

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

FULCRUM BIOENERGY, INC., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 24-12008 (TMH)

(Joint Administration Requested)

**DEBTORS' MOTION FOR ENTRY OF AN 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**

The above-captioned debtors and debtors in possession (collectively, the “Debtors” and, together with their non-Debtor affiliates, “Fulcrum”) respectfully state as follows in support of this motion (this “Motion”):

**BACKGROUND**

1. On September 9, 2024 (the “Petition Date”), the Debtors commenced these cases by filing voluntary petitions for relief under chapter 11 of title 11 of the Bankruptcy Code. The Debtors are authorized to continue managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors have requested that their cases be consolidated for procedural purposes only and administered jointly. No trustee, examiner, or official committee has been appointed in these chapter 11 cases.

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



241200824091000000000006

2. The Debtors were formed in 2007 to develop and implement a commercially viable “waste to fuel” process whereby trash is converted into usable fuel through the utilization of gasification and other technologies. The Debtors’ Sierra BioFuels Plant (the “Sierra Plant”) located approximately twenty miles east of Reno, Nevada, began successfully producing low carbon synthetic crude oil from landfill waste in December 2022.

3. Despite the Debtors’ successful proof of concept at the Sierra Plant and substantial progress with ongoing research and development, the Debtors have faced significant liquidity issues in the last few years and were forced to cease operations at the Sierra Plant in May 2024. The Debtors have determined that a comprehensive financial restructuring, through chapter 11 bankruptcy is the only path forward to realize value on the Debtors assets for the benefit of its stakeholders.

4. Additional details regarding the Debtors and the circumstances that led to the filing of these chapter 11 cases and the facts and circumstances supporting the relief requested herein is set forth in the *Declaration of Mark Smith, Restructuring Advisor to Fulcrum BioEnergy, Inc. in Support of the Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”) filed simultaneously herewith and incorporated herein by reference.<sup>2</sup>

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012.

---

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the First Day Declaration.

6. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Debtors consent, pursuant to rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), to the entry of a final order by this Court in connection with this Motion to the extent that it is later determined that this Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

7. Venue is proper pursuant to 28 U.S.C. §§ 408 and 1409.

8. The bases for the relief requested herein are sections 105(a) and 366 of the Bankruptcy Code and Rules 2002, 6003, and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

### **RELIEF REQUESTED**

9. By this Motion, the Debtors seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** (the “Interim Order”) and **Exhibit B** (the “Final Order,” and together with the Interim Order, the “Proposed Orders”), respectively: (i) prohibiting Utility Companies (as defined below) from altering, refusing, or discontinuing services to the Debtors; (ii) approving the Proposed Adequate Assurance (as defined below); (iii) approving the proposed procedures for resolving Additional Assurance Requests (as defined below); and (iv) granting certain related relief. In addition, the Debtors request that this Court schedule a hearing (the “Final Hearing”) to consider entry of the Final Order no later than thirty (30) days from the date hereof.

### **UTILITY SERVICES AND PROPOSED ADEQUATE ASSURANCE**

#### **I. Utility Services and Utility Companies.**

10. The Debtors obtain, either directly or indirectly, electricity, natural gas, water and sewage, internet, and other similar services (collectively, the “Utility Services”) from several utility companies (each, a “Utility Company,” and collectively, the “Utility Companies”).

The Debtors obtain certain Utility Services the Debtors' landlords. Fulcrum BioEnergy, Inc. and/or Fulcrum Sierra BioFuels LLC pays certain Utility Companies directly for the applicable Utility Services.<sup>3</sup> A nonexclusive list of the Utility Companies that provide Utility Services to the Debtors as of the Petition Date is annexed to this Motion as **Exhibit C** (the "Utility Services List") and incorporated herein by reference.<sup>4</sup>

11. On average, the Debtors pay approximately \$35,000 each month for the Utility Services. The Debtors estimate that their cost for Utility Services during the thirty days following the Petition Date will be approximately \$35,000. To the best of the Debtors' knowledge, none of the Utility Companies hold deposits from the Debtors, and the Debtors are not in possession of any funds allocated for any prepayments for the Utility Services.

