Distribution provided under the Plan shall be made on account of a Disputed Claim unless and until such Disputed Claim becomes an Allowed Claim; *provided* that payment or Distribution may be made on an Allowed portion of a Claim pending adjudication of the Disputed portion of such Claim.

5. Resolution of Claims

Except as otherwise provided in the Plan (including the release provisions thereof) or in the Confirmation Order, or in any contract, instrument, release, or other agreement or document entered into in connection with the Plan, in accordance with section 1123(b) of the Bankruptcy Code, on and after the Effective Date, the Liquidation Trustee may enforce, sue on, settle, or compromise (or decline to do any of the foregoing) all Claims, Disputed Claims, rights, Causes of

Action, suits and proceedings, whether in law or in equity, whether known or unknown, that the Liquidation Trust may hold against any Person, and any contract, instrument, release, indenture, or other agreement entered into in connection therewith. From and after the Effective Date, the Liquidation Trustee may settle or compromise any Disputed Claim without approval of the Bankruptcy Court; provided that in its discretion, the Liquidation Trustee may seek court approval of a settlement of a Disputed Claim.

6. Amendments to Claims and Late Filed Claims

Following the Effective Date, except as otherwise provided in the Plan (including with respect to the filing of Claims by Governmental Units by the Governmental Bar Date), the Confirmation Order, or the Liquidation Trust Agreement, no Claim may be filed, amended, or supplemented without the approval of the Bankruptcy Court or without the prior written authorization of the Liquidation Trustee, and any such new or amended Claim filed without such prior authorization shall be deemed disallowed in full and expunged without any further action, order or approval of the Bankruptcy Court.

7. Insured Claims

If any portion of an Allowed Claim is an Insured Claim, no distributions under the Plan shall be made on account of such Allowed Claim until the holder of such Allowed Claim has exhausted all remedies with respect to any applicable insurance policies. To the extent that the Debtors' insurers agree to satisfy a Claim in whole or in part, then immediately upon such agreement, the portion of such Claim so satisfied may be expunged (i) without an objection to such Claim having to be filed and without any further notice to or action, order or approval of the Bankruptcy Court and (ii) with a notice of satisfaction filed on the docket and served on the applicable claimant or interest holder.

H. Executory Contracts and Unexpired Leases

1. Rejection of Executory Contracts and Unexpired Leases

On the Effective Date, except as otherwise provided in the Plan, each Executory Contract and Unexpired Lease not previously rejected, assumed, or assumed and assigned (including any Executory Contract or Unexpired Lease assumed and assigned in connection with a Sale Transaction) shall be deemed automatically rejected pursuant to sections 365 and 1123 of the Bankruptcy Code, unless such Executory Contract or Unexpired Lease: (i) as of the Effective Date is subject to a pending motion to assume such Unexpired Lease or Executory Contract or (ii) is a D&O Policy or an insurance policy.

2. Claims Based on Rejection of Executory Contracts and Unexpired Leases

Unless otherwise provided by an order of the Bankruptcy Court, any Proofs of Claim based on the rejection of the Debtors' Executory Contracts or Unexpired Leases pursuant to the Plan must be filed with Bankruptcy Court and served on the Liquidation Trustee no later than thirty (30) days after the notice of occurrence of the Effective Date. The notice of occurrence of the Effective Date shall include the date by which Proofs of Claim based on the rejection of the Debtors' Executory Contracts or Unexpired Leases must be filed.

Any Claims arising from the rejection of an Executory Contract or Unexpired Lease not filed with the Bankruptcy Court within such time will be forever barred from assertion, and shall not be enforceable against the Debtors, the Liquidation Trust, the Liquidation Trustee, the Debtors' Estates, or the property for any of the foregoing, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully compromised, settled, and released, notwithstanding anything in the Schedules or a Proof of Claim to the contrary.

I. Conditions Precedent to Confirmation

1. Conditions Precent to Confirmation

Confirmation of the Plan shall not occur, and the Confirmation Order shall not be entered, until each of the following conditions precedent have been satisfied or waived:

i. An order, finding that the Disclosure Statement contains adequate information pursuant to section 1125 of the Bankruptcy Code, shall have been entered; and

ii. The Confirmation Order shall be in a form and substance reasonably satisfactory to the Debtors, the Committee, the BioFuels Trustee and the Prepetition Agent.

J. Conditions Precedent to the Effective Date

1. Conditions Precedent to the Effective Date

The occurrence of the Effective Date of the Plan is subject to the following conditions precedent:

i. the Bankruptcy Court shall have entered the Confirmation Order, and the Confirmation Order shall not be stayed;

ii. The Confirmation Order shall have become a Final Order;

iii. all funding, actions, documents and agreements necessary to implement and consummate the Plan and the transactions and other matters contemplated thereby, shall have been effected or executed;

iv. the Liquidation Trust shall be established and validly existing and the Liquidation Trust Agreement shall have been executed;

v. all professional fees and expenses that, as of the Effective Date, were due and payable under an order of the Bankruptcy Court shall have been paid in full, other than any Fee Claims subject to approval by the Bankruptcy Court;

vi. the Debtors shall have funded the Professional Fees Account in accordance with Section 2.3 of the Plan;

vii. the Debtors shall have sufficient Cash on hand to pay in full, or reserve for, the projected Allowed Administrative Expense Claims, Allowed Fee Claims, Allowed Priority Tax Claims, Allowed Other Priority Claims, and U.S. Trustee Fees otherwise due or payable on the Effective Date;

viii. no Governmental Unit or federal or state court of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any law or order (whether temporary, preliminary or permanent), in any case which is in effect and which prevents or prohibits consummation of the Plan or any of the other transactions contemplated hereby and no Governmental Unit shall have instituted any action or proceeding (which remains pending at what would otherwise be the Effective Date) seeking to enjoin, restrain or otherwise prohibit consummation of the transactions contemplated by the Plan;

ix. all authorizations, consents, regulatory approvals, rulings or documents that are necessary to implement and effectuate the Plan as of the Effective Date shall have been received, waived or otherwise resolved; and

x. all documents and agreements necessary to implement the Plan, including those set forth in the Plan Supplement, shall have (i) been tendered for delivery and (ii) been effected or executed by all Entities party thereto, and all conditions precedent to the effectiveness of such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

2. Waiver of Conditions Precedent

Each of the conditions precedent in Section 11.1 of the Plan other than the condition set forth in Section 11.1(a) may be waived in writing by the Debtors with the prior consent of the Committee or as otherwise ordered by the Bankruptcy Court. Any such waivers may be effected at any time, without notice, without leave or order of the Bankruptcy Court and without any formal action.

3. Substantial Consummation

On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127(b) of the Bankruptcy Code.

4. Notice of Effective Date

Within one business day after its occurrence, the Debtors shall file a notice stating that the Effective Date has occurred.

5. Effect of Vacatur of Confirmation Order

If the Confirmation Order is vacated, (i) no distributions under the Plan shall be made, (ii) the Debtors and all holders of Claims and Interests shall be restored to the status quo ante as of the day immediately preceding the Confirmation Date as though the Confirmation Date never occurred, and (iii) all the Debtors' obligations with respect to the Claims and the Interests shall

remain unchanged and nothing contained in the Plan shall be deemed to constitute a waiver or release of any Claims by or against the Debtors or any other entity or to prejudice in any manner the rights of the Debtors or any other entity in any further proceedings involving the Debtors or otherwise.

K. Settlement, Releases, Injunctions, and Related Provisions

1. Release of Liens

Except as otherwise provided in the Plan or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released, settled, and compromised and all property of the Estates shall revert to the Debtors and vest in the Liquidation Trust free and clear of any liens, security interests, or other interests.

2. Binding Effect

Confirmation of the Plan does not provide the Debtors with a discharge under section 1141 of the Bankruptcy Code because the Plan is a liquidating chapter 11 plan. Except as otherwise provided in section 1141(d)(3) of the Bankruptcy Code and subject to the occurrence of the Effective Date, on and after the Effective Date, the provisions of the Plan shall bind any holder of a Claim against, or Interest in, the Debtors, and such holder's respective successors and assigns, whether or not the Claim or Interest of such holder is Impaired under the Plan and whether or not such holder has accepted the Plan.

3. Term of Injunctions or Stays

Unless otherwise provided in the Plan, all injunctions or stays arising under or entered during the Chapter 11 Cases under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay.

4. Releases by the Debtors

As of the Effective Date, except (i) for the rights that remain in effect from and after the Effective Date to enforce the Plan, Confirmation Order, Liquidation Trust Agreement or any Sale Transaction; and (ii) as otherwise provided in the Plan or in the Confirmation Order, for good and valuable consideration, including their cooperation and contributions to the Chapter 11 Cases, the Released Parties will be deemed conclusively, absolutely, unconditionally, irrevocably, and forever released, to the maximum extent permitted by law, by the Debtors and the Estates (including the Wind-Down Estates), in each case, on behalf of themselves and their respective successors (including the Liquidation Trust), assigns, and representatives, and any and all other persons that may purport to assert any Cause of Action derivatively, by, through or on behalf of the foregoing Persons and Entities, from any and all Claims and Causes of Action, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise that the Debtors or the Estates would have been legally entitled to assert in their own right (whether individually or

collectively) or on behalf of the holder of any Claim or Interest or other Person, based on or relating to, in whole or in part, the Debtors, the Chapter 11 Cases, the pre- and postpetition marketing and sale process, any Sale Transaction, the purchase, sale, or rescission of the purchase or sale of any securities issued by the Debtors, the ownership of any securities issued by the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the administration or implementation of the Plan, including the issuance or distribution of the Liquidation Trust Assets pursuant to the Plan, the creation of the Liquidation Trust, the business or contractual arrangements between any Debtor and any Released Party, the Disclosure Statement, the Plan (including the Plan Supplement), or the solicitation of votes with respect to the Plan, or any other act or omission, in all cases based upon any act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date related or relating to the foregoing; provided that nothing in Section 12.4 of the Plan shall act as a release of a direct claim any holder of a Claim or Interest or other Entity may have against any Released Party or a release of any claim or Cause of Action specifically preserved through the Plan.

Notwithstanding anything to the contrary to the foregoing, the release set forth above does not release (i) any post-Effective Date obligations of any Person under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan or a Sale Transaction. Moreover, the foregoing release shall have no effect on the liability of, or any Causes of Action against, any Entity that results from any act or omission that is determined in a Final Order to have constituted actual fraud, willful misconduct, criminal acts, or gross negligence.

5. Releases by Holders of Claims and Interests

As set forth in the Plan, "Releasing Parties" means collectively, and in each case, solely in their respective capacities as such: (i) the Released Parties; (ii) all holders of Secured Claims in Classes 2A-2C, Deficiency Claims in Classes 3A-3C, and Undersecured and General Unsecured Claims in Classes 4A-4C, who vote to accept the Plan and do not opt out of the voluntary release contained in Section 12.5 of the Plan by checking the "opt out" box on the ballot and returning it in accordance with the instructions set forth thereon.

As of the Effective Date, except (i) for the right to enforce the Plan, Confirmation Order, and any Sale Transactions, and (ii) as otherwise expressly provided in the Plan or in the Confirmation Order, in exchange for good and valuable consideration, including the obligations of the Debtors under the Plan, to the fullest extent permissible under applicable law, the Released Parties shall be deemed conclusively, absolutely, unconditionally, irrevocably and forever released by the Releasing Parties in each case, from any and all Claims and Causes of Action, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, asserted or unasserted, accrued or unaccrued, existing or hereinafter arising, in law or equity, whether arising under federal or state statutory or common law, or any other applicable international, foreign, or domestic law, rule, statute, regulation, treaty, right, duty, requirement or otherwise, that such entity would have been legally entitled to assert in their own right (whether individually, derivatively, or collectively) or on behalf of the holder of any Claim or Interest or other Person, based on or relating to, or in any manner arising prior to the Effective Date, from,

in whole or in part, the Debtors, the Chapter 11 Cases, the pre-and postpetition marketing and sale process, a Sale Transaction, the purchase, sale, or rescission of the purchase or sale of any securities issued by the Debtors, the ownership of any securities issued by the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the administration or implementation of the Plan, including the issuance or distribution of the Liquidation Trust Assets pursuant to the Plan, the creation of the Liquidation Trust, the business or contractual arrangements between any Debtor and any Released Party, the Disclosure Statement, the Plan (including the Plan Supplement), or the solicitation of votes with respect to the Plan, or any other act or omission, in all cases based upon any act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date related or relating to the foregoing.

Notwithstanding anything to the contrary, the release set forth above does not release any post-Effective Date obligations of any Person under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan. Moreover, the foregoing release shall have no effect on the liability of, or any causes of action against, any Entity that results from any act or omission that is determined in a Final Order to have constituted actual fraud, willful misconduct, criminal acts, or gross negligence.

6. Exculpation

To the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each of the Exculpated Parties are hereby exculpated from, any Claim, obligation, suit, judgment, damage, demand, debt, right, causes of action, remedy, loss, and liability for any Claim arising on or after the Petition Date through the Effective Date in connection with, related to, or arising out of the filing or administration of the Chapter 11 Cases, the postpetition marketing and sale process, the postpetition purchase, sale, or rescission of the purchase or sale of any security or asset of the Debtors; the negotiation and pursuit of the Disclosure Statement, any Sale Transactions, the Plan, or the solicitation of votes for, or confirmation of, the Plan; the funding or consummation of the Plan; the occurrence of the Effective Date; the property to be distributed under the Plan (including Liquidation Trust Assets); the creation and administration of the Liquidation Trust; or the transactions in furtherance of any of the foregoing; except for actual fraud, gross negligence, criminal acts or willful misconduct, as determined by a Final Order. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations and any other applicable law or rules protecting such Exculpated Parties from liability. Notwithstanding anything to the contrary in the foregoing, the exculpation set forth in the Plan does not release any post-Effective Date obligation or liability of any Entity or Person under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.

7. Injunction

a) Upon entry of the Confirmation Order, all holders of Claims and Interests and other parties in interest, along with their respective present or former employees, agents, officers, directors, principals, and affiliates, shall be enjoined from taking any actions to

interfere with the implementation or Consummation of the Plan in relation to any such Claims and Interests.

b) Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court or as agreed to by the Debtors and a holder of a Claim against or Interest in the Debtors, all Releasing Parties who have held, hold, or may hold Claims against or Interests in the Released Parties that have been released or exculpated in Section 12 of the Plan (the "Released and Exculpated Claims") are permanently enjoined, on and after the Effective Date, solely with respect to any Released and Exculpated Claims, from (i) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtors, the Liquidation Trust, the Liquidation Trustee, or the property of any of the Debtors or the Liquidation Trust; (ii) enforcing, levying, attaching (including, without limitation, any prejudgment attachment), collecting, or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree, or order against the Debtors, and the Liquidation Trust; the Liquidation Trustee or the property of any of the Debtors or the Liquidation Trust; (iii) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtors or the Liquidation Trust, or the property of any of the Debtors or the Liquidation Trust; (iv) asserting any right of setoff (except to the extent exercised prepetition), directly or indirectly, against any obligation due from the Debtors or the Liquidation Trust, or against property or interests in property of any of the Debtors or the Liquidation Trust except as contemplated or allowed by the Plan; and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

c) The benefit of the injunctions in Section 12.7 of the Plan shall extend to any successors of the Debtors, the Liquidation Trust, the Liquidation Trustee, and their respective property and interests in property.

L. Retention of Jurisdiction

On and after the Effective Date, the Bankruptcy Court shall retain jurisdiction over all matters arising in, arising under, and related to the Chapter 11 Cases for, among other things, the following purposes:

a) to hear and determine motions and/or applications for the assumption or rejection of Executory Contracts or Unexpired Leases and the allowance, classification, priority, compromise, estimation or payment of Claims resulting therefrom;

b) to determine any motion, adversary proceeding, application, contested matter, or other litigated matter pending on or commenced after the Confirmation Date, including any such motions, adversary proceeding, application, contested matter or other litigated matter brought by the Liquidation Trust;

c) to ensure that distributions to holders of Allowed Claims are accomplished as provided in the Plan;

d) to consider Claims or the allowance, classification, priority, compromise, estimation or payment of any Claim;

e) to enter, implement or enforce such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, reversed, revoked, modified or vacated;

f) to issue injunctions, enter and implement other orders, and take such other actions as may be necessary or appropriate to restrain interference by any Person with the Consummation, implementation or enforcement of the Plan, the Confirmation Order, or any other order of the Bankruptcy Court;

g) to hear and determine any application to modify the Plan in accordance with section 1127 of the Bankruptcy Code, to remedy any defect or omission or reconcile any inconsistency in the Plan, or any order of the Bankruptcy Court, including the Confirmation Order, in such a manner as may be necessary to carry out the purposes and effects thereof;

h) to hear and determine all applications under sections 330, 331, and 503(b) of the Bankruptcy Code for awards of compensation for services rendered and reimbursement of expenses incurred before the Effective Date;

i) to hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan, the Confirmation Order, the Sale Order, the Liquidation Trust Agreement, or any agreement, instrument, or other document governing or relating to any of the foregoing;

j) to take any action and issue such orders as may be necessary to construe, interpret, enforce, implement, execute, and consummate the Plan or to maintain the integrity of the Plan following Consummation;

k) to hear any disputes arising out of, and to enforce, any order approving alternative dispute resolution procedures to resolve personal injury, employment litigation and similar Claims pursuant to section 105(a) of the Bankruptcy Code;

l) to determine such other matters and for such other purposes as may be provided in the Confirmation Order;

m) to hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code (including any requests for expedited determinations under section 505(b) of the Bankruptcy Code);

n) to adjudicate any and all disputes arising from or relating to distributions under the Plan;

o) to hear, determine and resolve any cases, matters, controversies, suits, disputes or Causes of Action in connection with or in any way related to the Chapter 11 Cases, including with respect to the releases, exculpation and injunction provisions contained in Section 11 of the Plan and the Confirmation Order;

p) to hear and determine any other matters related hereto and not inconsistent with the Bankruptcy Code and title 28 of the United States Code;

q) to enter one or more final decrees closing the Chapter 11 Cases;

r) to interpret and enforce the Confirmation Order and all other orders previously entered by the Bankruptcy Court in these Chapter 11 Cases;

s) to recover all assets of the Debtors and property of the Debtors' Estates, wherever located;

t) to hear and determine any rights, Claims or Causes of Action held by or accruing to the Debtors pursuant to the Bankruptcy Code or pursuant to any federal statute or legal theory; and

u) any other matters that may arise in connection with or relate to the Plan, the Plan Supplement, the Disclosure Statement, the Confirmation Order, a Sale Order or any contract, instrument, release, indenture, or other agreement or document created in connection therewith.

M. Miscellaneous Provisions

1. No Revesting of Assets

To the extent not otherwise distributed in accordance with the Plan, the property of the Debtors' Estates shall not revest in the Debtors on or after the Effective Date but shall instead vest in the Liquidation Trust, to be administered by the Liquidation Trustee in accordance with the Plan and the Liquidation Trust Agreement.

2. Subordinated Claims

The allowance, classification, and treatment of all Allowed Claims and Interests and the respective Distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtors reserve the right for the Liquidation Trustee to re-classify any Allowed Claim or Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

3. Amendments

a) *Plan Modifications*. Prior to the Effective Date, the Plan may be amended, modified or supplemented by the Debtors, with the consent of the Committee or as ordered by the Bankruptcy Court, in the manner provided for by section 1127 of the Bankruptcy Code or as otherwise permitted by law without additional disclosure pursuant to section 1125 of the Bankruptcy Code. In addition, after the Confirmation Date but before substantial consummation of the Plan, the Debtors may, after consultation with the Committee, institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan

or the Confirmation Order, with respect to such matters as may be necessary to carry out the purposes and effects of the Plan.

b) *Other Amendments*. Before the Effective Date, to the extent provided in section 1127 of the Bankruptcy Code, the Debtors, with the consent of the Committee or court order, may make appropriate technical adjustments and modifications to the Plan and any of the documents prepared in connection herewith.

4. Revocation or Withdrawal of the Plan

The Debtors reserve the right, in consultation with the Committee, to revoke or withdraw the Plan for one or all Debtors prior to the Confirmation Date. If the Debtors revoke or withdraw the Plan, or if Confirmation or Consummation does not occur, then: (i) the Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain of any Claim or Interest or Class of Claims or Interests), assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void; and (ii) nothing contained in the Plan shall: (A) constitute a waiver or release of any Claims or Interests; (B) prejudice in any manner the rights of the Debtors, the Debtors' Estates, or any other Entity; or (C) constitute an admission, acknowledgement, offer, or undertaking of any sort by the Debtors, the Debtors' Estates, or any other Entity.

5. Severability of Plan Provisions upon Confirmation

If, before the entry of the Confirmation Order, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court, at the request of the Debtors, in consultation with the Committee, shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is (i) valid and enforceable pursuant to its terms; (ii) integral to the Plan and may not be deleted or modified without the consent of the Debtors or the Liquidation Trustee (as the case may be); and (iii) nonseverable and mutually dependent.

6. Governing Law

Except to the extent that the Bankruptcy Code or other federal law is applicable, or to the extent an exhibit hereto provides otherwise, the rights, duties and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without giving effect to the principles of conflict of laws thereof.

7. Time

In computing any period of time prescribed or allowed by the Plan, unless otherwise set forth in the Plan or determined by the Bankruptcy Court, the provisions of Bankruptcy Rule 9006 shall apply.

8. Additional Documents

On or before the Effective Date, the Debtors may file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors, the Liquidation Trustee, and all holders of Claims or Interests receiving distributions pursuant to the Plan and all other parties in interest shall, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

9. Immediate Binding Effect

Notwithstanding Bankruptcy Rule 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan shall be immediately effective and enforceable and deemed binding upon and inure to the benefit of the Debtors, the holders of Claims and Interests, the Releasing Parties, the Released Parties, the Exculpated Parties, and each of their respective successors and assigns, including, without limitation, the Liquidation Trustee.

10. Successor and Assigns

The rights, benefits and obligations of any Person named or referred to in the Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or permitted assign, if any, of each Entity.

11. Entire Agreement

On the Effective Date, the Plan and the Confirmation Order shall supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings and representations on such subjects, all of which have become merged and integrated into the Plan.

12. Notices

All notices, requests and demands to or upon the Debtors, or the Liquidation Trust, as applicable, to be effective shall be in writing (including by facsimile transmission) and, unless otherwise expressly provided in the Plan, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

(a) <u>if to the Debtors</u>:

Fulcrum BioEnergy, Inc.
P.O. Box 220
Pleasanton, CA 94566

Attention: Mark J. Smith
Richard D. Barraza
Email: msmith@fulcrum-bioenergy.com
rbarraza@fulcrum-bioenergy.com

-and-

Morris Nichols Arsht & Tunnell LLP
1201 North Market Street
Wilmington, Delaware 19899-1347
Attention: Robert J. Dehney
Curtis S. Miller
Clint M. Carlisle
Email: rdehney@morrisnichols.com
cmiller@morrisnichols.com
ccarlisle@morrisnichols.com

(b) If to the Committee:

Eversheds Sutherland (US) LLP
1114 Avenue of the Americas, 40th Floor
New York, NY 10036
Attention: Todd C. Meyers
Jennifer B. Kimble
Email: toddmeyers@eversheds-sutherland.com
jenniferkimble@eversheds-sutherland.com

-and-

Morris James LLP
500 Delaware Avenue, Suite 1500
Wilmington, DE 19801-1494
Attention: Jeffrey R. Waxman
Email: jwaxman@morrisjames.com

(c) If to the Liquidation Trust, to the parties designated for notice and in the manner set forth in the Liquidation Trust Agreement.

After the Effective Date, any party must file a renewed request to receive documents pursuant to Bankruptcy Rule 2002. After the Effective Date, the Liquidation Trust is authorized to limit the list of Entities receiving documents pursuant to Bankruptcy Rule 2002 to (i) those Entities who have filed such renewed requests and (ii) those Entities whose rights are affected by such documents and/or the relief requested therein.

VII. CERTAIN RISK FACTORS AFFECTING THE DEBTORS

Prior to voting to accept or reject the Plan, holders of Claims should read and carefully consider the risk factors set forth below, in addition to the information set forth in this Disclosure Statement together with any attachments, exhibits, or documents incorporated by reference hereto. The factors below should not be regarded as the only risks associated with the Plan or its implementation.

A. Certain Bankruptcy Law Considerations

1. Risk of Non-Confirmation or Delay of the Plan

Although the Debtors believe that the Plan will satisfy all requirements necessary for confirmation by the Bankruptcy Court, there can be no assurance that the Bankruptcy Court will reach the same conclusion or that modifications of the Plan will not be required for confirmation or that such modifications would not necessitate re-solicitation of votes.

2. Risk of Failing to Satisfy Vote Requirement

In the event that the Debtors are unable to get sufficient votes from the Voting Classes with respect to each respective Debtor, the Debtors may seek to accomplish an alternative chapter 11 plan. There can be no assurance that the terms of any such alternative chapter 11 plan would be similar or as favorable to holders of Claims as those proposed in the Plan.

3. Failure to Satisfy Administrative Claims or Otherwise Agree to Alternative Treatment and Other Factors that May Impact Administrative Solvency

To confirm a chapter 11 plan, section 1129(a)(9) of the Bankruptcy Code requires, among other things, that "except to the extent that the holder of a particular claim has agreed to a different treatment of such claim," claims entitled to administrative priority under section 507(a)(2) or 507(a)(3) must be paid in full in order for a debtor to confirm a chapter 11 plan. To the extent that a Debtor is unable to pay such claims in full or otherwise agree to treatment with the applicable holder, such Debtor may be unable to confirm a chapter 11 plan. Furthermore, certain factors could also impact the Debtors' administrative solvency, including reconciliation of Administrative Expense Claims, which may impact the Debtors' ability to confirm a chapter 11 plan for all or certain of the Debtors. If no plan can be confirmed, one or more of these Chapter 11 Cases may be converted to cases under chapter 7 of the Bankruptcy Code or dismissed.

4. Non-Consensual Confirmation

In the event any impaired class of claims or interests does not accept a plan, a bankruptcy court may nevertheless confirm such plan at the proponent's request if at least one impaired class has accepted the plan (with such acceptance being determined without including the vote of any "insider" in such class), and as to each impaired class that has not accepted the plan, the bankruptcy court determines that the plan "does not discriminate unfairly" and is "fair and equitable" with respect to the dissenting impaired classes. Should any Class at any Debtor vote to reject the Plan, then these requirements must be satisfied with respect to such rejecting Class. The Debtors believe that the Plan satisfies these requirements.

5. *Conversion to Chapter 7*

If the Plan cannot be confirmed, or if the Bankruptcy Court otherwise finds that it would be in the best interest of holders of Claims and Interests, one or more of the Chapter 11 Cases may be converted to cases under chapter 7 of the Bankruptcy Code, pursuant to which a chapter 7 trustee would be appointed or elected to liquidate the applicable Debtor's assets for distribution in accordance with the priorities established by the Bankruptcy Code. *See* Section IX.C.2 hereof, as well as the liquidation analysis annexed hereto as Exhibit B, for a discussion of the effects that a chapter 7 liquidation would have on the recoveries of holders of Claims and Interests (the "Liquidation Analysis").

B. Additional Factors to be Considered

1. The Debtors Have No Duty to Update

The statements contained in this Disclosure Statement are made by the Debtors, unless otherwise specified herein, and the delivery of this Disclosure Statement after that date does not imply that there has been no change in the information set forth herein since that date. The Debtors have no duty to update this Disclosure Statement unless otherwise ordered to do so by the Bankruptcy Court.

2. No Representations Outside This Disclosure Statement Are Authorized

No representations concerning or related to the Debtors, the Chapter 11 Cases, or the Plan are authorized by the Bankruptcy Court, or the Bankruptcy Code, other than as set forth in this Disclosure Statement. Any representations or inducements made to secure your acceptance or rejection of the Plan that are other than as contained in, or included with, this Disclosure Statement should not be relied upon by you in arriving at your decision.

3. No Legal or Tax Advice Is Provided to You by This Disclosure Statement

The contents of this Disclosure Statement should not be construed as legal, business, or tax advice. Each holder of a Claim or Interests should consult his, her, or its own legal counsel and accountant as to legal, tax, and other matters concerning his, her, or its Claim or Interest.

This Disclosure Statement is not legal advice to you. This Disclosure Statement may not be relied upon for any purpose other than to determine how to vote on the Plan or object to confirmation of the Plan.

4. No Admission Made

Nothing contained in the Plan or Disclosure Statement shall constitute an admission of, or be deemed evidence of, the tax or other legal effects of the Plan on the Debtors or on holders of Claims or Interests, or on the rights of any other Person or Entity.

5. Failure to Identify Litigation Claims or Projected Objections

No reliance should be placed on the fact that a particular litigation Claim of the Debtors or Cause of Action or projected objection to a particular Claim or Interest is, or is not, identified in this Disclosure Statement or in the Plan or Plan Supplement. The Debtors or the Liquidation Trustee, as applicable, may seek to investigate, file, and prosecute Causes of Action, Claims and objections to Claims and Interests after the Confirmation Date or Effective Date of the Plan irrespective of whether this Disclosure Statement identifies such Causes of Action, Claims, or objections to such Claims or Interests.

6. No Waiver of Right to Object or Right to Recover Transfers and Assets

The vote by a holder of a Claim for or against the Plan does not constitute a waiver or release of any claims, causes of action, or rights of the Debtors (or any entity, as the case may be) to object to that holder's Claim, or for the Debtors or the Liquidation Trust to recover any preferential, fraudulent, or other voidable transfer of assets, regardless of whether any claims or causes of action of the Debtors or their respective estates are specifically or generally identified in this Disclosure Statement, the Plan, or the Plan Supplement.

7. Risk Associated with Forward Looking Statements

The financial information contained in the Disclosure Statement and Plan has not been audited. In preparing the Disclosure Statement and Plan, the Debtors relied on financial data derived from their books and records that was available at the time of such preparation. Although the Debtors have used their reasonable business judgment to ensure the accuracy of the financial information provided in the Disclosure Statement and Plan, and while the Debtors believe that such financial information fairly reflects the financial condition of the Debtors, the Debtors are unable to warrant or represent that the financial information contained herein and attached hereto is without inaccuracies.

8. Information Was Provided by Debtors and Was Relied Upon by Debtors' Advisors

The Debtors' advisors have relied upon information provided by the Debtors in connection with the preparation of this Disclosure Statement. Although the Debtors' advisors have performed certain limited due diligence in connection with the preparation of this Disclosure Statement, they have not independently verified the information contained in this Disclosure Statement.

9. Certain Tax Considerations

There are a number of material income tax considerations, risks and uncertainties associated with the Plan.

THE U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. NOTHING HEREIN SHALL CONSTITUTE TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASS UNCERTAIN AND MAY VARY DEPENDING ON A HOLDER'S PARTICULAR CIRCUMSTANCES. ACCORDINGLY, HOLDERS ARE URGED TO CONSULT THEIR TAX ADVISORS ABOUT THE FEDERAL, STATE, LOCAL AND APPLICABLE FOREIGN TAX CONSEQUENCES OF THE PLAN.

VIII. VOTING PROCEDURES AND REQUIREMENTS

Before voting to accept or reject the Plan, each holder of Allowed Claims entitled to vote on the Plan should carefully review the Plan attached hereto as Exhibit A. All descriptions of the Plan set forth in this Disclosure Statement are subject to the terms and provisions of the Plan.

This Section is qualified in its entirety by the Solicitation Procedures Order.

A. Voting Instructions and Voting

Holders in Classes 2A-2C (Secured Claims), Classes 3A-3C (Deficiency Claims), and Classes 4A-4C (Undersecured and General Unsecured Claims) are entitled to vote to accept or reject the Plan. All holders within such Classes have been sent a Ballot together with this Disclosure Statement. Such holders should read the Ballot carefully and follow the instructions contained therein. Please use only the Ballot that accompanies this Disclosure Statement to cast your vote.

Each Ballot contains detailed voting instructions. Each Ballot also sets forth in detail, among other things, the deadlines, procedures, and instructions for voting to accept or reject the Plan, the Voting Record Date for voting purposes, and the applicable standards for tabulating Ballots. The Voting Record Date for determining which holders are entitled to vote on the Plan is March 6, 2025. The Voting Deadline is March 31, 2025, at 4:00 p.m. (Prevailing Eastern Time).

The Ballots have been specifically designed for the purpose of soliciting votes on the Plan from holders of Claims within Classes 2A-2C, Classes 3A-3C, and Classes 4A-4C who are entitled to a vote with respect thereto. Accordingly, in voting on the Plan, please use only the Ballot sent to you with this Disclosure Statement. In order for your Ballot to be counted, please complete and sign your Ballot, and submit it so as to be received by 4:00 p.m. (Prevailing Eastern Time), on March 31, 2025, using *one* of the following methods:

If by First Class Mail, Overnight Courier or Hand Delivery:

Fulcrum BioEnergy Inc.
c/o Kurtzman Carson Consultants, LLC dba Verita Global
222 N Pacific Coast Highway, Suite 300
El Segundo, CA 90245

If you would like to coordinate hand delivery of your Ballot, please email FulcrumInfo@veritaglobal.com with a reference to "Fulcrum Solicitation" in the subject line, and at least twenty-four (24) hours in advance and provide the anticipated date and time of your delivery.

If by Online Submission:

Visit the Debtors' restructuring website at: https://www.veritaglobal.net/fulcrum, click on the "Submit Electronic

Ballot" button on the of the landing page, and follow the directions to submit your Ballot online.

ANY BALLOTS RECEIVED AFTER THE VOTING DEADLINE WILL NOT BE COUNTED, NOR WILL ANY BALLOTS RECEIVED BY TELECOPY, FACSIMILE, EMAIL OR OTHER MEANS BE ACCEPTED OR COUNTED.

Following the Voting Deadline, the Claims Agent will prepare and file with the Bankruptcy Court a certification of the results of the balloting with respect to the Plan. Ballots submitted to the Debtors or any of their agents and advisors (other than the Voting Agent) will not be counted.

If you have any questions regarding the Ballot, did not receive a return envelope with your Ballot, did not receive an electronic copy of the Disclosure Statement and the Plan, or need physical copies of the Ballot or other enclosed materials, please contact the Debtors' solicitation and claims agent, ("Verita") or the "Voting Agent"), in writing at Fulcrum BioEnergy, Inc., c/o Kurtzman Carson Consultants, LLC dba Verita Global, 222 N Pacific Coast Highway, Suite 300, El Segundo, CA 90245, or by email at FulcrumInfo@veritaglobal.com with a reference to "Fulcrum Solicitation" in the subject line, or by calling (866) 967-0676 (U.S./Canada) or (310) 751-2676 (International) and request to speak with a member of the solicitation team.

ANY BALLOT THAT IS EXECUTED AND RETURNED BUT (A) WHICH DOES NOT INDICATE EITHER AN ACCEPTANCE OR REJECTION OF THE PLAN, (B) PARTIALLY ACCEPTS AND PARTIALLY REJECTS THE PLAN, OR (C) INDICATES BOTH AN ACCEPTANCE AND A REJECTION OF THE PLAN WILL NOT BE COUNTED.

IF YOU ARE AN ELIGIBLE HOLDER AND YOU DID NOT RECEIVE A BALLOT, RECEIVED A DAMAGED BALLOT, OR LOST YOUR BALLOT, OR IF YOU HAVE ANY QUESTIONS CONCERNING THE PROCEDURES FOR VOTING ON THE PLAN, PLEASE CONTACT THE VOTING AGENT BY CALLING (866) 967-0676 (U.S./CANADA) OR (310) 751-2676 (INTERNATIONAL) AND REQUEST TO SPEAK WITH A MEMBER OF THE SOLICITATION TEAM OR BY EMAILING FULCRUMINFO@VERITAGLOBAL.COM WITH A REFERENCE TO "FULCRUM SOLICITATION" IN THE SUBJECT LINE.

B. Parties Entitled to Vote

Under the Bankruptcy Code, only holders of Claims or Interests in "impaired" classes are entitled to vote on the Plan. Under section 1124 of the Bankruptcy Code, a class of Claims or Interests is "impaired" under the Plan unless (1) the Plan leaves unaltered the legal, equitable, and contractual rights to which such Claim or Interest entitles the holder thereof or (2) notwithstanding any legal right to an accelerated payment of such Claim or Interest, the Plan cures all existing defaults (other than defaults resulting from the occurrence of events of bankruptcy) and reinstates the maturity of such claim or interest as it existed before the default.

If, however, the holder of an Impaired Claim or Interest will not receive or retain any distribution under the Plan on account of such Claim or Interest, the Bankruptcy Code deems such

holder to have rejected the Plan, and, accordingly, holders of such Claims and Interests do not vote on the Plan and will not receive a Ballot. If a Claim or Interest is not impaired by the Plan, the Bankruptcy Code presumes the holder of such Claim or Interest to have accepted the Plan and, accordingly, holders of such Claims and Interests are not entitled to vote on the Plan, and also will not receive a Ballot.

A vote may be disregarded if the Bankruptcy Court determines, pursuant to section 1126(e) of the Bankruptcy Code, that it was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code.

As set forth above, the Bankruptcy Code defines "acceptance" of a plan by a class of: (1) claims as acceptance by creditors in that class that hold at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the claims that cast ballots for acceptance or rejection of the plan; and (2) interests as acceptance by interest holders in that class that hold at least two-thirds (2/3) in amount of the interests that cast ballots for acceptance or rejection of the plan.

Claims in Classes 2A-2C, 3A-3C and 4A-4C are impaired under the Plan and entitled to vote to accept or reject the Plan: Claims in all other Classes are either unimpaired and presumed to accept or will not receive a Distribution under the Plan and deemed to reject the Plan, and therefore are not entitled to vote. For a detailed description of the treatment of Claims and Interests under the Plan, *see* Article VI of this Disclosure Statement.

The Debtors will request confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code over the deemed rejection of the Plan by all holders of Interests in Class 5. Under section 1129(b), a plan may be confirmed by a bankruptcy court if it does not "discriminate unfairly" and is "fair and equitable" with respect to each rejecting class. For a more detailed description of the requirements for confirmation of a nonconsensual plan, *see* Article IX.C of this Disclosure Statement.

C. Agreements Upon Furnishing Ballots

The delivery of an accepting Ballot pursuant to one of the procedures set forth above will constitute the agreement of the creditor with respect to such Ballot to accept (i) all of the terms of, and conditions to, this solicitation; and (ii) to the extent such accepting Ballot does not opt out of the voluntary releases contained in Section 12 of the Plan by checking the "opt out" box on the Ballot, the terms of the Plan including the releases, exculpations, and injunction set forth in Sections 12.4, 12.5, 12.6, and 12.7 therein. All parties in interest retain their right to object to confirmation of the Plan.

D. Change of Vote

Any party who has previously submitted to the Voting Agent prior to the Voting Deadline a properly completed Ballot may change its vote by submitting to the Voting Agent prior to the Voting Deadline a subsequent, properly completed Ballot for acceptance or rejection of the Plan.

E. Waivers of Defects, Irregularities, Etc.

Unless otherwise directed by the Bankruptcy Court, all questions as to the validity, form, eligibility (including time of receipt), acceptance, and revocation or withdrawals of Ballots will be determined by the Voting Agent and/or the Debtors, as applicable, in their sole reasonable discretion, which determination will be final and binding. The Debtors reserve the right to reject any and all Ballots submitted by any of their respective creditors not in proper form, the acceptance of which would, in the opinion of the Debtors or their counsel, as applicable, be unlawful. The Debtors further reserve their respective rights to waive any defects or irregularities or conditions of delivery as to any particular Ballot by any of their creditors; *provided*, *however*, that the Debtors may not waive the requirement that a Ballot must be signed to be counted. The interpretation (including the Ballot and the respective instructions thereto) by the applicable Debtor, unless otherwise directed by the Bankruptcy Court, will be final and binding on all parties. Unless waived, any defects or irregularities in connection with deliveries of Ballots must be cured within such time as the Debtors or the Bankruptcy Court may determine. Neither the Debtors nor any other person will be under any duty to provide notification of defects or irregularities with respect to deliveries of Ballots nor will any of them incur any liabilities for failure to provide such notification. Unless otherwise directed by the Bankruptcy Court, delivery of such Ballots will not be deemed to have been made until such irregularities have been cured or waived. Ballots previously furnished (and as to which any irregularities have not theretofore been cured or waived) will be invalidated.

F. Miscellaneous

Unless otherwise ordered by the Bankruptcy Court, Ballots that are signed, dated, and timely received, but on which a vote to accept or reject the Plan has not been indicated, will not be counted. The Voting Agent is authorized, but not required, to contact parties that submit incomplete or otherwise deficient votes to make a reasonable effort to cure such deficiencies. If you simultaneously return duplicative Ballots that are voted inconsistently, those Ballots will not be counted. An otherwise properly executed Ballot that attempts to partially accept and partially reject the Plan will likewise not be counted.