12. Should any Utility Company refuse or discontinue service, even for a brief period, it would impair the Debtors' ability to manage their restructuring efforts and jeopardize the Debtors' sale process to the detriment of all stakeholders in these chapter 11 cases. It is essential that the Utility Services continue uninterrupted during these chapter 11 cases.

## **II. Proposed Adequate Assurance of Payment.**

13. The Debtors intend, in accordance with their prepetition practices, to continue paying postpetition obligations owed to the Utility Companies in a timely manner. The Debtors believe that with access to debtor-in-possession financing, they will have sufficient liquidity for

---

<sup>3</sup> The following Utility Companies are paid directly by Fulcrum BioEnergy, Inc. and/or Fulcrum Sierra BioFuels, LLC: NV Energy; Waste Management, Tri General Improvement District, Sky Fiber Internet, AT&T Internet and Canyon General Improvement District.

<sup>4</sup> Although the Debtors believe that the Utility Companies List includes all of their Utility Companies, the Debtors reserve the right to supplement such list if they inadvertently omitted any Utility Company. Additionally, inclusion or exclusion of an entity on the Utility Companies List is not an admission by the Debtors that such entity is, or is not, a utility within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve all rights with respect to any such determination. The Debtors request relief applicable to all Utility Companies, regardless of whether such Utility Company is specifically identified in **Exhibit C** of the Motion.

them to do so. This should constitute sufficient adequate assurance of payment for postpetition Utility Services in satisfaction of section 366 of the Bankruptcy Code.

14. To provide additional assurance of payment, the Debtors propose to deposit \$17,500 (the “Adequate Assurance Deposit”) into a newly created segregated account (the “Adequate Assurance Account”) as soon as reasonably practicable, but no later than twenty (20) business days after entry of the Interim Order. The Adequate Assurance Deposit represents an amount equal to approximately half of the Debtors’ average monthly cost of Utility Services, calculated based on the Debtors’ average utility expenses for the three-month<sup>5</sup> period preceding the Petition Date. The Adequate Assurance Deposit will be held in the Adequate Assurance Account for the benefit of the Utility Companies for the duration of these chapter 11 cases and may be applied to any postpetition defaults in payment to the Utility Companies.

15. The Adequate Assurance Deposit and the Debtors’ cash flow from the proposed debtor-in-possession financing (collectively, the “Proposed Adequate Assurance”) demonstrates the Debtors’ ability to pay for future Utility Services in accordance with their prepetition practices and constitutes sufficient adequate assurance to the Utility Companies in full satisfaction of section 366 of the Bankruptcy Code.

### **III. The Proposed Adequate Assurance Procedures.**

16. Any Utility Company that is not satisfied with the Proposed Adequate Assurance may make a request for additional or different adequate assurance of future payment (each, an “Additional Assurance Request”) pursuant to the adequate assurance procedures set forth in the Order (the “Adequate Assurance Procedures”). The Adequate Assurance Procedures will

---

<sup>5</sup> The Debtors ceased operations in May of 2024, significantly reducing the scope of utilities being utilized by the Debtors on a go-forward basis.

implement a streamlined process for Utility Companies to address potential concerns with respect to the Proposed Adequate Assurance, while allowing the Debtors to continue their business operations uninterrupted. The Adequate Assurance Procedures permit a Utility Company to object to the Proposed Adequate Assurance by serving an Adequate Assurance Request upon certain Notice Parties (as defined in the Interim Order). The Debtors, in their discretion, may then resolve any Adequate Assurance Request by mutual agreement with the Utility Company without further order of the Court. If the Debtors determine that the Adequate Assurance Request cannot be resolved by mutual agreement, the Debtors may seek Court resolution of the Adequate Assurance Request. Absent compliance with the Adequate Assurance Procedures, the Utility Companies including, without limitation, those listed on the Utility Company List, shall be prohibited from altering, refusing, or discontinuing Utility Services, or otherwise discriminating against the Debtors, on account of any unpaid prepetition charges or any perceived inadequacy of the Debtors' Proposed Adequate Assurance.