Under the Bankruptcy Code, for purposes of determining whether the requisite acceptances have been received, only holders of the Claims or Interests, as applicable, who actually vote will be counted. The failure of a holder to deliver a duly executed Ballot to the Voting Agent will be deemed to constitute an abstention by such holder with respect to voting on the Plan and such abstentions will not be counted as votes for or against the Plan.

Except as provided below, unless the Ballot is timely submitted to the Voting Agent before the Voting Deadline together with any other documents required by such Ballot, the Debtors may, in their sole discretion, reject such Ballot as invalid, and therefore decline to include it in the tabulation of votes for or against the Plan.

As a cost saving measure, the Debtors are authorized to distribute by first-class U.S. mail or overnight mail (as applicable), the Plan, the Disclosure Statement, and related orders (without exhibits) to Claimholders in the Voting Classes in electronic format (i.e., flash drive) with the Ballots and hearing notices to be provided in paper format. Additionally, for purposes of serving

the solicitation packages, hearing notices, and notice of non-voting status, the Debtors are authorized to rely on the address information for Voting and Non-Voting Classes as compiled, updated, and maintained by the Voting Agent as of the Voting Record Date. The Debtors and the Voting Agent are not required to conduct any additional research for updated addresses based on undeliverable solicitation packages, hearing notices, and notices of non-voting status.

G. Further Information, Additional Copies

If you have any questions or require further information about the voting procedures for voting your Claim, or about the packet of material you received, or if you wish to obtain an additional copy of the Plan, this Disclosure Statement, or any exhibits to such documents, please contact the Voting Agent.

IX. CONFIRMATION OF THE PLAN

A. Confirmation Hearing

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after appropriate notice, to hold a hearing on confirmation of a chapter 11 plan. The Bankruptcy Court has scheduled the Confirmation Hearing to commence on **April 14, 2025 at 10:00 a.m. (Prevailing Eastern Time)**. The Confirmation Hearing may be continued from time to time without further notice other than the announcement of the adjourned date(s) at the Combined Hearing or any continued hearing or as indicated in any notice of agenda of matters scheduled for hearing filed with the Court. Adjournments of the Confirmation Hearing shall be reflected on the Court's docket and the Debtors' case website maintained by the Voting Agent.

B. Objections

Section 1128 of the Bankruptcy Code provides that any party in interest may object to the confirmation of a plan. Objections to confirmation of the Plan are governed by Bankruptcy Rule 9014.

Any objection to confirmation of the Plan must be in writing, must conform to the Bankruptcy Rules and the Local Rules for the Bankruptcy Court, must set forth the name of the objector, the nature and amount of Claims or Interests held or asserted by the objector against the Debtors' estates or property, the basis for the objection and the specific grounds therefor, and must be filed with the Bankruptcy Court, together with proof of service thereof, and served upon the parties listed below no later than the Plan Objection Deadline of **March 31, 2025, at 4:00 p.m. (Prevailing Eastern Time)**:

Debtors

Fulcrum BioEnergy, Inc.
Attn: Rick Barraza
P.O. Box 220
Pleasanton, CA 94566

Counsel to the Debtors

Morris, Nichols. Arsht & Tunnell LLP
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)

Office of the United States Trustee

844 N. King Street, Room 2207
Wilmington, Delaware 19801
Attn: Rosa Sierra-Fox
Telephone: (302) 573-6491
Facsimile: (302) 573-6497
Email: Rosa.Sierra-Fox@usdoj.gov

1201 Market Street, 16th Floor
Wilmington, Delaware 19801
Telephone: (302) 658-9200
Facsimile: (302) 658-3989
Email: rdehney@morrisnichols.com
cmiller@morrisnichols.com
dbutz@morrisnichols.com
ccarlisle@morrisnichols.com
ameng@morrisnichols.com

UNLESS AN OBJECTION TO CONFIRMATION IS TIMELY SERVED, IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT.

C. Requirements for Confirmation of Plan

1. Requirements of Section 1129(a) of the Bankruptcy Code

1. GENERAL REQUIREMENTS

At the Confirmation Hearing, the Bankruptcy Court will determine whether the confirmation requirements specified in section 1129(a) of the Bankruptcy Code have been satisfied including, without limitation, whether:

a) the Plan complies with the applicable provisions of the Bankruptcy Code;

b) the Debtors have complied with the applicable provisions of the Bankruptcy Code;

c) the Plan has been proposed in good faith and not by any means forbidden by law;

d) any payment made or promised by the Debtors or by a person issuing securities or acquiring property under the Plan, for services or for costs and expenses in or in connection with these Chapter 11 Cases, or in connection with the Plan and incident to these Chapter 11 Cases, has been disclosed to the Bankruptcy Court, and any such payment made before confirmation of the Plan is reasonable, or if such payment is to be fixed after confirmation of the Plan, such payment is subject to the approval of the Bankruptcy Court as reasonable;

e) the Debtors have disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the Plan, as a director or officer of the Debtors, or a successor to the Debtors under the Plan, and the appointment to, or continuance in, such office of such individual is consistent with the interests holders of Claims and Interests and with public policy;

f) with respect to each Class of Claims or Interests, each holder of an Impaired Claim has either accepted the Plan or will receive or retain under the Plan, on account of such holder's Claim, property of a value, as of the Effective Date of the Plan, that is not less than the amount such holder would receive or retain if the Debtors were liquidated on the Effective Date of the Plan under chapter 7 of the Bankruptcy Code;

g) except to the extent the Plan meets the requirements of section 1129(b) of the Bankruptcy Code (as discussed further below), each Class of Claims either accepted the Plan or is not impaired under the Plan;

h) except to the extent that the holder of a particular Claim has agreed to a different treatment of such Claim, the Plan provides that Administrative Expense Claims and priority claims, other than Priority Tax Claims, will be paid in full on the Effective Date, and that Priority Tax Claims will receive either payment in full on the Effective Date or deferred cash payments over a period not exceeding five years after the Petition Date, of a value, as of the Effective Date of the Plan, equal to the allowed amount of such Claims;

i) at least one Class of impaired Claims has accepted the Plan for each Debtor, determined without including any acceptance of the Plan by any insider holding a Claim in such Class;

j) confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtors or any successor to the Debtors under the Plan, unless such liquidation is proposed in the Plan; and

k) all fees payable under section 1930 of title 28, as determined by the Bankruptcy Court at the Confirmation Hearing, have been paid or the Plan provides for the payment of all such fees on the Effective Date of the Plan.

2. BEST INTERESTS TEST

As noted above, with respect to each impaired class of claims and equity interests, confirmation of a plan requires that each such holder either (i) accept the plan or (ii) receive or retain under the plan property of a value, as of the effective date of the plan, that is not less than the value such holder would receive or retain if the debtors were liquidated under chapter 7 of the Bankruptcy Code. This requirement is referred to as the "best interests test."

This test requires a Bankruptcy Court to determine what the holders of allowed claims and allowed equity interests in each impaired class would receive from a liquidation of the debtor's assets and properties in the context of a liquidation under chapter 7 of the Bankruptcy Code. To determine if a plan is in the best interests of each impaired class, the value of the distributions from the proceeds of the liquidation of the debtor's assets and properties (after subtracting the amounts attributable to the aforesaid claims) is then compared with the value offered to such classes of claims and equity interests under the plan.

The Debtors believe that under the Plan, all holders of Impaired Claims and Interests will receive property with a value not less than the value such holder would receive in a liquidation under chapter 7 of the Bankruptcy Code. The Debtors' belief is based primarily on (i) consideration of the effects that a chapter 7 liquidation would have on the ultimate proceeds available for distribution to holders of Impaired Claims and Interests and (ii) the Liquidation Analysis attached hereto as Exhibit B.

The Liquidation Analysis is a comparison of (i) the estimated recoveries for creditors and equity holders of the Debtors that may result from the Plan and (ii) an estimate of the recoveries

that may result from a hypothetical chapter 7 liquidation. The Liquidation Analysis is based upon a number of significant assumptions which are described therein. The Liquidation Analysis is solely for the purpose of disclosing to holders of Claims and Interests the effects of a hypothetical chapter 7 liquidation of the Debtors, subject to the assumptions set forth therein. There can be no assurance as to values that would actually be realized in a chapter 7 liquidation nor can there be any assurance that the Bankruptcy Court will accept the Debtors' conclusions or concur with such assumptions in making its determinations under section 1129(a)(7) of the Bankruptcy Code.

3. FEASIBILITY

Also as noted above, section 1129(a)(11) of the Bankruptcy Code requires that a debtor demonstrate that confirmation of a plan is not likely to be followed by liquidation or the need for further financial reorganization. For purposes of determining whether the Plan meets this requirement, the Debtors have analyzed their ability to meet their obligations under the Plan. Since the Plan provides for the liquidation of the Debtors, the Bankruptcy Court will find that the Plan is feasible if it determines that the Debtors will be able to satisfy the conditions precedent to the Effective Date and otherwise have sufficient funds to meet their post-Confirmation obligations to pay for the costs of administering and fully consummating the Plan, including sufficient funds to liquidate the Debtors' remaining assets as provided for in the Plan. Accordingly, the Debtors believe the Plan satisfies the feasibility requirement imposed by the Bankruptcy Code. Moreover, Article VII hereof sets forth certain risk factors that could impact the feasibility of the Plan.

4. NO UNFAIR DISCRIMINATION

The "no unfair discrimination" test applies to classes of claims or equity interests that are of equal priority and are receiving different treatment under a plan. A chapter 11 plan does not discriminate unfairly, within the meaning of the Bankruptcy Code, if the legal rights of a dissenting class are treated in a manner consistent with the treatment of other classes whose legal rights are substantially similar to those of the dissenting class and if no class of claims or equity interests receives more than it legally is entitled to receive for its claims or equity interests. This test does not require that the treatment be the same or equivalent, but that such treatment is "fair."

The Debtors believe that, under the Plan, all Impaired classes of Claims and Interests are treated in a manner that is fair and consistent with the treatment of other classes of Claims and Interests having the same priority. Accordingly, the Debtors believe that the Plan does not discriminate unfairly as to any impaired class of Claims or Interests.

5. FAIR AND EQUITABLE TEST

The "fair and equitable" test applies to classes of different priority and status (e.g., secured versus unsecured) and includes the general requirement that no class of claims receive more than 100% of the allowed amount of the claims in such class. The test sets forth different standards for what is fair and equitable, depending on the type of claims or interests in such class. In order to demonstrate that a plan is "fair and equitable," the plan proponent must demonstrate the following:

a) *Secured Creditors*. With respect to a class of impaired secured claims, a proposed plan must provide the following: (a) that the holders of secured claims retain their liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to

another entity, to the extent of the allowed amount of such claims, and receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the Plan, of at least the value of such holder's interest in the estates' interest in such property, or (b) for the sale, subject to section 363 of the Bankruptcy Code, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (a) or (c) of this paragraph, or (c) that the holders of secured claims receive the "indubitable equivalent" of their allowed secured claim.

b) *Unsecured Creditors*. With respect to a class of impaired unsecured claims, a proposed plan must provide the following: either (i) each holder of an impaired unsecured claim receives or retains under the plan property of a value equal to the amount of its allowed claim or (ii) the holders of claims and interests that are junior to the claims of the dissenting class will not receive any property under the plan.

c) *Holders of Equity Interests*. With respect to a class of equity interests, a proposed plan must provide the following: (i) that each holder of an equity interest receive or retain on account of such interest property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest or (ii) that the holder of any interest that is junior to the interests of the class of equity interests will not receive or retain under the Plan on account of such junior interest any property.

Pursuant to the Plan, no class junior to Classes 4A-4C (Undersecured and General Unsecured Claims) will receive or retain property on account of their Claims or Interests. Accordingly, the Debtors believe that the Plan meets the "fair and equitable" test with respect to all Claims and Interests.

2. Application to the Plan

As to any Class that may reject, or be deemed to reject, the Plan, the Debtors believe the Plan will satisfy both the "no unfair discrimination" requirement and the "fair and equitable" requirements, because, as to any such dissenting Class, there is no Class of equal priority receiving more favorable treatment, and such Class will either be paid in full, or no Class that is junior to such a dissenting Class will receive or retain any property on account of the Claims or Interests in such Class.

3. Alternatives to the Plan

The Debtors have evaluated several alternatives to the Plan. After studying these alternatives, the Debtors have concluded that the Plan is the best alternative and will maximize recoveries to parties in interest, assuming confirmation and consummation of the Plan. If the Plan is not confirmed and consummated, the alternatives to the Plan are (i) the preparation and presentation of an alternative chapter 11 plan, or (ii) a liquidation under chapter 7 of the Bankruptcy Code.

a) Alternative Chapter 11 Plan. If the Plan is not confirmed, the Debtors (or if the Debtors' exclusive period in which to file a Chapter 11 plan has expired, any other party in interest) could attempt to formulate a different plan.

b) Liquidation Under Chapter 7 or Applicable Non-Bankruptcy Law. If no plan can be confirmed, one or more of these Chapter 11 Cases may be converted to cases under chapter 7 of the Bankruptcy Code in which a trustee would be elected or appointed to liquidate the assets of the Debtors for distribution to their creditors in accordance with the priorities established by the Bankruptcy Code. The effect a chapter 7 liquidation would have on the recovery of holders of allowed Claims and Interests is set forth in the Liquidation Analysis attached hereto as Exhibit B.

The Debtors believe that liquidating the Debtors' Estates under the Plan will provide Holders of Allowed Claims with a larger, more timely recovery because of the fees and expenses that would be incurred in a chapter 7 liquidation, including the potential added time and expense incurred by the chapter 7 trustee and any retained professionals in familiarizing themselves with the Debtors and their estates. The Debtors believe that in liquidation under chapter 7, before creditors received any distribution, additional administrative expenses involved in the appointment of a chapter 7 trustee and its retained professionals would cause a substantial diminution in the value of the Debtors' assets and that the assets available for distribution to creditors would be reduced by such additional expenses.

Accordingly, the Debtors believe that a chapter 7 liquidation or other bankruptcy would result in smaller distributions being made to creditors than those provided for under the Plan because of additional expenses and claims that would be generated during the liquidation, as well as lower recoveries on certain assets of the Debtors. Accordingly, the Debtors believe that the Plan is in the best interests of creditors.

X. CONCLUSION AND RECOMMENDATION OF THE DEBTORS

The Debtors believe that confirmation and implementation of the Plan is in the best interests of all creditors, and urges holders of Impaired Claims in Classes 2A-2C (Secured Claims), Classes 3A-3C (Deficiency Claims), and Classes 4A-4C (Undersecured and General Unsecured Claims) to vote to accept the Plan and to evidence such acceptance by returning their Ballots so that they will be received no later than the Voting Deadline, March 31, 2025, at 4:00 p.m. (ET).

Dated: February 3, 2025

Respectfully submitted,

By: */s/ Mark J. Smith*
Mark J. Smith
Chief Restructuring Officer,
Fulcrum BioEnergy, Inc.

Exhibit A: The Plan

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

JOINT CHAPTER 11 PLAN OF LIQUIDATION

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Counsel to the Debtors and Debtors in Possession

Dated: February 3, 2025
Wilmington, Delaware

[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 Debtors' service address is: Fulcrum BioEnergy Inc., P.O. Box 220 Pleasanton, CA 94566.

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Each of the Debtors proposes the following joint chapter 11 plan of liquidation pursuant to section 1121(a) of the Bankruptcy Code. Capitalized terms used herein shall have the meanings set forth in Section 1.A.

SECTION 1. DEFINITIONS AND INTERPRETATION.

A. Definitions.

1.1. ***503(b)(9) Claims*** means Claims that have been timely and properly filed prior to the Bar Date and that are granted administrative expense priority treatment pursuant to section 503(b)(9) of the Bankruptcy Code.

1.2. ***Abengoa Claims*** shall mean the claims, rights, actions or causes of action held by any of the Debtors against Abeinsa Abener Teyma General Partnership or Abengoa, S.A., including but not limited to those relating to or involved in the prepetition state court litigation and subsequent arbitration for administration by the International Chamber of Commerce or International Court.

1.3. ***Administrative Expense Claim*** means any Claim for costs and expenses of administration during the Chapter 11 Cases pursuant to sections 328, 330, 363, 364(c)(1), 365, 503(b), 507(a)(2) or 507(b) of the Bankruptcy Code, including, (i) Fee Claims and (ii) U.S. Trustee Fees which is filed on or before the Administrative Expense Claims Bar Date.

1.4. ***Administrative Expense Claims Bar Date*** means except for Fee Claims, the date that is thirty (30) days following service of notice of the occurrence of the Effective Date. With respect to Fee Claims, Administrative Expense Claims Bar Date means the date that is forty-five (45) days following service of the occurrence of the Effective Date.

1.5. ***Affiliate*** has the meaning set forth in section 101(2) of the Bankruptcy Code.

1.6. ***Agent Sale Order*** means 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. 394].

1.7. ***Allowed*** means, with reference to any Claim or Interest, a Claim or Interest or any portion thereof (i) arising on or before the Effective Date as to which a Proof of Claim or Interest has been filed and (A) no objection to allowance or priority, and no request for estimation or other challenge, including, without limitation, pursuant to section 502(d) of the Bankruptcy Code or otherwise, has been interposed and not withdrawn within the applicable period fixed by the Plan or applicable law, or (B) any objection has been determined in favor of the holder of the Claim or Interest by a Final Order; (ii) that is compromised, settled, or otherwise resolved pursuant to the authority granted to the Debtors or the Liquidation Trustee, as applicable; (iii) as to which the liability of the Debtors and the amount thereof are determined by a Final Order of a court of competent jurisdiction; (iv) that is listed in the Schedules as liquidated, non-contingent, and undisputed, and is not superseded by a Proof of Claim; or (v) expressly allowed hereunder; provided, notwithstanding the foregoing, (x) unless expressly waived by the Plan, the

Allowed amount of Claims or Interests shall be subject to, and shall not exceed the limitations or maximum amounts permitted by the Bankruptcy Code, including sections 502 or 503 of the Bankruptcy Code, to the extent applicable, and (y) the Debtors and the Liquidation Trustee shall retain all claims and defenses with respect to Allowed Claims that are Unimpaired pursuant to the Plan; provided, further, that any Claim or Interest (i) paid or required to be paid by a purchaser pursuant to a Bankruptcy Court-approved purchase agreement or Sale Order or (ii) listed in the Schedules that has been paid by the Debtors (w) after the Petition Date pursuant to an order of the Bankruptcy Court, (x) before the Petition Date and was inadvertently listed in the Schedules, or (y) paid by the Debtors or a Bankruptcy Court-approved purchaser pursuant to a Bankruptcy Court-approved purchase agreement or Sale Order during the course of these Chapter 11 Cases as an assumed liability, shall not be considered an Allowed Claim. ***Asset Sale*** means a sale, conveyance, transfer, or other disposition to, or any exchange of property with, any Person, in one transaction or a series of transactions, of all or any part of the Debtors' or any of their respective Subsidiaries' businesses, assets or properties of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired.

1.8. ***Avoidance Action*** means any and all actual or potential claims and causes of action arising under and/or assertable by the Debtors under chapter 5 of the Bankruptcy Code (including, but not limited to, sections 502(d), 510, 542 through 551, 553, and 724(a) of the Bankruptcy Code), including any claim or cause of action to avoid a transfer of property or an obligation incurred by the Debtors, equitable subordination or recovery actions or proceedings, or under similar or related state or federal statutes and common law of the United States or similar applicable foreign laws or regulations, including fraudulent transfer laws.

1.9. ***Ballot*** means the form distributed to each holder of an Impaired Claim that is entitled to vote to accept or reject this Plan.

1.10. ***Bankruptcy Code*** means title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.*, as amended from time to time, as applicable to the Chapter 11 Cases.

1.11. ***Bankruptcy Court*** means the United States Bankruptcy Court for the District of Delaware having jurisdiction over the Chapter 11 Cases and, to the extent of any reference made under section 157 of title 28 of the United States Code, the unit of such District Court having jurisdiction over the Chapter 11 Cases under section 151 of title 28 of the United States Code.

1.12. ***Bankruptcy Rules*** means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, as amended from time to time, applicable to the Chapter 11 Cases, and any local rules of the Bankruptcy Court.

1.13. ***Bar Date*** means the General Bar Date or the dates fixed by order(s) of the Bankruptcy Court (including this Plan or the Confirmation Order), including the Governmental Bar Date, by which any Persons asserting a Claim against any Debtor must have filed a Proof of Claim or application for allowance of such Claim (as applicable) with the Bankruptcy Court against any such Debtor or be forever barred from asserting such Claim.