#### **IV. Modifications to the Utility Companies List.**

17. The Debtors have made an extensive and good-faith effort to identify all Utility Companies and include them on the Utility Companies List. To the extent the Debtors subsequently identify additional Utility Companies or discontinue any Utility Services, the Debtors seek authority, in their discretion, to amend the Utility Companies List to add or remove any Utility Company. The Debtors will (i) file any such amendments, (ii) serve any Utility Company that is subsequently added to the Utility Services List with a copy of the Motion, the applicable Approval Interim Order, and the amended Utility Services List, and (iii) increase or decrease the Adequate Assurance Deposit to account for such Utility Company. The Debtors request that the terms of the Approval Order apply to any such subsequently added Utility Company to the same extent as if the Utility Company was listed on the Utility Services List

attached hereto. The Debtors also request the authority to decrease the Adequate Assurance Deposit to account for the removal of any Utility Company from the Utility Services List.

### **BASIS FOR RELIEF**

18. Section 366 of the Bankruptcy Code protects a debtor against the immediate termination or alteration of utility services after the Petition Date. *See* 11 U.S.C. § 366. Section 366(c) of the Bankruptcy Code requires the debtor to provide “adequate assurance” of payment for postpetition services in a form “satisfactory” to the utility Company within thirty (30) days of the petition date, or the utility Company may alter, refuse, or discontinue service. 11 U.S.C. § 366(c)(2). Section 366(c)(1) of the Bankruptcy Code enumerates various ways of providing the requisite “adequate assurance” of payment, which include cash deposits. *See* 11 U.S.C. § 366(c)(1). Although assurance of payment must be “adequate,” it need not constitute an absolute guarantee of future payment. *See, e.g., Long Island Lighting Co. v. Great Atl. & Pac. Tea Co. (In re Great Atl. & Pac. Tea Co., Inc.)*, No. 11-cv-1338, 2011 WL 5546954, at \*5 (S.D.N.Y. Nov. 14, 2011) (“Courts will approve an amount that is adequate enough to insure against unreasonable risk of nonpayment, but are not required to give the equivalent of a guaranty of payment in full.”) (citation omitted); *In re Caldor, Inc.—NY*, 199 B.R. 1, 3 (S.D.N.Y. 1996) (“Section 366(b) requires the [b]ankruptcy [c]ourt to determine whether the circumstances are sufficient to provide a utility with adequate assurance of payment. The statute does not require an absolute guarantee of payment.”) (internal quotation and citation omitted), *aff’d sub nom. Va. Elec. & Power Co. v. Caldor, Inc.—N.Y.*, 117 F.3d 646 (2d Cir. 1997).

19. To determine whether a given assurance of payment is “adequate,” courts examine the totality of the circumstances to determine whether the utility company will be subject to an unreasonable risk of nonpayment. *See Mass. Elec. Co. v. Keydata Corp. (In re Keydata Corp.)*, 12 B.R. 156, 158 (B.A.P. 1st Cir. 1981) (citing *In re Cunha*, 1 B.R. 330 (Bankr. E.D. Va. 1979));

*In re Adelphia Bus. Sols., Inc.*, 280 B.R. 63, 82-83 (Bankr. S.D.N.Y. 2002). Courts have recognized that, in determining the requisite level of adequate assurance, “a bankruptcy court must focus upon the need of the utility for assurance, and . . . require that the debtor supply no more than that, since the debtor almost perforce has a conflicting need to conserve scarce financial resources.” *Va. Elec. & Power Co.*, 117 F.3d at 650 (internal quotations omitted) (citing *In re Penn Jersey Corp.*, 72 B.R. 981, 985 (Bankr. E.D. Pa. 1987)); *see also In re Penn. Cent. Transp. Co.*, 467 F.2d 100, 103-04 (3d Cir. 1972) (affirming bankruptcy court’s ruling that no utility deposits were necessary where such deposits likely would “jeopardize the continuing operation of the [debtor] merely to give further security to suppliers who already are reasonably protected”). Accordingly, demands by a Utility Company for excessive assurance of payment should be refused when the specific circumstances of a particular debtor already afford “adequate” assurance of payment.

20. Here, the Utility Companies are adequately assured against any risk of nonpayment for future services. The Debtors endeavor to pay all utility bills on time in the ordinary course of business. The Adequate Assurance Deposit and the Debtors’ ongoing ability to meet obligations as they come due in the ordinary course provide assurance that the Debtors will pay their future obligations to the Utility Companies.