1.14. ***BioFuels*** means Fulcrum Sierra BioFuels, LLC.

1.15. ***BioFuels Bond Indenture*** means that certain Trust Indenture, dated as of October 1, 2017 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, by and between the Bond Issuer and the BioFuels Trustee, as trustee for the BioFuels Bonds.

1.16. ***BioFuels Bondholders*** means the holders of BioFuels Bonds.

1.17. ***BioFuels Bonds*** means the bonds issued under the BioFuels Bond Indenture.

1.18. ***BioFuels Bonds Collateral Agency Agreement*** means that certain Second Amended and Restated Collateral Agency and Account Agreement, dated as of March 1, 2018 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, by and among BioFuels and the BioFuels Collateral Agent.

1.19. ***BioFuels Collateral Agent*** means UMB Bank.

1.20. ***BioFuels Deficiency Claim*** means claims arising from unsatisfied amounts of BioFuels Prepetition Bond Secured Claim as of the Petition Date, plus interest, fees, expenses, and other amounts arising under the BioFuels Bond Indenture.

1.21. ***BioFuels Guaranty Claims*** mean those guaranty Claims asserted by the Prepetition Biofuels Bonds Secured Parties on account of the guarantees provided by Fulcrum in connection with the Biofuels Bonds in an amount not less than $124,710,200.16 on account of the aggregate outstanding principal amount arising under the BioFuels Bond Indenture as of the Petition Date, plus interest, fees, expenses, and other amounts arising under the BioFuels Bond Indenture.

1.22. ***BioFuels Mechanics Lien Claims*** means Claims held by holders of mechanics liens against BioFuels.

1.23. ***BioFuels Prepetition Bond Secured Claim*** means the Claim held by the Prepetition Biofuels Bonds Secured Parties under the BioFuels Bond Indenture.

1.24. ***BioFuels Term Loan Agreement*** means that certain senior unsecured term loan agreement (as amended, restated, supplemented or otherwise modified in accordance with the terms thereof, including by those amendments dated October 25, 2023, November 17, 2023, December 8, 2023, December 22, 2023, January 19, 2024, February 8, 2024, March 5, 2024, March 25, 2024 and April 5, 2024) by and between BioFuels and the Prepetition Agent, as administrative agent for the lenders thereunder

1.25. ***BioFuels Trustee*** means UMB Bank.

1.26. ***BioFuels Undersecured and General Unsecured Claims*** means (i) the BioFuels Mechanics Lien Claims, (ii) the Claims held by the Prepetition Loan Unsecured

Parties under the BioFuels Term Loan Agreement, numbered on the Debtors' claim register as claim number 47, and (iii) General Unsecured Claims at BioFuels.

1.27. ***Biorefinery Sale Order*** means the *Order (I) Approving the Sale of the Debtors' Biorefinery Assts 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. 264].

1.28. ***Business Day*** means any day, other than a Saturday, Sunday, "legal holiday" (as defined in Bankruptcy Rule 9006(a)) or court holiday of the Bankruptcy Court.

1.29. ***Cash*** means legal tender of the United States of America and equivalents thereof.

1.30. ***Catalyst Sale*** means the private sale of the FT CANs to Johnson Matthey PLC as approved by a Sale Order entered by the Bankruptcy Court on January 15, 2025 [D.I. 385].

1.31. ***Causes of Action*** means, without limitation, any and all actions, proceedings, agreements, causes of action, controversies, demands, rights, Liens, indemnities, guaranties, accounts, defenses, offsets, powers, privileges, licenses, liabilities, obligations, rights, suits, damages, judgments, Claims, any right of setoff, counterclaim, or recoupment, any claim for breach of contract or for breach of duties imposed by law or in equity, any claim or defense including fraud, and any demands whatsoever owned by the Debtors, whether known or unknown, reduced to judgment, liquidated or unliquidated, fixed or contingent, matured or unmatured, suspected or unsuspected, foreseen or unforeseen, disputed or undisputed, secured or unsecured, whether assertable directly, indirectly, derivatively or in any representative or other capacity, existing or hereafter arising, in contract or in tort, in law or in equity, or otherwise pursuant to any other theory of law, based in whole or in part upon any act, failure to act, error, omission, transaction, occurrence or other event arising or occurring prior to the Petition Date or during the course of the Chapter 11 Cases, including through the Effective Date.

1.32. ***Chapter 11 Cases*** means the jointly administered cases of the Debtors under chapter 11 of the Bankruptcy Code styled *In re Fulcrum BioEnergy, Inc., et al.*, Case No. 24-12008 (TMH).

1.33. ***Claim*** means any "claim" (as defined in section 101(5) of the Bankruptcy Code) against the Debtors, including, without limitation, any Claim arising after the Petition Date.

1.34. ***Claims Agent*** means Kurtzman Carson Consultants, LLC dba Verita Global, or any other entity approved by the Bankruptcy Court to act as the Debtors' claims and noticing agent pursuant to 28 U.S.C. § 156(c).

1.35. ***Claims Objection Bar Date*** means the date that is 180 days after the Effective Date, subject to extension by the Bankruptcy Court.

1.36. ***Class*** means any group of Claims or Interests classified pursuant to Section 3 of the Plan.

1.37. ***Committee*** means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee in these Chapter 11 Cases.

1.38. ***Bond Issuer*** means the Director of the State of Nevada Department of Business and Industry.

1.39. ***Confirmation*** means the entry of the Confirmation Order on the docket of the Chapter 11 Cases.

1.40. ***Confirmation Date*** means the date on which the Bankruptcy Court enters the Confirmation Order.

1.41. ***Confirmation Hearing*** means the hearing held by the Bankruptcy Court to consider confirmation of the Plan pursuant to section 1129 of the Bankruptcy Code, as such hearing may be adjourned or continued from time to time.

1.42. ***Confirmation Order*** means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

1.43. ***Consenting Bondholders*** means the BioFuels Bondholders and Holdings Bondholders that are party to that certain Sale and Plan Agreement Term Sheet, dated January 3, 2025 [D.I. 366].

1.44. ***Consummation*** means the occurrence of the Effective Date of the Plan.

1.45. ***Deficiency Claim*** means the General Unsecured Claim of (i) the Prepetition Loan Secured Parties, (ii) the Prepetition Holdings Bonds Secured Parties, and (iii) the Prepetition BioFuels Bonds Secured Parties reflecting the difference between the (y) the aggregate amount of the Allowed Claims of the relevant Secured Creditor and (z) the value of the collateral received by the relevant Secured Creditor. For the avoidance of doubt, Deficiency Claims shall exclude Undersecured Claims.

1.46. ***D&O Policy*** means any insurance policy for, among others, directors, members, trustees, and officers liability (or any equivalents) and liabilities relating thereto, in each case, maintained by the Debtors and/or the Debtors' Estates, and all agreements, documents or instruments relating thereto, including any runoff policies or tail coverage.

1.47. ***Debtors*** means Fulcrum BioEnergy, Inc., Fulcrum Sierra Holdings, LLC, Fulcrum Sierra Finance Company, LLC, and Fulcrum Sierra BioFuels, LLC.

1.48. ***Disallowed*** means a Claim against a Debtor, or any portion thereof, (i) that has been disallowed by a Final Order of the Bankruptcy Court, a settlement, or the Plan, (ii) that is listed in the Schedules at zero or as contingent, disputed, or unliquidated and as to which a Bar Date has been established but no Proof of Claim has been timely filed or deemed timely filed

with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court or applicable law, or (iii) that is not listed in the Debtors' Schedules and as to which a Bar Date has been established but no Proof of Claim has been timely filed or deemed timely filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court or under applicable law.

1.49. ***Disbursing Agent*** means an entity selected to make Distributions at the direction of the Liquidation Trustee, which may include, but is not limited to, the Claims Agent, the Liquidation Trustee, the Debtors, or the Wind-Down Estates.

1.50. ***Disclosure Statement*** means the disclosure statement relating to this Plan, as such disclosure statement may be amended, modified, or supplemented from time to time (including, without limitation, all exhibits and schedules thereto).

1.51. ***Disputed*** means, with respect to a Claim, a Claim against a Debtor (i) to the extent such Claim, or a portion thereof, is neither Allowed nor Disallowed, or (ii) held by a Person or Entity against whom or which any of the Debtors, the Liquidation Trust or the Liquidation Trustee has commenced a proceeding, including an objection to such Claim.

1.52. ***Disputed Claims Reserve*** means Liquidation Trust Assets allocable to Disputed Claims.

1.53. ***Distribution*** means payment or distribution of consideration to holders of Allowed Claims pursuant to this Plan in respect of the holder's Allowed Claim.

1.54. ***Distribution Date*** means a date or dates, including the Initial Distribution Date, as determined by the Debtors or the Liquidation Trustee, as applicable, in accordance with the terms of the Plan, on which the Debtors or the Liquidation Trustee makes a Distribution to holders of Allowed Claims.

1.55. ***Distribution Record Date*** means the Effective Date of the Plan.

1.56. ***Effective Date*** means the date on which all conditions to the effectiveness of the Plan set forth in Section 11 hereof have been satisfied or waived in accordance with the terms of the Plan. A notice of the Effective Date shall be filed by the Debtors with the Bankruptcy Court within one business day after its occurrence.

1.57. ***Entity*** has the meaning set forth in section 101(15) of the Bankruptcy Code.

1.58. ***Estate*** or ***Estates*** means individually or collectively, the estate or estates of the Debtors created under section 541 of the Bankruptcy Code.

1.59. ***Exculpated Parties*** means collectively, and in each case solely in their capacity as such: (i) the Debtors; (ii) the Debtors' directors and officers that have served postpetition; (iii) the Committee and each of its members; and (iv) to the extent they are or are acting as or for Estate fiduciaries at any time between the Petition Date and the Effective Date, the successors and assigns, subsidiaries, members, employees, partners, officers, directors, agents,

attorneys, advisors, accountants, financial advisors, investment bankers, consultants, and other professionals of or for any of the Persons identified in (i) through (iii) above on or after the Petition Date solely in their capacity as such.

1.60. ***Executory Contract*** means a contract to which one or more of the Debtors is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

1.61. ***Fee Claim*** means a Claim for professional services rendered or costs incurred on or after the Petition Date through the Effective Date (including any the fees associated with the preparation, filing and prosecution of a final fee application) by professional persons retained by the Debtors and the Committee pursuant to sections 327, 328, 329, 330, 331, 503(b) or 1103 of the Bankruptcy Code, provided that Professionals shall use their best efforts to allocate fees and expenses incurred after December 1, 2024 and included as part of the Fee Claim, between Fulcrum and Biofuels.

1.62. ***Feedstock Sale Order*** means Order (I) Approving the Sale of the Debtors' Feedstock 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. 265].

1.63. ***Final Order*** means an order or judgment of a court of competent jurisdiction that has been entered on the docket maintained by the clerk of such court, which has not been reversed, vacated or stayed and as to which (i) the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending, or (ii) if an appeal, writ of *certiorari*, new trial, reargument or rehearing thereof has been sought, such order or judgment shall have been affirmed by the highest court to which such order was appealed, or *certiorari* shall have been denied, or a new trial, reargument or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for *certiorari* or move for a new trial, reargument or rehearing shall have expired; provided, however, that no order or judgment shall fail to be a "Final Order" solely because of the possibility that a motion pursuant to section 502(j) or 1144 of the Bankruptcy Code or under Rule 60 of the Federal Rules of Civil Procedure or Bankruptcy Rule 9024 has been or may be filed with respect to such order or judgment.

1.64. ***FT Catalyst*** means the proprietary catalyst required to effect the Fischer-Tropsch Reaction to be supplied by JM Davy in compliance with Article 6 of the Catalyst Agreement.

1.65. ***FT CANs*** means a catalyst carrier device substantially as described in the Catalyst Agreement and any of the JM Davy patents together with future variants thereof and improvements and developments thereto designed to be inserted into a single or multi-tubular reactor and designed to hold FT Catalyst.

1.66. ***Fulcrum*** means Fulcrum BioEnergy, Inc.

1.67. ***Fulcrum Deficiency Claims*** means Claims arising from unsatisfied amounts of the Fulcrum Prepetition Loan Secured Claim as of the Petition Date, plus interest, fees, expenses, and other amounts arising under the Prepetition Loan Documents.

1.68. ***Fulcrum Prepetition Loan Secured Claims*** means Claims held by the Prepetition Loan Secured Parties under the Prepetition Term Loan Credit Agreement, numbered on the Debtors' claim register as claim number 46.

1.69. ***Fulcrum Secured Convertible Promissory Noteholders*** means Crestline Praeter, L.P. – Fulcrum, BP Technology Ventures Limited, and Cathay Pacific Airways Limited.

1.70. ***Fulcrum Secured Convertible Promissory Notes*** means those certain secured convertible promissory notes issued to the Fulcrum Secured Convertible Promissory Noteholders pursuant to that certain Securities Purchase Agreement, dated as of November 13, 2020 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time) in the principal amount of $23,500,000.

1.71. ***Fulcrum Senior Secured Term Loan Facility*** means the term loan facility in an initial aggregate principal amount of $84,500,000, which was subsequently increased on September 29, 2023 and May 20, 2024 by amendments thereto to a total aggregate principal amount of $94,140,475 provided for under the Prepetition Term Loan Credit Agreement.

1.72. ***Fulcrum Undersecured and General Unsecured Claims*** means (i) the Fulcrum Undersecured Convertible Notes Claims, (ii) the BioFuels Guaranty Claims, (iii) the Holdings Guaranty Claims, and (iv) General Unsecured Claims at Fulcrum.

1.73. ***Fulcrum Undersecured Convertible Notes Claims*** means Claims held by the Fulcrum Secured Convertible Promissory Noteholders.

1.74. ***General Bar Date*** means January 23, 2025, and the date by which any general unsecured creditor asserting a Claim against any Debtor must have filed a Proof of Claim with the Bankruptcy Court against any such Debtor or be forever barred from asserting such Claim.

1.75. ***Governmental Bar Date*** means March 10, 2025, and the date by which any Governmental Units asserting a Claim against any Debtor must have filed a Proof of Claim or application for allowance of such Claim (as applicable) with the Bankruptcy Court against any such Debtor or be forever barred from asserting such Claim.

1.76. ***General Unsecured Claim*** means any unsecured nonpriority Claim against the Debtors. General Unsecured Claims shall not include Claims that are not Allowed or are released, whether by operation of law or pursuant to order of the Bankruptcy Court, written release or settlement, the provisions of the Plan or otherwise.

1.77. ***Governmental Unit*** has the meaning set forth in section 101(27) of the Bankruptcy Code.

1.78. ***Holdings*** means Fulcrum Sierra Holdings, LLC.

1.79. ***Holdings Bond Indenture*** means that certain Trust Indenture, dated as of September 1, 2018 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time by and between the Bond Issuer and the Holdings Trustee, as trustee for Holdings Bonds.

1.80. ***Holdings Bondholders*** means the holders of the Holdings Bonds

1.81. ***Holdings Bonds*** means the bonds issued pursuant to the Holdings Bond Indenture.

1.82. ***Holdings Bonds Collateral Agency Agreement*** means that certain Second Amended and Restated Collateral Agency and Account Agreement, dated as of December 1, 2020 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, by and among Holdings and the Holdings Collateral Agent.

1.83. ***Holdings Collateral Agent*** means UMB Bank.

1.84. ***Holdings Deficiency Claim*** means claims arising from unsatisfied amounts of Holdings Prepetition Bond Secured Claim as of the Petition Date, plus interest, fees, expenses, and other amounts arising under the Holdings Bond Indenture.

1.85. ***Holdings Guaranty Claims*** means those guaranty claims asserted by the Prepetition Biofuels Bonds Secured Parties on account of the guarantees provided by Fulcrum in connection with the Holdings Bonds in an amount not less than $113,955,467.80 on account of the aggregate outstanding principal amount arising under the Holdings Bond Indenture as of the Petition Date, plus interest, fees, expenses, and other amounts arising under the Holdings Bond Indenture.

1.86. ***Holdings Prepetition Bond Secured Claim*** means the Claim held by the Prepetition Holdings Bonds Secured Parties under the Holdings Bond Indenture.

1.87. ***Holdings Trustee*** means UMB Bank.

1.88. ***Holdings Undersecured and General Unsecured Claims*** means General Unsecured Claims at Holdings.

1.89. ***Impaired*** means, with respect to a Claim, Interest or Class of Claims or Interests, "impaired" within the meaning of section 1124 of the Bankruptcy Code.

1.90. ***Initial Distribution*** means the first Distribution that either the Debtors or the Liquidation Trustee, as applicable, makes to holders of Allowed Claims.

1.91. ***Initial Distribution Date*** means the date selected by the Liquidation Trustee on which the Liquidation Trustee, will make the Initial Distribution through the Disbursing Agent.

1.92. ***Insured Claim*** means any Claim or portion of a Claim that is, or may be, insured under any of the Debtors' insurance policies.

1.93. ***Intercompany Claim*** means a Claim by a Debtor against another Debtor or its direct or indirect subsidiary or affiliate.

1.94. ***Interest*** means any equity security (as defined in section 101(16) of the Bankruptcy Code) of a Debtor, including all shares, common stock, preferred stock, or other instrument evidencing any fixed or contingent ownership interest in any Debtor, whether or not transferable, and any option, warrant, or other right, contractual or otherwise, to acquire any such interest in the Debtors, whether fully vested or vesting in the future, including, without limitation, equity or equity-based incentives, grants, or other instruments issued, granted or promised to be granted to current or former employees, directors, officers, or contractors of the Debtors.

1.95. ***Lien*** has the meaning set forth in section 101(37) of the Bankruptcy Code.

1.96. ***Liquidation Trust*** means that certain trust established pursuant to Section 6.3 hereof and the Liquidation Trust Agreement to, among other things, hold and, as applicable, monetize the Liquidation Trust Assets (including though the assertion of Causes of Action), make Distributions to holders of Allowed Claims pursuant to this Plan and wind-down the Debtors' estates after the Effective Date.

1.97. ***Liquidation Trust Account*** means one or more trust accounts established and maintained in one or more federally insured domestic banks in the name of the Liquidation Trust.

1.98. ***Liquidation Trust Agreement*** means the trust agreement governing the Liquidation Trust, which shall be in form and substance reasonably acceptable to the Debtors, the Committee and the Liquidation Trustee, and shall be filed with the Plan Supplement.

1.99. ***Liquidation Trust Assets*** means (i) all remaining assets of each of the Debtors that have not been sold or abandoned prior to the Effective Date following payment of (or establishment of appropriate reserves for) all Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Fee Claims, Allowed Other Priority Claims, and U.S. Trustee Fees, (ii) all assets recovered by the Liquidation Trustee on behalf of the Liquidation Trust on or after the Effective Date through enforcement, resolution, settlement, collection, return, or otherwise, (iii) all Causes of Action, other than those expressly waived and/or released pursuant to this Plan or sold in connection with a Sale Transaction, including (w) any remaining Avoidance Actions; (x) Causes of Action against any former officers, directors, or management; (y) Causes of Action against current or former insurers of the Debtors or any insurance policies of the Debtors (or rights to proceeds thereunder; (z) the Abengoa Claims; the TRI Claims, and commercial tort claims; (iv) any proceeds of (i) through (iii), plus any additional proceeds resulting from the Liquidation Trustee's investment of the Liquidation Trust Assets on or after the Effective Date. For the avoidance of doubt, Liquidation Trust Assets exclude those assets that were sold pursuant to any Sale Order.

1.100. ***Liquidation Trust Beneficiaries*** shall mean collectively the holders of Allowed Claims under the Plan against the Debtors, or any successors to such Holders, or their interests in the Liquidation Trust, whether such Claims are Allowed before or after the Effective Date.

1.101. ***Liquidation Trust Expenses*** means any and all reasonable fees, costs and expenses incurred by the Liquidation Trust or the Liquidation Trustee (or any professional or other Person retained by the Liquidation Trustee) on or after the Effective Date in connection with any of their duties under the Plan and the Liquidation Trust Agreement, including any administrative fees, attorneys' fees and expenses, insurance fees, taxes and escrow expenses.

1.102. ***Liquidation Trustee*** means such Person designated pursuant to the Liquidation Trust Agreement and who is to be identified in the Plan Supplement; provided that the initial Liquidation Trustee shall be selected by the Committee in consultation with the Debtors, the BioFuels Trustee and the Prepetition Agent.

1.103. ***Other Priority Claim*** means any Claim against any of the Debtors entitled to priority in payment as specified in section 507(a) of the Bankruptcy Code, other than an Administrative Expense Claim, a Fee Claim or a Priority Tax Claim.

1.104. ***Person*** means an individual, corporation, partnership, joint venture, association, joint stock company, limited liability company, limited liability partnership, trust, estate, unincorporated organization, Governmental Unit or other entity.

1.105. ***Petition Date*** means September 9, 2024.

1.106. ***Plan*** means this joint chapter 11 plan, including the exhibits hereto, as the same may be amended or modified from time to time in accordance with Section 14.4 herein.

1.107. ***Plan Supplement*** means the compilation of documents and forms of documents, schedules and exhibits to be filed no later than seven (7) calendar days prior to the Voting Deadline, as may be supplemented, which shall contain draft forms, signed copies or summaries of material terms, as the case may be, of (i) the Liquidation Trust Agreement; (ii) the identity of the Liquidation Trustee; and (iii) any other document necessary or appropriate to implement the Plan, as each document may be amended or supplemented from time to time in accordance with its terms.

1.108. ***Prepetition Agent*** means PCL Administration LLC.

1.109. ***Prepetition Biofuels Bonds Secured Parties*** means the BioFuels Trustee and the BioFuels Collateral Agent.

1.110. ***Prepetition BioFuels Lenders*** means the lenders under the BioFuels Term Loan Agreement.

1.111. ***Prepetition Bonds Secured Parties*** means the Prepetition Biofuels Bonds Secured Parties and the Prepetition Holdings Bonds Secured Parties.

1.112. ***Prepetition Fulcrum Lenders*** means the lenders under the Prepetition Term Loan Credit Agreement.

1.113. ***Prepetition Holdings Bonds Secured Parties*** means the Holdings Trustee and the Holdings Collateral Agent.

1.114. ***Prepetition Loan Documents*** means the Prepetition Term Loan Credit Agreement, the other "Loan Documents" (as defined in the Prepetition Term Loan Credit Agreement).

1.115. ***Prepetition Loan Secured Parties*** means the Prepetition Agent and the Prepetition Fulcrum Lenders.

1.116. ***Prepetition Term Loan Credit Agreement*** means that certain Credit Agreement, dated June 23, 2023 (as amended, restated, supplemented, or otherwise modified from time to time, including by that certain First Amendment to Credit Agreement and Waiver dated September 29, 2023 and that certain Assignment and Assumption Agreement and Second Amendment to Credit Agreement dated May 20, 2024, by and between Fulcrum as borrower, certain of Fulcrum's subsidiaries as guarantors, and the Prepetition Agent as administrative and collateral agent for the Prepetition Fulcrum Lenders.

1.117. ***Prepetition Loan Unsecured Parties*** means the Prepetition Agent and the Prepetition BioFuels Lenders

1.118. ***Priority Tax Claim*** means any secured or unsecured Claim of a Governmental Unit of the kind entitled to priority in payment as specified in sections 502(i) and 507(a)(8) of the Bankruptcy Code.

1.119. ***Pro Rata Share*** means the proportion that an Allowed Claim in a particular Class bears to the aggregate amount of Allowed Claims within such Class or within Classes of the same priority of the same Debtor.

1.120. ***Professional*** means a Person retained in the Chapter 11 Cases pursuant to and in accordance with sections 327, 363, or 1103 of the Bankruptcy Code and to be compensated for services rendered and expenses incurred pursuant to sections 327, 328, 329, 330, 331, or 363 of the Bankruptcy Code.

1.121. ***Professional Fees Account*** shall mean a segregated account funded by the Debtors in accordance with section 2.3 of the Plan for the purpose of payment of Allowed Fee Claims.

1.122. ***Proof of Claim*** means a proof of Claim filed against any of the Debtors in the Chapter 11 Cases.

1.123. ***Related Parties*** has the meaning set forth in the definition of "Released Parties."

1.124. ***Released and Exculpated Claims*** has the meaning set forth in section 12.7(b) of the Plan.

1.125. ***Released Party or Released Parties*** means collectively and in each case, solely in their respective capacities as such: (i) the Debtors; (ii) the Debtors' directors and officers that have served in such capacity postpetition, as set forth in **Exhibit A**; (iii) the Holdings Trustee, Holdings Collateral Agent, BioFuels Trustee and BioFuels Collateral Agent, (iv) the Prepetition Agent and each Prepetition Fulcrum Lenders, (v) the Consenting Bondholders, (vi) the Committee and each of its members, (vii) the Agent and lenders under the BioFuels Unsecured Term Loan Facility; (viii) the Wind-Down Estates; and (ix) with respect to any Person or Entity in the foregoing clauses (i) through (viii), current and former affiliates' directors, managers, officers, shareholders, equity holders (regardless of whether such interests are held directly or indirectly), affiliated investment funds or investment vehicles, predecessors, participants, successors, assigns (whether by operation of law or otherwise), subsidiaries, current, former, and future associated entities, managed or advised entities, accounts or funds, partners, limited partners, general partners, principals, members, management companies, fund advisors, managers, fiduciaries, trustees, employees, agents, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, other representatives, and other professionals, representatives, advisors, predecessors, successors, and assigns, each solely in their capacities as such (including any other attorneys or professionals retained by any current or former director or manager in his or her capacity as director or manager of a Person), and the respective heirs, executors, estates, servants, and nominees of the foregoing (collectively, the "Related Parties"); provided that if any of the foregoing parties object to the releases in Section 12.5 of this Plan, such objecting party will no longer be considered a Released Party.

1.126. ***Releasing Parties*** means collectively, and in each case, solely in their respective capacities as such: (i) the Released Parties; (ii) all holders of Secured Claims in Classes 2A-2C, Deficiency Claims in Classes 3A-3C, and Undersecured and General Unsecured Claims in Classes 4A-4C, who vote to accept the Plan and do not opt out of the voluntary release contained in Section 12.5 of the Plan by checking the "opt out" box on the ballot and returning it in accordance with the instructions set forth thereon.

1.127. ***Remaining Catalyst Proceeds*** means the proceeds, if any, from the Catalyst Sale remaining after the administration of Fulcrum's chapter 11 case.

1.128. ***Sale Order*** means one or more orders of the Bankruptcy Court approving any Sale Transaction.

1.129. ***Sale Transaction*** means one or more Asset Sales, as approved by the Bankruptcy Court pursuant to a Sale Order.

1.130. ***Schedules*** means the schedules of assets and liabilities and the statements of financial affairs filed by the Debtors under section 521 of the Bankruptcy Code, Bankruptcy Rule 1007, and the Official Bankruptcy Forms of the Bankruptcy Rules, as such schedules and statements have been or may be supplemented or amended from time to time.

1.131. ***Secured Claim*** means a Claim to the extent, under applicable non-bankruptcy law, that it is (i) secured by property of the Estate, the amount of which is equal to or less than the value of such property (A) as agreed to by the holder of such Claim and the Debtors, upon notice or opportunity to object, or (B) as determined by a Final Order in accordance with section 506(a) of the Bankruptcy Code, or (ii) secured by the amount of any rights of setoff of the holder thereof under section 553 of the Bankruptcy Code.

1.132. ***Secured Creditor*** means (i) the Prepetition Loan Secured Parties, (ii) the Prepetition Holdings Bonds Secured Parties, and (iii) the Prepetition BioFuels Bonds Secured Parties.

1.133. ***Subordinated Claim*** means any Claim, whether or not the subject of an existing lawsuit: (a) arising from rescission of a purchase or sale of any debt or equity securities of any Debtor or an affiliate of any Debtor; (b) for damages arising from the purchase or sale of any such security; (c) for violations of the securities laws, misrepresentations, or any similar Claims, including, to the extent related to the foregoing or otherwise subject to subordination under section 510(b) of the Bankruptcy Code, any attorneys' fees, other charges, or costs incurred on account of the foregoing Claims; (d) reimbursement, contribution, or indemnification on account of any such Claim; (e) subject to a subordination agreement; or (f) subject to subordination under section 510 or any other provision of the Bankruptcy Code.

1.134. ***Tax Code*** means the Internal Revenue Code of 1986, as amended from time to time.

1.135. ***TRI Claims*** means any claims held by the Debtors as of the Effective Date against Thermochem Recovery International, Inc. ("TRI"), including any claim relating to defective or improperly manufactured equipment.

1.136. ***U.S. Trustee*** means the United States Trustee for Region 3.

1.137. ***U.S. Trustee Fees*** means fees arising under 28 U.S.C. § 1930(a)(6), and accrued interest thereon arising under 31 U.S.C. § 3717.

1.138. ***Unexpired Lease*** means a lease to which one or more of the Debtors is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

1.139. ***Unimpaired*** means, with respect to a Claim, Interest or Class of Claims or Interests, not "impaired" within the meaning of section 1123(a)(4) and 1124 of the Bankruptcy Code.

1.140. ***Wind-Down Estates*** means the Estates of the Debtors after the Effective Date.

B. Interpretation; Application of Definitions and Rules of Construction.

Unless otherwise specified, all section or exhibit references in the Plan are to the respective section in, or exhibit to, the Plan, as the same may be amended, waived or modified

from time to time. The words "herein," "hereof," "hereto," "hereunder," and other words of similar import refer to the Plan as a whole and not to any particular section, subsection or clause contained therein. The headings in the Plan are for convenience of reference only and shall not limit or otherwise affect the provisions hereof. For purposes herein: (i) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender; (ii) unless otherwise specified, all references herein to "Sections" are references to Sections hereof or hereto; (iii) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; and (iv) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be.

C. Controlling Document.

In the event of an inconsistency between the Plan and any other document, the terms of the Plan shall control (unless expressly stated otherwise herein or in such other document). The provisions of the Plan and the Confirmation Order shall be construed in a manner consistent with each other so as to effect the purposes of each; provided that, if there is determined to be any inconsistency between any Plan provision and any provision of the Confirmation Order or the Liquidation Trust Agreement that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order or the Liquidation Trust Agreement, as applicable, shall govern and any such provision of the Confirmation Order or the Liquidation Trust Agreement, as applicable, shall be deemed a modification of the Plan and shall control and take precedence.

SECTION 2. ADMINISTRATIVE EXPENSE, FEE CLAIMS, PRIORITY TAX CLAIMS, AND U.S. TRUSTEE FEES.

2.1 *Administrative Expense Claims.*

Except to the extent that a holder of an Allowed Administrative Expense Claim and the Debtors or the Liquidation Trustee, as applicable, agree to different treatment, the Debtors or the Liquidation Trustee, as applicable, shall pay to each holder of an Allowed Administrative Expense Claim, other than Fee Claims, Cash in an amount equal to such Claim on or at the first Business Day after, or as soon thereafter as is reasonably practicable, the later of (i) the Effective Date and (ii) the date such Administrative Expense Claim is Allowed.

Holders of Administrative Expense Claims, other than Fee Claims, that were required to file and serve a request for payment of such Administrative Expense Claims and that did not file and serve such a request by the Administrative Expense Claims Bar Date shall be forever barred, estopped, and enjoined from asserting such Administrative Expense Claims against the Debtors or their property, or the Liquidation Trust or the Liquidation Trust Assets. The Debtors or the Liquidation Trustee, as applicable, may file and serve objections to Administrative Expense Claims on or before the Claims Objection Bar Date.

2.2 *Time for Filing Administrative Expense Claims.*

Each holder of an Administrative Expense Claim, other than:

(i) a Fee Claim;

(ii) an Administrative Expense Claim that has been allowed on or before the Effective Date;

(iii) a 503(b)(9) Claim;

(iv) an Administrative Expense Claim on account of fees and expenses incurred on or after the Petition Date but before the Effective Date by ordinary course professionals retained by the Debtors pursuant to an order of the Bankruptcy Court;

(v) an Administrative Expense Claim arising, in the ordinary course of business, out of the employment by one or more Debtors of an individual from and after the Petition Date but before the Effective Date, but only to the extent that such Administrative Expense Claim is solely for outstanding wages, commissions, accrued benefits, or reimbursement of business expenses; or

(vi) U.S. Trustee Fees,

must file with the Bankruptcy Court and serve on the Debtors, the Liquidation Trust, the Claims Agent, and the United States Trustee, **proof of such Administrative Expense Claim so as to be received by 5:00 p.m. prevailing Eastern time on the Administrative Expense Claims Bar Date**. Proof of an Administrative Expense Claim must include at a minimum: (i) the name of the applicable Debtor that is purported to be liable for the Administrative Expenses Claim; (ii) the name of the holder of the Administrative Expense Claim; (iii) the amount of the Administrative Expense Claim; (iv) the basis of the Administrative Expense Claim; and (v) supporting documentation for the Administrative Expense Claim. **FAILURE TO FILE AND SERVE SUCH PROOF OF ADMINISTRATIVE EXPENSE CLAIM TIMELY AND PROPERLY SHALL RESULT IN THE ADMINISTRATIVE EXPENSE CLAIM BEING FOREVER BARRED AND RELEASED.**

2.3 *Fee Claims.*

(a) *Professional Fees Account.* On the Effective Date, the Debtors or the Liquidation Trustee, as appropriate, shall fund the Professional Fees Account. Fee Claims shall be paid in Cash from funds held in the Professional Fees Account when such Fee Claims are Allowed by a Final Order of the Bankruptcy Court. Neither the Debtors' nor the Liquidation Trust's obligations to pay Fee Claims shall be limited nor be deemed limited to funds held in the Professional Fees Account.

(b) *Estimation of Fee Claims*. No later than five (5) days before the anticipated Effective Date, Professionals shall provide a good faith estimate of their Fee Claims projected to be outstanding as of the Effective Date and shall deliver such estimate to the Debtors. With respect to Fee Claims, Professionals shall use their best efforts to allocate fees and expenses

incurred after December 1, 2024 between Fulcrum and Biofuels. Such estimate shall not be considered an admission or limitation with respect to the fees and expenses of such Professional and such Professionals are not bound to any extent by the fee estimates. If a Professional does not provide an estimate, the Debtors may estimate the unbilled fees and expenses of such Professional. The total amount so estimated shall be utilized by the Debtors to determine the amount to be funded to the Professional Fees Account. The Debtors or the Liquidation Trustee shall use Cash on hand to increase the amount of the Professional Fees Account to the extent fee applications are filed after the Effective Date in excess of the amount held in the Professional Fees Account based on such estimates.

(c) *Payment of Fee Claims.* All entities seeking an award by the Bankruptcy Court of Fee Claims (i) shall file their respective final applications for allowance of compensation for services rendered and reimbursement of expenses incurred by the date that is forty-five (45) days after the Effective Date, and (ii) shall be paid in full from the Professional Fees Account in such amounts as are Allowed by the Bankruptcy Court (A) in accordance with an order entered by the Bankruptcy Court approving the interim compensation of Professionals, (B) upon the later of the Effective Date and the date upon which the order relating to any such Allowed Fee Claim is entered or (C) upon such other terms as may be mutually agreed upon between the holder of such an Allowed Fee Claim and the Debtors or the Liquidation Trustee, as applicable. Objections to such Fee Claims, if any, must be filed and served no later than twenty (20) calendar days after the filing of such fee application or such other date as established by the Bankruptcy Court.

The Liquidation Trustee is authorized to pay compensation for services rendered or reimbursement of expenses incurred by any Professional after the Effective Date in the ordinary course and without the need for Bankruptcy Court approval in accordance with the Liquidation Trust Agreement. When all Allowed Fee Claims have been paid in full, any remaining amount in the Professional Fees Account shall promptly be released from such escrow and revert to, and ownership thereof shall vest in, the Liquidation Trust without any further action or order of the Bankruptcy Court.

(d) *Professional Fees Account Not Property of the Liquidation Trust*. Until payment in full of all Allowed Fee Claims, funds held in the Professional Fees Account shall not be considered Liquidation Trust Assets or otherwise property of the Liquidation Trust, the Debtors, or their Estates. The Professional Fees Account shall be treated as a trust account for the benefit of holders of Fee Claims and for no other parties until all Allowed Fee Claims have been paid in full in Cash. No other Liens, claims, or interests shall encumber the Professional Fees Account or Cash held in the Professional Fees Account in any way.

2.4 *Priority Tax Claims.*

Except to the extent that a holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, each holder of an Allowed Priority Tax Claim shall receive, at the sole option of the Debtors or the Liquidation Trustee, as applicable, (i) Cash in an amount equal to such Allowed Priority Tax Claim on the later of (a) forty five (45) calendar days after the Effective Date (or as soon as reasonably practicable thereafter), (b) the first Business Day after the date that is thirty (30) days after the date such Priority Tax Claim becomes an Allowed Priority Tax Claim, and (c) the date such Allowed Priority Tax Claim is due and payable in the ordinary course, or as

soon thereafter as is reasonably practicable, or (ii) equal annual Cash payments in an aggregate amount equal to the amount of such Allowed Priority Tax Claim, together with interest at the applicable rate under section 511 of the Bankruptcy Code, over a period not exceeding five (5) years from and after the Petition Date. The holders of Allowed Priority Tax Claims shall retain their tax liens on their collateral to the same validity, extent and priority as existed on the Petition Date until all validly determined taxes and related interest, penalties, and fees (if any) have been paid in full. To the extent a holder of an Allowed Priority Tax Claim is not paid in the ordinary course of business, payment of the Allowed Priority Tax Claim shall include interest through the date of payment at the applicable state statutory rate, as set forth in sections 506(b), 511, and 1129 of the Bankruptcy Code.

SECTION 3. CLASSIFICATION OF CLAIMS AND INTERESTS.

3.1 *Classification in General.*

A Claim or Interest is placed in a particular Class for all purposes, including voting, confirmation, and distribution under this Plan and under sections 1122 and 1123(a)(1) of the Bankruptcy Code; provided that a Claim or Interest is placed in a particular Class for the purpose of receiving distributions pursuant to this Plan only to the extent that such Claim or Interest is an Allowed Claim or Allowed Interest in that Class and such Claim or Interest has not been satisfied, released, or otherwise settled prior to the Effective Date.

3.2 *Formation of Debtor Groups for Convenience Only.*

This Plan (including, but not limited to, Section 2 and Section 3 of the Plan) groups the Debtors together solely for the purpose of describing treatment under this Plan, confirmation of this Plan, and Distributions to be made in respect of Claims against and Interests in the Debtors under this Plan. Except as provided in Section 6 of the Plan, such groupings shall not affect each Debtor's status as a separate legal entity, change the organizational structure of the Debtors' business enterprise, constitute a change of control of any Debtor for any purpose, cause a merger or substantive consolidation of any legal entities, or cause the transfer of any assets.

3.3 *Summary of Classification.*

The Plan constitutes a separate chapter 11 plan for each Debtor. The Plan is not premised upon, and will not cause, the substantive consolidation of any of the Debtors. For brevity and convenience, the classification and treatment of Claims and Equity Interests have been arranged into one chart. Such classification shall not affect any Debtor's status as a separate legal entity, change the organizational structure of the Debtors' business enterprise, constitute a change of control of any Debtor for any purpose, cause a merger or consolidation of any legal entities, or cause the consolidation of assets that vest in the Liquidation Trust. A Holder of an Allowed Claim against more than one Debtor on a theory of joint and several liability shall only be entitled to a single recovery in distribution.

The table below designates the Classes of Claims against and Interests in each of the Debtors and specifies which of those Classes are (i) Impaired or Unimpaired by the Plan, (ii) entitled to vote to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code and (iii) deemed to reject the Plan. In accordance with section 1123(a)(1) of the Bankruptcy

Code, Administrative Expense Claims and Priority Tax Claims have not been classified and, thus, are excluded from the Classes of Claims and Interests set forth in this Section 3. All of the potential Classes for the Debtors are set forth herein.

Only holders of Claims in Classes 2A-2C; 3A-3C; and 4A-4C are Impaired and entitled to vote on the Plan. The Estates will not be substantively consolidated.

Class	Designation	Treatment	Entitled to Vote
1	Other Priority Claims	Unimpaired	No (Presumed to accept)
2A	Fulcrum Prepetition Loan Secured Claims	Impaired	Yes
2B	Holdings Prepetition Bond Secured Claims	Impaired	Yes
2C	BioFuels Prepetition Bond Secured Claims	Impaired	Yes
3A	Fulcrum Deficiency Claims	Impaired	Yes
3B	Holdings Deficiency Claims	Impaired	Yes
3C	BioFuels Deficiency Claims	Impaired	Yes
4A	Fulcrum Undersecured and General Unsecured Claims	Impaired	Yes
4B	Holdings Undersecured and General Unsecured Claims	Impaired	Yes
4C	BioFuels Undersecured and General Unsecured Claims	Impaired	Yes
5	Interests	Impaired	No (Deemed to reject)

3.4 *Special Provision Governing Unimpaired Claims.*

Except as otherwise provided in the Plan, nothing under the Plan shall affect the rights of the Debtors or the Liquidation Trustee, as applicable, in respect of any Unimpaired Claims, including all rights in respect of legal and equitable defenses to, or setoffs or recoupments against, any such Unimpaired Claims.