21. Courts are permitted to fashion reasonable procedures to implement the protections afforded under section 366 of the Bankruptcy Code. *See, e.g., In re Circuit City Stores, Inc.*, No. 08-35653, 2009 WL 484553, at \*5 (Bankr. E.D. Va. Jan. 14, 2009) (“The plain language of § 366 of the Bankruptcy Code allows the Court to adopt the Procedures set forth in the Utility Order.”). Such procedures are important because without them the Debtors “could be forced to address



numerous requests by utility companies in an unorganized manner at a critical period in their efforts to reorganize.” *Id.*

22. The Debtors submit that the Adequate Assurance Procedures constitute such reasonable procedures: notwithstanding the fact that the Proposed Adequate Assurance constitutes sufficient assurance of future payment to the Utility Companies, all rights the Utility Companies have under sections 366 of the Bankruptcy Code are wholly preserved. While, under the proposed Adequate Assurance Procedures, the Utility Companies have the right to request modification of the Proposed Adequate Assurance, the Adequate Assurance Procedures avoid a haphazard and disorganized process whereby each Utility Company could make an extortionate, last-minute demand for adequate assurance that would force the Debtors to pay under the threat of losing critical Utility Services. *See id.* at \*5-6.

23. Furthermore, section 105(a) of the Bankruptcy Code authorizes the Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” The Proposed Adequate Assurance and the Adequate Assurance Procedures are reasonable, necessary, and appropriate to carry out the provisions of section 366 of the Bankruptcy Code. Accordingly, approving the Proposed Adequate Assurance and the Adequate Assurance Procedures is within the Court’s powers.

24. Similar procedures have been approved by courts in this district. *See, e.g., In re Mallinckrodt PLC*, Case No. 23-11258 (JTD) (Bankr. D. Del. Sept. 15, 2023); *In re AeroFarms, Inc.*, Case No. 23-10737 (MFW) (Bankr. D. Del. June 29, 2023); *In re DCL Holdings (USA), Inc.*, Case No. 22-11319 (JKS) (Bankr. D. Del. Apr. 27, 2023); *In re Virgin Orbit Holdings, Inc.*, Case No. 23-10405 (KBO) (Bankr. D. Del. Apr. 5, 2023); *In re Ruby Pipeline*, Case No. 22-10278

(CTG) (Bankr. D. Del. May 24, 2022); *In Pipeline Foods, LLC*, Case No. 21-11002 (KBO) (Bankr. D. Del. Aug. 3, 2021).

25. For the foregoing reasons, the Debtors submit that the Proposed Adequate Assurance and the Adequate Assurance Procedures are reasonable and in accord with the purposes of section 366 of the Bankruptcy Code, and therefore, the Court should grant the relief requested herein.

**THE REQUIREMENTS OF BANKRUPTCY RULE 6003 ARE SATISFIED**

26. Bankruptcy Rule 6003 empowers a court to grant relief within the first twenty-one (21) days after the Petition Date “to the extent that relief is necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003. For the reasons stated herein, the relief requested herein is integral to the Debtors’ ability to preserve the value of their assets during the immediate postpetition period, and ultimately, maximize the value of their estates for the benefit of all stakeholders. Failure to obtain the requested relief during the first twenty-one (21) days of these chapter 11 cases would severely disrupt the Debtors’ operations at this critical juncture. Accordingly, the Debtors submit that they have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 and that the relief requested should be granted immediately.

**WAIVER OF BANKRUPTCY RULES 6004 (a) AND 6004(h)**

27. To better implement the foregoing, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen (14) day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h). As set forth above, the relief requested herein is essential to prevent immediate and irreparable damage to the Debtors’ operations, going concern value, and their efforts to pursue a resolution to these chapter 11 cases.

**RESERVATION OF RIGHTS**

28. Nothing contained herein or any actions taken pursuant to such relief requested is intended or shall be construed as (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law, (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds, (c) a promise or requirement to pay any claim, (d) an implication or admission that any particular claim is of a type specified or defined in this Motion or any order granting the relief requested in this Motion or a finding that any particular claim is an administrative expense claim or other priority claim, (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code, (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates, (g) a waiver or limitation of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law, or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in this Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' or any other party in interest's rights to subsequently dispute such claim.

**NOTICE**

29. Notice of this Motion is being provided to: (a) the Office of the United States Trustee (Attn: Rosa Sierra-Fox (rosa.sierra-fox@usdoj.gov)); (b) the Utility Providers identified on the Utility Providers List; (c) the Debtors' prepetition secured lender[s]; (d) UMB Bank, N.A.