SECTION 4. TREATMENT OF CLAIMS AND INTERESTS.

4.1 ***Other Priority Claims (Class 1).***

(a) *Classification*: Class 1 consists of Allowed Other Priority Claims against the Debtors.

(b) *Treatment*: Except to the extent that a holder of an Allowed Other Priority Claim against any of the Debtors has agreed to less favorable treatment of such Claim, each such holder shall receive, in full and final satisfaction of such Claim, Cash in an amount equal to such Claim, payable on the later of (i) forty five (45) calendar days after the Effective Date (or as soon as reasonably practicable thereafter) and (ii) the first Business Day after thirty (30) days from the date on which such Other Priority Claim becomes an Allowed Priority Claim, or as soon as reasonably practical thereafter.

(c) *Voting*: Class 1 is Unimpaired, and the holders of Other Priority Claims are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, holders of Other Priority Claims are not entitled to vote to accept or reject the Plan, and the votes of such holders will not be solicited with respect to Other Priority Claims.

4.2 ***Fulcrum Prepetition Loan Secured Claims (Class 2A).***

(a) *Classification*: Class 2A consists of Fulcrum Prepetition Loan Secured Claims.

(b) *Treatment*: Except to the extent that a holder of an Allowed Fulcrum Prepetition Loan Secured Claim has agreed to less favorable treatment of such Claim, on the Effective Date, each such holder shall receive:

- the proceeds of any collateral securing the Prepetition Secured Party Claims; provided that the Remaining Catalyst Proceeds shall be deemed applied to the Fulcrum Prepetition Loan Secured Claim in partial satisfaction of the obligations under the Prepetition Fulcrum Credit Agreement and then made available for distribution by the Fulcrum Estate to creditors in Class 4A;
- the return (to the extent agreed by the Prepetition Agent) or abandonment of the collateral securing such holder's claim;
- the applicable net proceeds from the Liquidation Trust with respect to the Prepetition Agent's collateral transferred to the Liquidation Trust; and/or
- such other treatment as may otherwise be agreed to by such holder and the Liquidation Trustee.

Notwithstanding the foregoing, holders of the Fulcrum Prepetition Loan Secured Claim agree that the first additional $1.1 million of available recovery to which the holders of the Fulcrum Prepetition Loan Secured Claim would otherwise be entitled in satisfaction of the Fulcrum Prepetition Loan Secured Claim shall be deemed applied to the Fulcrum Prepetition Loan Secured Claim in partial satisfaction thereof and then made available for distribution to creditors in Class 4A pursuant to the terms of the Plan.

[For the avoidance of doubt, the Claim numbered on the Debtors' claim register as claim number 46 is an Allowed class 2A claim, as set forth in the Agent Sale Order].[2]

(c) *Voting*: Class 2A is Impaired, and the holders of Fulcrum Prepetition Loan Secured Claims are entitled to vote to accept or reject the Plan.

4.3 ***Holdings Prepetition Bond Secured Claims (Class 2B).***

(a) *Classification*: Class 2B consists of the Holdings Prepetition Bond Secured Claims.

(b) *Treatment*: Except to the extent that a holder of an Allowed Holdings Prepetition Bond Secured Claim has agreed to less favorable treatment of such Claim, each such holder shall receive delivery of the collateral securing such Allowed Holdings Prepetition Bond Secured Claim, which was not otherwise released in accordance with any court order or sale process.

For the avoidance of doubt, the Holdings Prepetition Bond Secured Claims are Allowed.

(c) *Voting*: Class 2B is Impaired, and the holders of Holdings Prepetition Bond Secured Claims are entitled to vote to accept or reject the Plan.

4.4 ***BioFuels Prepetition Bond Secured Claims (Class 2C).***

(a) *Classification*: Class 2C consists of the BioFuels Prepetition Bond Secured Claims.

(b) *Treatment*: Except to the extent that a holder of an Allowed BioFuels Prepetition Bond Secured Claim has agreed to less favorable treatment of such Claim, each such holder shall receive delivery of the collateral securing such Allowed BioFuels Prepetition Bond Secured Claim, which was not otherwise released in accordance with any court order or sale process.

(c) *Voting*: Class 2C is Impaired, and the holders of BioFuels Prepetition Bond Secured Claims are entitled to vote to accept or reject the Plan.

For the avoidance of doubt, the BioFuels Prepetition Bond Secured Claims are Allowed.

4.5 ***Fulcrum Deficiency Claims (Class 3A).***

(a) *Classification*: Class 3A consists of Fulcrum Deficiency Claims.

(b) *Treatment*: Holders of Fulcrum Deficiency Claims agree that they will not recover from (a) the Remaining Catalyst Proceeds or (b) the first additional $1.1 million of

[2] Allowance of Claims in Class 2A subject to sale closing.

available recovery to which the holders of the Fulcrum Prepetition Loan Secured Claim would otherwise be entitled in satisfaction of the Fulcrum Deficiency Claim.

Thereafter, except to the extent that a holder of an Allowed Fulcrum Deficiency Claim has agreed to less favorable treatment of such Claim, each such holder shall receive in full satisfaction, settlement, and release of, and in exchange for such Allowed Fulcrum Deficiency Claim the Pro Rata Share of the Cash, if any, to be distributed from the Fulcrum Liquidation Trust Account. The Fulcrum Deficiency Claims shall be treated Pro Rata with the Claims in Class 4A.

(c) *Voting*: Class 3A is Impaired, and the holders of Fulcrum Deficiency Claims are entitled to vote to accept or reject the Plan.

4.6 ***Holdings Deficiency Claims (Class 3B).***

(a) *Classification*: Class 3B consists of Holdings Deficiency Claims.

(b) *Treatment*: Except to the extent that a holder of an Allowed Holdings Deficiency Claim has agreed to less favorable treatment of such Claim, each such holder shall receive in full satisfaction, settlement, and release of, and in exchange for such Allowed Holdings Deficiency Claim the Pro Rata Share of the Cash, if any, to be distributed from the Holdings Liquidation Trust Account. The Holdings Deficiency Claims shall be treated Pro Rata with the Claims in Class 4B.

(c) *Voting*: Class 3B is Impaired, and the holders of Holdings Deficiency Claims are entitled to vote to accept or reject the Plan.

4.7 ***BioFuels Deficiency Claims (Class 3C).***

(a) *Classification*: Class 3C consists of BioFuels Deficiency Claims.

(b) *Treatment*: As provided for in section 5.25(b) of the Amended Final DIP Order [D.I. 177], the holders of BioFuels Deficiency Claims have agreed to waive any distribution on account of their BioFuels Deficiency Claims.

(c) *Voting*: Class 3C is Impaired, and the holders of BioFuels Deficiency Claims are entitled to vote to accept or reject the Plan.

4.8 ***Fulcrum Undersecured and General Unsecured Claims (Class 4A).***

(a) *Classification*: Class 4A consists of Fulcrum Undersecured and General Unsecured Claims.

(b) *Treatment*: Except to the extent that a holder of an Allowed Fulcrum Undersecured and General Unsecured Claim has agreed to less favorable treatment of such Claim, each such holder shall receive in full satisfaction, settlement, and release of, and in exchange for such Allowed Fulcrum Undersecured and General Unsecured Claim the Pro Rata Share of the Cash, if any, to be distributed from the Fulcrum Liquidation Trust Account. The Fulcrum

Undersecured and General Unsecured Claim shall be treated Pro Rata with the Claims in Class 3A.

(c) *Voting*: Class 4A is Impaired, and the holders of Fulcrum Undersecured and General Unsecured Claims are entitled to vote to accept or reject the Plan.

4.9 ***Holdings Undersecured and General Unsecured Claims (Class 4B).***

(a) *Classification*: Class 4B consists of Holdings Undersecured and General Unsecured Claims.

(b) *Treatment*: Except to the extent that a holder of an Allowed Holdings Undersecured and General Unsecured Claim has agreed to less favorable treatment of such Claim, each such holder shall receive in full satisfaction, settlement, and release of, and in exchange for such Allowed Holdings Undersecured and General Unsecured Claim the Pro Rata Share of the Cash, if any, to be distributed from the Holdings Liquidation Trust Account. The Holdings Undersecured and General Unsecured Claim shall be treated Pro Rata with the Claims in Class 3B.

(c) *Voting*: Class 4B is Impaired, and the holders of Holdings Undersecured and General Unsecured Claims are entitled to vote to accept or reject the Plan.

4.10 ***BioFuels Undersecured and General Unsecured Claims (Class 4C).***

(a) *Classification*: Class 4C consists of Undersecured and General Unsecured Claims against BioFuels.

(b) *Treatment*: Except to the extent that a holder of Allowed BioFuels Undersecured and General Unsecured has agreed to less favorable treatment of such Claim, each such holder shall receive in full satisfaction, settlement, and release of, and in exchange for such Allowed BioFuels Undersecured and General Unsecured Claim the Pro Rata Share of the Cash, if any, to be distributed from the BioFuels Liquidation Trust Account.

[For the avoidance of doubt, the Claim numbered on the Debtors' claim register as claim number 47 is an Allowed class 4(c) claim, as set forth in Agent Sale Order][3].

(c) *Voting*: Class 4C is Impaired, and the holders of BioFuels Undersecured and General Unsecured Claims are entitled to vote to accept or reject the Plan.

4.11 ***Interests (Class 5).***

(a) *Classification*: Class 5 consists of Interests in the Debtors.

[3] Allowance of Claim subject to sale closing.

(b) *Treatment*: Interests shall be extinguished, cancelled and released on the Effective Date. Holders of Interests shall not receive or retain any distribution under the Plan on account of such Interests.

(c) *Voting*: Class 5 is Impaired, and the holders of Interests are conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, the holders of Interests are not entitled to vote to accept or reject the Plan, and the votes of such holders will not be solicited with respect to such Interests.

SECTION 5. ACCEPTANCE OR REJECTION OF THE PLAN.

5.1 *Class Acceptance Requirement.*

A Class of Claims shall have accepted the Plan if it is accepted by at least two-thirds (2/3) in dollar amount of the Allowed Claims in such Class and more than one-half (1/2) in number of holders of such Claims, in each case, that have voted on the Plan.

5.2 *Tabulation of Votes on a Non-Consolidated Basis.*

All votes on the Plan shall be tabulated on a non-consolidated basis by Debtor and by Class for the purpose of determining whether the Plan satisfies sections 1129(a)(8) and/or 1129(a)(10).

5.3 *Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code or "Cramdown".*

Because certain classes are deemed to have rejected the Plan, the Debtors will request confirmation of the Plan, as it may be modified and amended from time to time, under section 1129(b) of the Bankruptcy Code with respect to such Classes. Subject to Sections 13.5 and 13.6 of this Plan, the Debtors reserve the right to alter, amend, modify, revoke or withdraw this Plan in order to satisfy the requirements of section 1129(b) of the Bankruptcy Code, if necessary.

5.4 *Elimination of Vacant Classes.*

Any Class of Claims or Interests that, as of the commencement of the Confirmation Hearing, does not have at least one holder of a Claim or Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to that Class

5.5 *Voting Classes; Deemed Acceptance by Non-Voting Classes.*

If a Class contains Claims or Interests eligible to vote and no holders of Claims or Interests eligible to vote in such Class vote to accept or reject the Plan, the Plan shall be deemed accepted by the holders of such Claims or Interests in such Class.

SECTION 6. MEANS FOR IMPLEMENTATION.

6.1 *Joint Chapter 11 Plan.*

The Plan is a joint chapter 11 plan for each of the Debtors, with the Plan for each Debtor being non-severable and mutually dependent on the Plan for each other Debtor. The Plan does not seek substantive consolidation of the Debtors.

6.2 *Plan Funding.*

Distributions under the Plan shall be funded from Cash on hand by each Debtor on a non-consolidated basis.

6.3 *Liquidation Trust.*

(a) *Execution of the Liquidation Trust Agreement*. On or before the Effective Date, the Liquidation Trust Agreement shall be executed, and all other necessary steps shall be taken to establish the Liquidation Trust to hold the Liquidation Trust Assets, which shall be for the benefit of the Liquidation Trust Beneficiaries. This Section 6.3 sets forth certain of the rights, duties, and obligations of the Liquidation Trustee. In the event of any conflict between the terms of this Section 6.3 and the terms of the Liquidation Trust Agreement, unless otherwise specified in the Plan, the terms of the Liquidation Trust Agreement shall govern.

(b) *Purpose of the Liquidation Trust*. The Liquidation Trust shall be established in accordance with the Liquidation Trust Agreement to administer post-Effective Date responsibilities of the Debtors and Wind-Down Estates under the Plan, including, but not limited to, (i) being vested with, and liquidating, the Liquidation Trust Assets, (ii) making Distributions to holders of Allowed Claims in accordance with the terms of this Plan and the Liquidation Trust Agreement, (iii) resolving all Disputed Claims and effectuating the Claims reconciliation process pursuant to the procedures prescribed in this Plan, (iv) prosecuting, settling, and resolving Causes of Action that are Liquidation Trust Assets, (v) recovering, through enforcement, resolution, settlement, collection, or otherwise, assets on behalf of the Liquidation Trust (which assets shall become part of the Liquidation Trust Assets), (vi) winding down the affairs of the Debtors and their subsidiaries, if and to the extent necessary, including taking any steps to dissolve, liquidate, bankrupt or take other similar action with respect to each Debtor and their subsidiaries, including by terminating the corporate or organizational existence of each such Debtor and subsidiary, and (vii) performing all actions and executing all agreements, instruments and other documents necessary to effectuate the purpose of the Liquidation Trust.

(c) *Liquidation Trust Assets*. The Liquidation Trust shall consist of the Liquidation Trust Assets. Except as otherwise provided in this Plan or the Confirmation Order, on the Effective Date, the Debtors shall be deemed to have transferred all of the Liquidation Trust Assets held by the Debtors to the Liquidation Trust, and all Liquidation Trust Assets shall vest in the Liquidation Trust on the Effective Date, to be administered by the Liquidation Trustee, in accordance with this Plan and the Liquidation Trust Agreement, free and clear of all Liens, Claims, encumbrances and other Interests. For the avoidance of doubt, the Plan does not provide for the substantive consolidation of the Debtors' estates and assets from each Debtor's estate that vest in the Liquidation Trust will not be consolidated. The Liquidation Trustee shall separately account

for and administer Trust assets and claims with respect to each Debtor's estate. Prior to the Effective Date, the Debtors and following the Effective Date, the Liquidation Trustee may take all actions as may be necessary or appropriate to effectuate the Plan that are consistent with and pursuant to the terms and conditions of the Plan and the Liquidation Trust Agreement.

(d) *Liquidation Trustee*. The initial Liquidation Trustee shall be selected by the Committee in consultation with the Debtors, the BioFuels Trustee and the Prepetition Agent. The Liquidation Trustee may be replaced in accordance with the Liquidation Trust Agreement. The Liquidation Trustee shall have no duties until the occurrence of the Effective Date, and on and after the Effective Date shall be the sole fiduciary of each of the Wind-Down Estates. The powers, rights and responsibilities of the Liquidation Trustee shall be as specified in the Liquidation Trust Agreement and Plan and shall include the authority and responsibility to fulfill the items identified in this Section 6.3 of the Plan. Other rights and duties of the Liquidation Trustee and the Liquidation Trust Beneficiaries shall be as set forth in the Liquidation Trust Agreement. Pursuant to section 1123 of the Bankruptcy Code, the Liquidation Trustee shall be deemed to be the representative of the Debtors' Estates for all purposes under the Plan.

(e) *Functions of the Liquidation Trustee*. On and after the Effective Date, and subject to the Liquidation Trust Agreement, the Liquidation Trustee shall carry out the functions set forth in this Section 6.3 and may take such actions without further approval by the Bankruptcy Court, in accordance with the Liquidation Trust Agreement. Such functions may include any and all powers and authority to:

(i) take all steps and execute all instruments and documents necessary to make Distributions to holders of Allowed Claims and to perform the duties assigned to the Liquidation Trustee under the Plan or the Liquidation Trust Agreement;

(ii) comply with and effectuate the Plan and the obligations hereunder;

(iii) employ, retain or replace professionals to represent him or her with respect to his or her responsibilities pursuant to the Liquidation Trust Agreement;

(iv) wind up the affairs of the Debtors and their subsidiaries, if and to the extent necessary, including taking any steps to dissolve, liquidate, bankrupt, or take other similar action with respect to each Debtor and subsidiary, including by terminating the corporate or organizational existence of each such Debtor or subsidiary;

(v) take any actions necessary to (A) resolve all matters related to the Liquidation Trust Assets and (B) vest such assets in the Liquidation Trust;

(vi) establish and maintain one or more Cash reserves in his or her reasonable discretion to ensure sufficient funding to pay all current and future Liquidation Trust Expenses;

(vii) make Distributions of the Cash in the Liquidation Trust and any proceeds thereof, in excess of any amounts necessary to pay Liquidation Trust Expenses, in accordance with the terms of this Plan;

(viii) prepare and file appropriate tax returns and other reports on behalf of the Debtors and pay taxes or other obligations owed by the Debtors (including, without limitation, any Allowed Administrative Expense Claims, Allowed Priority Tax Claims asserted by taxing authorities, and Fee Claims);

(ix) file, prosecute, settle or dispose of any and all objections to asserted Claims;

(x) file, prosecute, settle or dispose of any and all Causes of Action;

(xi) establish and maintain the Disputed Claims Reserve;

(xii) enter into and consummate any transactions for the purpose of dissolving the Debtors and their subsidiaries;

(xiii) take such actions as are necessary or appropriate to close any of the Debtors' Chapter 11 Cases;

(xiv) maintain the books and records and accounts of the Debtors;

(xv) publish quarterly reports on aggregate receipts and disbursements;

(xvi) take any other actions not inconsistent with the provisions hereof and the Liquidation Trust Agreement that the Liquidation Trustee deems reasonably necessary or desirable in connection with the foregoing functions.

(f) *Fees and Expenses of the Liquidation Trust*. From and after the Effective Date, Liquidation Trust Expenses shall be paid from the Liquidation Trust Assets in the ordinary course of business, in accordance with the Plan and the Liquidation Trust Agreement. Without any further notice to any party or action, order or approval of the Bankruptcy Court, the Liquidation Trustee, on behalf of the Liquidation Trust, may employ professionals and pay in the ordinary course of business the reasonable fees of any employed professional (including professionals previously employed by the Debtors or the Committee) for services rendered or expenses incurred on and after the Effective Date that, in the discretion of the Liquidation Trustee, are necessary to assist the Liquidation Trustee in the performance of the Liquidation Trustee's duties under the Plan and the Liquidation Trust Agreement, subject to any limitations and procedures established by the Liquidation Trust Agreement.

(g) *Liquidation Trust's Obligation to Provide Periodic Reporting*. The Liquidation Trustee will provide or publish quarterly reports on aggregate receipts and disbursements from the Liquidation Trust.

(h) *Creation and Maintenance of Trust Accounts*. On or prior to the Effective Date, or as soon as reasonably practicable, appropriate trust accounts will be established and maintained in one or more federally insured domestic banks in the name of the Liquidation Trust. Cash deposited in the trust accounts will be invested, held and used solely as provided in the Liquidation Trust Agreement. The Liquidation Trustee is authorized to establish additional

trust accounts after the Effective Date, consistent with the terms of the Liquidation Trust Agreement, as applicable. After the funding of the trust accounts on the Effective Date, or as soon as reasonably practicable, the trust accounts will be funded, as applicable, by Cash proceeds obtained through litigation, settlement, disposition or other monetization of the Liquidation Trust Assets. Upon obtaining an order of the Bankruptcy Court authorizing a final Distribution or closure of all of the Debtors' Chapter 11 Cases, any funds remaining in the trust accounts shall be distributed in accordance with this Plan and the Liquidation Trust Agreement, and the trust accounts may be closed.

(i) *Indemnification of Liquidation Trustee*. The Liquidation Trustee and its agents and professionals shall not be liable for actions taken or omitted in their respective capacities as, or on behalf of, the Liquidation Trustee or the Liquidation Trust, except those acts arising out of its or their gross negligence, actual fraud or willful misconduct, each as determined by a Final Order from a court of competent jurisdiction. The Liquidation Trustee (and its agents and professionals) shall be entitled to indemnification and reimbursement for fees and expenses incurred in defending any and all of its or their actions or inactions in its or their capacity as, or on behalf of, the Liquidation Trustee or the Liquidation Trust, except for any actions or inactions involving gross negligence, actual fraud or willful misconduct, each as determined by a Final Order from a court of competent jurisdiction. Any indemnification claim of the Liquidation Trustee and the other parties entitled to indemnification under the Liquidation Trust Agreement shall be satisfied from the Liquidation Trust Assets, as provided in the Liquidation Trust Agreement. The Liquidation Trustee shall be entitled to rely, in good faith, on the advice of its professionals.

(j) *Insurance*. The Liquidation Trustee shall be authorized, but not required, to obtain any reasonably necessary insurance coverage, at the Liquidation Trust's sole expense, for itself and its respective agents, including coverage with respect to the liabilities, duties and obligations of the Liquidation Trustee, which insurance coverage may, at the sole option of the Liquidation Trustee, be extended for a reasonable period after the termination of the Liquidation Trust Agreement.

(k) *Records*. On the Effective Date, all records of the Debtors shall vest in and become property of the Liquidation Trust and shall be Liquidation Trust Assets. Further, the Liquidation Trustee shall be provided with originals or copies of or access to all documents and business records of the Debtors necessary for the Liquidation Trustee to fulfill his or her duties as set forth in the Liquidation Trust Agreement, including, but not limited to, the disposition of Liquidation Trust Assets and objections to Disputed Claims.

6.4 *Elimination of Duplicate Claims*

Any duplicate Claim or Interest or any Claim that has been paid or satisfied, or any Claim that has been amended or superseded, may be adjusted or expunged on the claims register by the Debtors or the Liquidation Trustee, as applicable, (i) upon stipulation between the parties in interest without a Claim objection having to be filed and without any further notice or action, order, or approval of the Bankruptcy Court, or (ii) a notice of satisfaction filed on the docket and served on the applicable claimant, provided, that such modification shall become effective only after fourteen days' notice to parties in interest and an opportunity to object.

6.5 *Corporate Action.*

Upon the Effective Date, all actions contemplated by the Plan (including any action to be undertaken by the Liquidation Trustee or the Debtors) shall be deemed authorized, approved, and, to the extent taken prior to the Effective Date, ratified without any requirement for further action by holders of Claims or Interests, the Debtors' Estates, the Liquidation Trustee or any other Entity or Person. All matters provided for in the Plan involving the corporate structure of the Debtors (including the filing of a certificate of cancellation for Finance), and any corporate action required by the Debtors or the Liquidation Trustee in connection therewith, shall be deemed to have occurred and shall be in effect, without any requirement of further action by the Debtors, the Debtors' Estates, or the Liquidation Trustee. Following the Effective Date, the Liquidation Trustee shall be deemed to be the representative of the Debtors and the Debtors' Estates for all purposes under section 1123 of the Bankruptcy Code.

6.6 *Directors, Officers, Managers, Members and Authorized Persons of the Debtors.*

On the Effective Date, each of the Debtors' directors and officers shall be discharged from their duties and terminated automatically without the need for any corporate action or approval and without the need for any corporate filings, and, unless subject to a separate agreement with the Liquidation Trustee, shall have no continuing obligations to the Debtors following the occurrence of the Effective Date.

6.7 *D&O Policy.*

As of the Effective Date, the Debtors shall be deemed to have assumed all of the D&O Policies pursuant to sections 105(a) and 365(a) of the Bankruptcy Code, and coverage for defense and indemnity under any of the D&O Policies shall remain in full force and effect subject to the terms and conditions of the D&O Policies and the D&O Policies shall become Liquidation Trust Assets. Entry of the Confirmation Order will constitute the Bankruptcy Court's approval of the Debtors' foregoing assumption of each D&O Policy. Notwithstanding anything to the contrary contained in the Plan, and except as otherwise may be provided in an order of the Bankruptcy Court, confirmation of the Plan shall not impair or otherwise modify any obligations assumed by the foregoing assumption of the D&O Policies, and each such obligation will be deemed and treated as an executory contract that has been assumed by the Debtors under the Plan as to which no proof of Claim need be filed. For the avoidance of doubt, the D&O Policies provide coverage for those insureds currently covered by such policies for the remaining term of such policies and runoff or tail coverage after the Effective Date to the fullest extent permitted by such policies. On and after the Effective Date, the Debtors, the Wind-Down Estates, or the Liquidation Trustee shall not terminate or otherwise reduce the coverage under any of the D&O Policies in effect or purchased as of the Petition Date, and all directors and officers of the Debtors at any time shall be entitled to the full benefits of any such policy for the full term of such policy regardless of whether such directors and/or officers remain in such positions after the Effective Date. For the avoidance of doubt, nothing herein shall be construed as the Debtors assuming any obligation with respect to any self-insured retention for which the applicable insurer has the ability to assert a prepetition Claim against the applicable Debtor in accordance with the order setting the Bar Date or other order of the Bankruptcy Court.

6.8 *Indemnification of Directors, Officers and Employees.*

For purposes of the Plan, the obligation of the Debtors to indemnify and reimburse any Person serving at any time on or after the Petition Date for actions taken on or after the Petition Date, as one of their directors, officers or employees by reason of such Person's service in such capacity, to the extent provided in such Debtor's constituent documents, a written agreement with the Debtor(s), in accordance with any applicable law, or any combination of the foregoing, shall survive confirmation of the Plan and the Effective Date.

6.9 *Withholding and Reporting Requirements.*

(a) *Withholding Rights*. In connection with the Plan, any party issuing any instrument or making any distribution described in the Plan shall comply with all applicable withholding and reporting requirements imposed by any federal, state, provincial or local taxing authority, and all distributions pursuant to the Plan and all related agreements shall be subject to any such withholding or reporting requirements. Notwithstanding the foregoing, each holder of an Allowed Claim or any other Person that receives a distribution pursuant to the Plan shall be liable for any taxes imposed by any Governmental Unit, including, without limitation, income, withholding, and other taxes, on account of such distribution. Any party issuing any instrument or making any distribution pursuant to the Plan has the right, but not the obligation, to not make a distribution until such holder has made arrangements satisfactory to such issuing or disbursing party for payment of any such tax obligations.

(b) *Forms*. Any party entitled to receive any property as an issuance or distribution under the Plan shall, upon request, deliver to the Debtors or Liquidation Trustee, as applicable or such other Person designated by the Debtors or the Liquidation Trustee (which entity shall subsequently deliver to the Debtors or the Liquidation Trustee any applicable IRS Form W-8 or Form W-9 received) an appropriate Form W-9 or (if the payee is a foreign Person) Form W-8 or any other form or document as reasonably requested by the Debtors or Liquidation Trustee or such other Person designated by either of them to eliminate or reduce any tax (including withholding tax), unless the Debtors or Liquidation Trustee or such other Person designated by them determines it is not required to eliminate or reduce any tax (including withholding tax). If such request is made by the Debtors or Liquidation Trustee or such other Person designated by the Debtors or the Liquidation Trustee and the holder fails to comply before the date that is 150 days after the request is made, the amount of such distribution shall irrevocably revert to the Liquidation Trust, and any Claim in respect of such Distribution shall be forever barred from assertion against any Debtor and its respective property.

6.10 *Exemption From Certain Transfer Taxes.*

To the maximum extent provided by section 1146 of the Bankruptcy Code, under this Plan, (i) the issuance, distribution, transfer or exchange of any debt, equity security or other interest in the Debtors; or (ii) the making, delivery or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, this Plan, including any deeds, bills of sale, assignments or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to this Plan, shall not be taxed under any law imposing a stamp tax or similar tax. To the extent that the Debtors or Liquidation Trustee elects to sell any

property after the Confirmation Date, such sales of property will be exempt from any transfer taxes in accordance with section 1146(a) of the Bankruptcy Code. All subsequent issuances, transfers or exchanges of securities, or the making or delivery of any instrument of transfer by the Debtors in the Chapter 11 Cases shall be deemed to be or have been done in furtherance of this Plan.

6.11 *Effectuating Documents; Further Transactions.*

On and after the Effective Date, the Liquidation Trustee and the Debtors are authorized to and may issue, execute, deliver, file or record such contracts, securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement and further evidence the terms and conditions of the Plan in the name of and on behalf of the Debtors, without the need for any approvals, authorization, or consents except for those expressly required pursuant to the Plan.

6.12 *Preservation of Rights of Action.*

Other than Causes of Action against an Entity that are expressly waived, relinquished, exculpated, released, sold pursuant to the Agent Sale Order, compromised, or settled in the Plan or by a Bankruptcy Court order entered prior to the Effective Date, the Debtors reserve any and all Causes of Action, and on the Effective Date, such causes of Action shall vest in the Liquidation Trust, free and clear of all Claims, Liens, encumbrances and other interests, and shall become Liquidation Trust Assets. On and after the Effective Date, the Liquidation Trustee shall have sole and exclusive discretion to pursue and dispose of any such Causes of Action that are or become Liquidation Trust Assets. No Entity may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any Cause of Action against them as any indication that the Debtors, and on and after the Effective Date, the Liquidation Trustee, will not pursue any and all available Causes of Action against them. No preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation. Prior to the Effective Date, the Debtors (and on and after the Effective Date, the Liquidation Trustee) shall retain and shall have, including through its authorized agents or representatives, the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court.

For the avoidance of doubt, any claims sold pursuant to the Agent Sale Order are not property of the Debtors' estate and therefore not preserved pursuant to this section.

6.13 *Closing of the Chapter 11 Cases.*

On or after the Effective Date, the Liquidation Trustee shall be authorized to file a motion requesting entry of one or more orders of this Court closing any of the remaining Chapter 11 Cases. Such motion may be heard by the Court on fourteen days' notice to the U.S. Trustee and all other parties entitled to notice under Local Rule 2002-1(b). Each Wind-Down Estate shall be entitled to appoint the Liquidation Trustee to prosecute claims and defenses and through the Disbursing Agent, make distributions, and attend to other wind down affairs on behalf of each of

the other prior Debtors as if such Wind-Down Estates continued to exist solely for that purpose. The Liquidation Trustee shall, promptly after the full administration of the Chapter 11 Cases, file with this Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court. Upon the filing of such a motion, the Liquidation Trustee shall file a final report with respect to all of the Chapter 11 Cases pursuant to Local Rule 3022-1(c).

6.14 *Dissolution of the Committee.*

On the Effective Date, the Committee shall dissolve, and the members thereof and the professionals retained by the Committee thereof shall be released and discharged from all rights and duties arising from, or related to, these Chapter 11 Cases; *provided*, however, that following the Effective Date, the Committee shall continue in existence and have standing and a right to be heard for the following limited purposes: (a) applications, and any relief related thereto, for compensation and requests for allowance of fees and/or expenses under sections 330, 331 and 503(b) of the Bankruptcy Code including Fee Claims and any Committee member reimbursement requests, (b) to enforce the releases and exculpations under Section 12 of the Plan of the Committee, the Committee's members (solely in their capacity as such), and the Committee's Related Parties, and (c) any appeals of the Confirmation Order, the Sale Order, or any other appeal to which the Committee is or was a party in interest.

SECTION 7. DISTRIBUTIONS.

7.1 *Distribution Record Date.*

The Debtors and the Liquidation Trustee shall have no obligation to recognize any transfer of the Claims or Interests (i) occurring on or after the Effective Date, or (ii) that does not comply with the Bankruptcy Code or Bankruptcy Rules, including Bankruptcy Rule 3001(e).

7.2 *Date of Distributions.*

Except as otherwise provided herein, the Liquidation Trustee shall direct the Initial Distribution to holders of Allowed Claims no later than the Initial Distribution Date. After the Initial Distribution Date, the Liquidation Trustee shall, from time to time, determine the subsequent Distribution Dates.

7.3 *Delivery of Distributions.*

The Disbursing Agent shall make all distributions, allocations, and/or issuances required under the Plan. In the event that any Distribution to any holder is returned as undeliverable, no Distribution to such holder shall be made unless and until the Liquidation Trustee has determined the then current address of such holder, at which time such Distribution shall be made to such holder without interest; provided, however, such Distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of six months from the date such Distribution was made. After such date, all unclaimed property or interests in property shall revert (notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws to the contrary) to the Liquidation Trust automatically and without need for a further order by the Bankruptcy Court for Distribution in accordance with the Plan and the

Claim of any such holder to such property or interest in property shall be released, settled, compromised, and forever barred.

7.4 *Manner of Payment Under Plan.*

At the option of the Debtors, the Liquidation Trustee or the Disbursing Agent, as applicable, any Cash payment to be made hereunder may be made by a check or wire transfer from the Disbursing Agent. Any wire transfer fees incurred in connection with the transmission of a wire transfer shall be deducted from the amount of the Distribution a holder of an Allowed Claim would otherwise receive. The Debtors, the Liquidation Trustee, or the Disbursing Agent, as applicable, will, to the extent practicable, make aggregate Distributions on account of all the Allowed Claims held by a particular holder.

7.5 *Minimum Cash Distributions.*

No intermediate Distribution shall be required to be made to any holder of an Allowed Claim on any Distribution Date of Cash less than $100; provided, however, that if any Distribution is not made pursuant to this Section 7.5, such Distribution shall be added to any subsequent Distribution to be made on behalf of the holder's Allowed Claim. The Liquidation Trustee through the Disbursing Agent shall not be required to make any final Distributions of Cash less than $50 to any holder of an Allowed Claim.

7.6 *Setoffs.*

The Debtors or the Liquidation Trustee may, but shall not be required to, set off against any Claim, any Claims of any nature whatsoever that the Debtors or the Liquidation Trustee have against the holder of such Claim; provided that neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors or the Liquidation Trustee of any such Claim the Debtors or the Liquidation Trustee may have against the holder of such Claim.

7.7 *Allocation of Distributions Between Principal and Interest.*

Except as otherwise provided in this Plan, to the extent that any Allowed Claim entitled to a Distribution under the Plan is comprised of indebtedness and accrued but unpaid interest thereon, such Distribution shall be allocated to the principal amount (as determined for U.S. federal income tax purposes) of the Claim first, and then to accrued but unpaid interest.

7.8 *No Postpetition Interest on Claims.*

Except as otherwise provided in the Plan, the Confirmation Order, or another order of the Bankruptcy Court, or required by the Bankruptcy Code, postpetition interest shall not accrue or be paid on any Claims and no holder of a Claim shall be entitled to interest accruing on or after the Petition Date.

7.9 *No Distribution in Excess of Amount of Allowed Claim.*

Notwithstanding anything to the contrary in the Plan, no holder of an Allowed Claim shall, on account of such Allowed Claim, receive a Distribution in excess of the Allowed amount of such Claim.

SECTION 8. PROCEDURES FOR DISPUTED CLAIMS.

8.1 *Objections to Claims.*

As of the Effective Date, objections to, and requests for estimation of Claims against the Debtors may be interposed and prosecuted by the Liquidation Trustee. Such objections and requests for estimation shall be served and filed on or before the Claims Objection Bar Date.

8.2 *Allowance of Claims.*

After the Effective Date, the Liquidation Trust shall have and shall retain any and all rights and defenses that the Debtors had with respect to any Claim against a Debtor, except with respect to any Claim expressly Allowed under this Plan. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Cases prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim shall become an Allowed Claim unless and until such Claim is expressly Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered a Final Order, including, without limitation, the Confirmation Order, in the Chapter 11 Cases allowing such Claim.

8.3 *Estimation of Claims.*

The Debtors or the Liquidation Trustee, as applicable, may at any time request that the Bankruptcy Court estimate any contingent, unliquidated, or Disputed Claim, pursuant to section 502(c) of the Bankruptcy Code regardless of whether any party in interest previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection. In the event that the Bankruptcy Court estimates any contingent, unliquidated, or Disputed Claim, the amount so estimated shall constitute either the Allowed amount of such Claim or the maximum limit of such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the Liquidation Trustee may pursue supplementary proceedings to object to the allowance of such Claim. All of the aforementioned objection, estimation and resolution procedures are intended to be cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

8.4 *No Distributions Pending Allowance.*

No payment or Distribution provided under the Plan shall be made on account of a Disputed Claim unless and until such Disputed Claim becomes an Allowed Claim.

8.5 *Resolution of Claims.*

Except as otherwise provided herein (including the release provisions hereof) or in the Confirmation Order, or in any contract, instrument, release, or other agreement or document entered into in connection with this Plan, in accordance with section 1123(b) of the Bankruptcy Code, on and after the Effective Date, the Liquidation Trustee may enforce, sue on, settle, or compromise (or decline to do any of the foregoing) all Claims, Disputed Claims, rights, Causes of Action, suits and proceedings, whether in law or in equity, whether known or unknown, that the Liquidation Trust may hold against any Person, and any contract, instrument, release, indenture, or other agreement entered into in connection herewith. From and after the Effective Date, the Liquidation Trustee may settle or compromise any Disputed Claim without approval of the Bankruptcy Court; provided that in its discretion, the Liquidation Trustee may seek court approval of a settlement of a Disputed Claim.

8.6 *Amendments to Claims and Late Filed Claims.*

Following the Effective Date, except as otherwise provided in this Plan (including with respect to the filing of Claims by Governmental Units by the Governmental Bar Date), the Confirmation Order, or the Liquidation Trust Agreement, no Claim may be filed, amended, or supplemented without the approval of the Bankruptcy Court or without the prior written authorization of the Liquidation Trustee, and any such new or amended Claim filed without such prior authorization shall be deemed disallowed in full and expunged without any further action, order or approval of the Bankruptcy Court.

8.7 *Insured Claims.*

If any portion of an Allowed Claim is an Insured Claim, no distributions under the Plan shall be made on account of such Allowed Claim until the holder of such Allowed Claim has exhausted all remedies with respect to any applicable insurance policies. To the extent that the Debtors' insurers agree to satisfy a Claim in whole or in part, then immediately upon such agreement, the portion of such Claim so satisfied may be expunged (i) without an objection to such Claim having to be filed and without any further notice to or action, order or approval of the Bankruptcy Court and (ii) with a notice of satisfaction filed on the docket and served on the applicable claimant or interest holder.

SECTION 9. EXECUTORY CONTRACTS AND UNEXPIRED LEASES.

9.1 *Rejection of Executory Contracts and Unexpired Leases.*

On the Effective Date, except as otherwise provided in the Plan, each Executory Contract and Unexpired Lease not previously rejected, assumed, or assumed and assigned (including any Executory Contract or Unexpired Lease assumed and assigned in connection with a Sale Transaction) shall be deemed automatically rejected pursuant to sections 365 and 1123 of the Bankruptcy Code, unless such Executory Contract or Unexpired Lease: (i) as of the Effective Date is subject to a pending motion to assume such Unexpired Lease or Executory Contract or (ii) is a D&O Policy or an insurance policy.

9.2 *Claims Based on Rejection of Executory Contracts and Unexpired Leases.*

Unless otherwise provided by an order of the Bankruptcy Court, any Proofs of Claim based on the rejection of the Debtors' Executory Contracts or Unexpired Leases pursuant to the Plan must be filed with Bankruptcy Court and served on the Liquidation Trustee no later than thirty (30) days after the notice of occurrence of the Effective Date. The notice of occurrence of the Effective Date shall include the date by which Proofs of Claim based on the rejection of the Debtors' Executory Contracts or Unexpired Leases must be filed.

Any Claims arising from the rejection of an Executory Contract or Unexpired Lease not filed with the Bankruptcy Court within such time will be forever barred from assertion, and shall not be enforceable against the Debtors, the Liquidation Trust, the Liquidation Trustee, the Debtors' Estates, or the property for any of the foregoing, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully compromised, settled, and released, notwithstanding anything in the Schedules or a Proof of Claim to the contrary.

SECTION 10. CONDITIONS PRECEDENT TO CONFIRMATION

10.1 *Conditions Precent to Confirmation*

Confirmation of the Plan shall not occur, and the Confirmation Order shall not be entered, until each of the following conditions precedent have been satisfied or waived:

(a) An order, finding that the Disclosure Statement contains adequate information pursuant to section 1125 of the Bankruptcy Code, shall have been entered; and

(b) The Confirmation Order shall be in a form and substance reasonably satisfactory to the Debtors, the Committee, the BioFuels Trustee and the Prepetition Agent.

SECTION 11. CONDITIONS PRECEDENT TO THE EFFECTIVE DATE.

11.1 *Conditions Precedent to the Effective Date.*

The occurrence of the Effective Date of the Plan is subject to the following conditions precedent:

(a) the Bankruptcy Court shall have entered the Confirmation Order, and the Confirmation Order shall not be stayed;

(b) the Confirmation Order shall have become a Final Order;

(c) all funding, actions, documents and agreements necessary to implement and consummate the Plan and the transactions and other matters contemplated thereby, shall have been effected or executed;

(d) the Liquidation Trust shall be established and validly existing and the Liquidation Trust Agreement shall have been executed;

(e) all professional fees and expenses that, as of the Effective Date, were due and payable under an order of the Bankruptcy Court shall have been paid in full, other than any Fee Claims subject to approval by the Bankruptcy Court;

(f) the Debtors shall have funded the Professional Fees Account in accordance with Section 2.3 herein;

(g) the Debtors shall have sufficient Cash on hand to pay in full, or reserve for, the projected Allowed Administrative Expense Claims, Allowed Fee Claims, Allowed Priority Tax Claims, Allowed Other Priority Claims, and U.S. Trustee Fees otherwise due or payable on the Effective Date;

(h) no Governmental Unit or federal or state court of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any law or order (whether temporary, preliminary or permanent), in any case which is in effect and which prevents or prohibits consummation of the Plan or any of the other transactions contemplated hereby and no Governmental Unit shall have instituted any action or proceeding (which remains pending at what would otherwise be the Effective Date) seeking to enjoin, restrain or otherwise prohibit consummation of the transactions contemplated by the Plan;

(i) all authorizations, consents, regulatory approvals, rulings or documents that are necessary to implement and effectuate the Plan as of the Effective Date shall have been received, waived or otherwise resolved; and

(j) all documents and agreements necessary to implement the Plan, including those set forth in the Plan Supplement, shall have (i) been tendered for delivery and (ii) been effected or executed by all Entities party thereto, and all conditions precedent to the effectiveness of such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

11.2 *Waiver of Conditions Precedent.*

Each of the conditions precedent in Section 11.1 other than the condition set forth in Section 11.1(a) may be waived in writing by the Debtors with the prior consent of the Committee or as otherwise ordered by the Bankruptcy Court. Any such waivers may be effected at any time, without notice, without leave or order of the Bankruptcy Court and without any formal action.

11.3 *Substantial Consummation.*

On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127(b) of the Bankruptcy Code.

11.4 *Notice of Effective Date.*

Within one (1) business day of the Effective Date, the Debtors shall file a notice stating that the Effective Date has occurred.

11.5 *Effect of Vacatur of Confirmation Order.*

If the Confirmation Order is vacated, (i) no distributions under the Plan shall be made, (ii) the Debtors and all holders of Claims and Interests shall be restored to the status quo ante as of the day immediately preceding the Confirmation Date as though the Confirmation Date never occurred, and (iii) all the Debtors' obligations with respect to the Claims and the Interests shall remain unchanged and nothing contained herein shall be deemed to constitute a waiver or release of any Claims by or against the Debtors or any other entity or to prejudice in any manner the rights of the Debtors or any other entity in any further proceedings involving the Debtors or otherwise.

SECTION 12. SETTLEMENT, RELEASES, INJUNCTIONS, AND RELATED PROVISIONS.

12.1 *Release of Liens.*

Except as otherwise provided in the Plan or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released, settled, and compromised and all property of the Estates shall revert to the Debtors and vest in the Liquidation Trust free and clear of any liens, security interests, or other interests.

12.2 *Binding Effect.*

Confirmation of the Plan does not provide the Debtors with a discharge under section 1141 of the Bankruptcy Code because the Plan is a liquidating chapter 11 plan. Except as otherwise provided in section 1141(d)(3) of the Bankruptcy Code and subject to the occurrence of the Effective Date, on and after the Effective Date, the provisions of the Plan shall bind any holder of a Claim against, or Interest in, the Debtors, and such holder's respective successors and assigns, whether or not the Claim or Interest of such holder is Impaired under the Plan and whether or not such holder has accepted the Plan.

12.3 *Term of Injunctions or Stays.*

Unless otherwise provided herein, all injunctions or stays arising under or entered during the Chapter 11 Cases under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay.

12.4 *Releases by the Debtors.*

As of the Effective Date, except (i) for the rights that remain in effect from and after the Effective Date to enforce the Plan, the Confirmation Order, the Liquidation Trust Agreement, or any Sale Transaction; and (ii) as otherwise provided in the Plan or in the Confirmation Order, for good and valuable consideration, including their cooperation and contributions to the Chapter 11 Cases, the Released Parties will be deemed conclusively, absolutely, unconditionally, irrevocably, and forever released, to the maximum extent permitted by law, by the Debtors and the Estates (including the Wind-Down Estates), in each case, on behalf of themselves and their respective successors (including the Liquidation

Trust), assigns, and representatives, and any and all other persons that may purport to assert any Cause of Action derivatively, by, through or on behalf of the foregoing Persons and Entities, from any and all Claims and Causes of Action, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise that the Debtors or the Estates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim or Interest or other Person, based on or relating to, in whole or in part, the Debtors, the Chapter 11 Cases, the pre- and post-petition marketing and sale process, any Sale Transaction, the purchase, sale, or rescission of the purchase or sale of any securities issued by the Debtors, the ownership of any securities issued by the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the administration or implementation of the Plan, including the issuance or distribution of the Liquidation Trust Assets pursuant to the Plan, the creation of the Liquidation Trust, the business or contractual arrangements between any Debtor and any Released Party, the Disclosure Statement, the Plan (including the Plan Supplement), or the solicitation of votes with respect to the Plan, or any other act or omission, in all cases based upon any act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date related or relating to the foregoing; provided that nothing in this Section 12.4 of the Plan shall act as a release of a direct claim any holder of a Claim or Interest or other Entity may have against any Released Party or a release of any claim or Cause of Action specifically preserved herein.

Notwithstanding anything to the contrary to the foregoing, the release set forth above does not release (i) any post-Effective Date obligations of any Person under the Plan, the Confirmation Order, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan or a Sale Transaction. Moreover, the foregoing release shall have no effect on the liability of, or any Causes of Action against, any Entity that results from any act or omission that is determined in a Final Order to have constituted actual fraud, willful misconduct, criminal acts, or gross negligence.

12.5 *Releases By Holders of Claims and Interests.*

As of the Effective Date, except (i) for the right to enforce the Plan, the Confirmation Order, and any Sale Transactions, and (ii) as otherwise expressly provided in the Plan or in the Confirmation Order, in exchange for good and valuable consideration, including the obligations of the Debtors under the Plan, to the fullest extent permissible under applicable law, the Released Parties shall be deemed conclusively, absolutely, unconditionally, irrevocably and forever released by the Releasing Parties in each case, from any and all Claims and Causes of Action, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, asserted or unasserted, accrued or unaccrued, existing or hereinafter arising, in law or equity, whether arising under federal or state statutory or common law, or any other applicable international, foreign, or domestic law, rule, statute, regulation, treaty, right, duty, requirement or otherwise, that such entity would have been legally entitled to assert in their own right (whether individually, derivatively, or collectively) or on behalf of the holder of any Claim or Interest or other Person, based on or relating to, or in any manner arising prior to the Effective Date, from, in whole or in part, the Debtors, the Chapter 11 Cases, the pre-

and post-petition marketing and sale process, a Sale Transaction, the purchase, sale, or rescission of the purchase or sale of any securities issued by the Debtors, the ownership of any securities issued by the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the administration or implementation of the Plan, including the issuance or distribution of the Liquidation Trust Assets pursuant to the Plan, the creation of the Liquidation Trust, the business or contractual arrangements between any Debtor and any Released Party, the Disclosure Statement, the Plan (including the Plan Supplement), or the solicitation of votes with respect to the Plan, or any other act or omission, in all cases based upon any act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date related or relating to the foregoing.

Notwithstanding anything to the contrary, the release set forth above does not release any post-Effective Date obligations of any Person under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan. Moreover, the foregoing release shall have no effect on the liability of, or any causes of action against, any Entity that results from any act or omission that is determined in a Final Order to have constituted actual fraud, willful misconduct, criminal acts, or gross negligence.

12.6 *Exculpation.*

To the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each of the Exculpated Parties are hereby exculpated from, any Claim, obligation, suit, judgment, damage, demand, debt, right, causes of action, remedy, loss, and liability for any Claim arising on or after the Petition Date through the Effective Date in connection with, related to, or arising out of the filing or administration of the Chapter 11 Cases, the postpetition marketing and sale process, the postpetition purchase, sale, or rescission of the purchase or sale of any security or asset of the Debtors; the negotiation and pursuit of the Disclosure Statement, any Sale Transactions, the Plan, or the solicitation of votes for, or confirmation of, the Plan; the funding or consummation of the Plan; the occurrence of the Effective Date; the property to be distributed under the Plan (including Liquidation Trust Assets); the creation and administration of the Liquidation Trust; or the transactions in furtherance of any of the foregoing; except for actual fraud, gross negligence, criminal acts or willful misconduct, as determined by a Final Order. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations and any other applicable law or rules protecting such Exculpated Parties from liability. Notwithstanding anything to the contrary in the foregoing, the exculpation set forth herein does not release any post-Effective Date obligation or liability of any Entity or Person under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.

12.7 *Injunction.*

(a) **Upon entry of the Confirmation Order, all holders of Claims and Interests and other parties in interest, along with their respective present or former employees, agents, officers, directors, principals, and affiliates, shall be enjoined from taking**

any actions to interfere with the implementation or Consummation of the Plan in relation to any such Claims and Interests.

(b) **Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court or as agreed to by the Debtors and a holder of a Claim against or Interest in the Debtors, all Releasing Parties who have held, hold, or may hold Claims against or Interests in the Released Parties that have been released or exculpated in Section 11 of this Plan (the "Released and Exculpated Claims") are permanently enjoined, on and after the Effective Date, solely with respect to any Released and Exculpated Claims, from (i) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtors, the Liquidation Trust, the Liquidation Trustee, or the property of any of the Debtors or the Liquidation Trust; (ii) enforcing, levying, attaching (including, without limitation, any prejudgment attachment), collecting, or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree, or order against the Debtors, and the Liquidation Trust; or the property of any of the Debtors or the Liquidation Trust; (iii) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtors or the Liquidation Trust, the Liquidation Trustee, or the property of any of the Debtors or the Liquidation Trust; (iv) asserting any right of setoff (except to the extent exercised prepetition), directly or indirectly, against any obligation due from the Debtors or the Liquidation Trust, or against property or interests in property of any of the Debtors or the Liquidation Trust except as contemplated or allowed by the Plan; and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.**

(c) **The benefit of the injunctions in this Section 12.7 shall extend to any successors of the Debtors, the Liquidation Trust, the Liquidation Trustee, and their respective property and interests in property.**

SECTION 13. RETENTION OF JURISDICTION.

On and after the Effective Date, the Bankruptcy Court shall retain jurisdiction over all matters arising in, arising under, and related to the Chapter 11 Cases for, among other things, the following purposes:

(a) to hear and determine motions and/or applications for the assumption or rejection of Executory Contracts or Unexpired Leases and the allowance, classification, priority, compromise, estimation or payment of Claims resulting therefrom;

(b) to determine any motion, adversary proceeding, application, contested matter, or other litigated matter pending on or commenced after the Confirmation Date, including any such motions, adversary proceeding, application, contested matter or other litigated matter brought by the Liquidation Trust;

(c) to ensure that distributions to holders of Allowed Claims are accomplished as provided herein;

(d) to consider Claims or the allowance, classification, priority, compromise, estimation or payment of or objection to any Claim;

(e) to enter, implement or enforce such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, reversed, revoked, modified or vacated;

(f) to issue injunctions, enter and implement other orders, and take such other actions as may be necessary or appropriate to restrain interference by any Person with the Consummation, implementation or enforcement of the Plan, the Confirmation Order, or any other order of the Bankruptcy Court;

(g) to hear and determine any application to modify the Plan in accordance with section 1127 of the Bankruptcy Code, to remedy any defect or omission or reconcile any inconsistency in the Plan, or any order of the Bankruptcy Court, including the Confirmation Order, in such a manner as may be necessary to carry out the purposes and effects thereof;

(h) to hear and determine all applications under sections 330, 331, and 503(b) of the Bankruptcy Code for awards of compensation for services rendered and reimbursement of expenses incurred before the Effective Date;

(i) to hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan, the Confirmation Order, the Sale Order, the Liquidation Trust Agreement, or any agreement, instrument, or other document governing or relating to any of the foregoing;

(j) to take any action and issue such orders as may be necessary to construe, interpret, enforce, implement, execute, and consummate the Plan or to maintain the integrity of the Plan following Consummation;

(k) to hear any disputes arising out of, and to enforce, any order approving alternative dispute resolution procedures to resolve personal injury, employment litigation and similar Claims pursuant to section 105(a) of the Bankruptcy Code;

(l) to determine such other matters and for such other purposes as may be provided in the Confirmation Order;

(m) to hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code (including any requests for expedited determinations under section 505(b) of the Bankruptcy Code);

(n) to adjudicate any and all disputes arising from or relating to distributions under the Plan;

(o) to hear, determine and resolve any cases, matters, controversies, suits, disputes or Causes of Action in connection with or in any way related to the Chapter 11 Cases, including with respect to the releases, exculpation and injunction provisions contained in Section 11 of the Plan and the Confirmation Order;

(p) to hear and determine any other matters related hereto and not inconsistent with the Bankruptcy Code and title 28 of the United States Code;

(q) to enter one or more final decrees closing the Chapter 11 Cases;

(r) to interpret and enforce the Confirmation Order and all other orders previously entered by the Bankruptcy Court in these Chapter 11 Cases;

(s) to recover all assets of the Debtors and property of the Debtors' Estates, wherever located;

(t) to hear and determine any rights, Claims or Causes of Action held by or accruing to the Debtors pursuant to the Bankruptcy Code or pursuant to any federal statute or legal theory; and

(u) any other matters that may arise in connection with or relate to the Plan, the Plan Supplement, the Disclosure Statement, the Confirmation Order, a Sale Order or any contract, instrument, release, indenture, or other agreement or document created in connection therewith.

SECTION 14. MISCELLANEOUS PROVISIONS.

14.1 *No Revesting of Assets.*

To the extent not otherwise distributed in accordance with this Plan, the property of the Debtors' Estates shall not revest in the Debtors on or after the Effective Date but shall instead vest in the Liquidation Trust, to be administered by the Liquidation Trustee in accordance with this Plan and the Liquidation Trust Agreement.

14.2 *Subordinated Claims.*

The allowance, classification, and treatment of all Allowed Claims and Interests and the respective Distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtors reserve the right for the Liquidation Trustee to re-classify any Allowed Claim or Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

14.3 *Payment of Statutory Fees.*

All U.S. Trustee Fees due and payable on or prior to the Effective Date shall be paid by the Debtors in full in Cash on the Effective Date or as soon as is reasonably practicable thereafter. On and after the Effective Date, the Liquidation Trustee shall pay any and all U.S. Trustee Fees in full in Cash when due and payable. Each Debtor or the Liquidation Trustee shall remain obligated to pay U.S. Trustee Fees until the earliest of that particular Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code. All U.S. Trustee

Fees are Allowed. The U.S. Trustee shall not be required to file any Administrative Claim in the case and shall not be treated as providing any release under the Plan with respect to the payment of the U.S. Trustee Fees.

The Debtors shall file all monthly operating reports due on or prior to the Effective Date when they become due, using UST Form 11-MOR. After the Effective Date, the Liquidation Trustee shall file with the Bankruptcy Court separate UST Form 11-PCR reports on behalf of each of the Wind-Down Estates when they become due.

14.4 *Amendments.*

(a) *Plan Modifications*. Prior to the Effective Date, the Plan may be amended, modified or supplemented by the Debtors, with the consent of the Committee or as ordered by the Bankruptcy Court, in the manner provided for by section 1127 of the Bankruptcy Code or as otherwise permitted by law without additional disclosure pursuant to section 1125 of the Bankruptcy Code. In addition, after the Confirmation Date but before substantial consummation of the Plan, the Debtors may, after consultation with the Committee, institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan or the Confirmation Order, with respect to such matters as may be necessary to carry out the purposes and effects of the Plan.

(b) O*ther Amendments*. Before the Effective Date, to the extent provided in section 1127 of the Bankruptcy Code, the Debtors, with the consent of the Committee or court order, may make appropriate technical adjustments and modifications to the Plan and any of the documents prepared in connection herewith.

14.5 *Revocation or Withdrawal of the Plan.*

The Debtors reserve the right, in consultation with the Committee, to revoke or withdraw the Plan for one or all Debtors prior to the Confirmation Date. If the Debtors revoke or withdraw the Plan, or if Confirmation or Consummation does not occur, then: (i) the Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain of any Claim or Interest or Class of Claims or Interests), assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void; and (ii) nothing contained in the Plan shall: (A) constitute a waiver or release of any Claims or Interests; (B) prejudice in any manner the rights of the Debtors, the Debtors' Estates, or any other Entity; or (C) constitute an admission, acknowledgement, offer, or undertaking of any sort by the Debtors, the Debtors' Estates, or any other Entity.

14.6 *Severability of Plan Provisions Upon Confirmation.*

If, before the entry of the Confirmation Order, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court, at the request of the Debtors, in consultation with the Committee, shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such

holding, alteration or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is (i) valid and enforceable pursuant to its terms; (ii) integral to the Plan and may not be deleted or modified without the consent of the Debtors or the Liquidation Trustee (as the case may be); and (iii) nonseverable and mutually dependent.

14.7 *Governing Law.*

Except to the extent that the Bankruptcy Code or other federal law is applicable, or to the extent an exhibit hereto provides otherwise, the rights, duties and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without giving effect to the principles of conflict of laws thereof.

14.8 *Time.*

In computing any period of time prescribed or allowed by the Plan, unless otherwise set forth herein or determined by the Bankruptcy Court, the provisions of Bankruptcy Rule 9006 shall apply.

14.9 *Additional Documents.*

On or before the Effective Date, the Debtors may file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors, the Liquidation Trustee, and all holders of Claims or Interests receiving distributions pursuant to the Plan and all other parties in interest shall, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

14.10 *Immediate Binding Effect.*

Notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan shall be immediately effective and enforceable and deemed binding upon and inure to the benefit of the Debtors, the holders of Claims and Interests, the Releasing Parties, the Released Parties, the Exculpated Parties, and each of their respective successors and assigns, including, without limitation, the Liquidation Trustee.

14.11 *Successor and Assigns.*

The rights, benefits and obligations of any Person named or referred to in the Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or permitted assign, if any, of each Entity.

14.12 *Entire Agreement.*

On the Effective Date, the Plan and the Confirmation Order shall supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings and representations on such subjects, all of which have become merged and integrated into the Plan.

14.13 *Notices.*

All notices, requests and demands to or upon the Debtors or the Liquidation Trustee, as applicable, to be effective shall be in writing (including by facsimile transmission) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

(a) if to the Debtors:

Fulcrum BioEnergy, Inc.
P.O. Box 220
Pleasanton, CA 94566
Attention: Mark J. Smith
Richard D. Barraza
Email: msmith@fulcrum-bioenergy.com
rbarraza@fulcrum-bioenergy.com

-and-

Morris Nichols Arsht & Tunnell LLP
1201 North Market Street
Wilmington, Delaware 19899-1347
Attention: Robert J. Dehney
Curtis S. Miller
Clint M. Carlisle
Email: rdehney@morrisnichols.com
cmiller@morrisnichols.com
ccarlisle@morrisnichols.com

(a) If to the Committee:

Eversheds Sutherland (US) LLP
1114 Avenue of the Americas, 40th Floor
New York, NY 10036
Attention: Todd C. Meyers
Jennifer B. Kimble
Email: toddmeyers@eversheds-sutherland.com
jenniferkimble@eversheds-sutherland.com

-and-

Morris James LLP
500 Delaware Avenue, Suite 1500
Wilmington, DE 19801-1494
Attention: Jeffrey R. Waxman
Email: jwaxman@morrisjames.com

(b) if to the Liquidation Trust, to the parties designated for notice and in the manner set forth in the Liquidation Trust Agreement.

After the Effective Date, any party must file a renewed request to receive documents pursuant to Bankruptcy Rule 2002. After the Effective Date, the Liquidation Trust is authorized to limit the list of Entities receiving documents pursuant to Bankruptcy Rule 2002 to (i) those Entities who have filed such renewed requests and (ii) those Entities whose rights are affected by such documents and/or the relief requested therein.

Dated: February 3, 2025

Respectfully submitted,

By: */s/ Mark J. Smith*
Name: Mark J. Smith
Title: Chief Restructuring Officer

EXHIBIT A

Debtors' Directors and Officers that Have Served Postpetition

1. Carin Marcy Barth
2. Andrew C. Kidd
3. Mark J. Smith
4. Richard D. Barraza

Exhibit B: Liquidation Analysis

[To Come]