(a) Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, NY 10065, Attn: Alexander Woolverton (awoolverton@kramerlevin.com); Douglas Buckley (dbuckley@kramerlevin.com), and (b) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Andrew Magaziner (amagaziner@ycst.com); (e) the Internal Revenue Service; (f) the parties included on the Debtors' consolidated list of their thirty (30) largest unsecured creditors; (g) the United States Attorney's Office for the District of Delaware; (h) the Securities and Exchange Commission; and (i) any party that has requested notice pursuant to Bankruptcy Rule 2002. As this Motion is seeking first-day relief, the Debtors will serve copies of this Motion and any order entered in respect of this Motion as required by Local Rule 9013-1(m). The Debtors respectfully submit that no further notice of this Motion is required under the circumstances.

#### **CONCLUSION**

WHEREFORE, the Debtors respectfully request entry of the Proposed Orders, substantially in the form attached hereto as **Exhibit A** and **Exhibit B**, granting the relief requested herein and such other and further relief as may be just and proper.

Dated: September 10, 2024  
Wilmington, Delaware

**MORRIS, NICHOLS, ARSHT & TUNNELL LLP**

/s/ Clint M. Carlisle

Robert J. Dehney, Sr. (No. 3578)

Curtis S. Miller (No. 4583)

Daniel B. Butz (No. 4227)

Clint M. Carlisle (No. 7313)

Avery Jue Meng (No. 7238)

1201 N. Market Street, 16th Floor

P.O. Box 1347

Wilmington, Delaware 19899-1347

Telephone: (302) 658-9200

Facsimile: (302) 658-3989

Email: rdehney@morrisnichols.com

cmiller@morrisnichols.com

dbutz@morrisnichols.com

ccarlisle@morrisnichols.com

ameng@morrisnichols.com

*Proposed Counsel to the Debtors and Debtors in  
Possession*

**Exhibit A**

**Proposed Interim Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

FULCRUM BIOENERGY, INC., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 24-12008 (TMH)

(Joint Administration Requested)

**Re: D.I. \_\_\_\_\_**

**INTERIM 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**

---

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an interim order: (i) prohibiting Utility Companies from altering, refusing, or discontinuing services to the Debtors; (ii) approving the Proposed Adequate Assurance; (iii) approving the proposed procedures for resolving Additional Assurance Requests; and (iv) granting certain related relief, all as more fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue in this district is proper pursuant

---

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

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the notice of the Motion and of the opportunity to be heard at the hearing thereon were appropriate under the circumstances and that no other notice need be provided, except as set forth herein; and this Court having reviewed the Motion and the First Day Declaration and having heard the statements and argument in support of the relief requested at a hearing before this Court (the “Hearing”); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT:**

1. The Motion is granted on an interim basis as set forth herein (this “Interim Order”).
2. The Final Hearing shall be held on \_\_\_\_\_, 2024, at \_\_\_\_:\_\_\_\_.m., prevailing Eastern Time. Any objections or responses to entry of the Final Order shall be filed on or before 4:00 p.m., prevailing Eastern Time on \_\_\_\_\_, 2024 (the “Objection Deadline”), and served on the following parties: (i) the Debtors, P.O. Box 220 Pleasanton, CA 94566; (ii) proposed counsel to the Debtors, (a) Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, 16<sup>th</sup> Floor, P.O. Box 1347, Wilmington, DE 19899-1347, Attn: Robert J. Dehney Sr. (rdehney@morrisnichols.com); Curtis S. Miller (cmiller@morrisnichols.com); Dan B. Butz (dbutz@morrisnichols.com); (iii) counsel to the DIP Agent, DIP Lender, Latham & Watkins LLP, 1271 Avenue of the Americas, New York, NY 10020, Attn: Brian S. Rosen (Brian.Rosen@lw.com) and Adam Goldberg (Adam.Goldberg@lw.com); (iv) the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Rosa Sierra-Fox (rosa.sierra-fox@usdoj.gov); (iv) the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Rosa Sierra-Fox (rosa.sierra-fox@usdoj.gov); and (v) any statutory committee appointed in these chapter 11 cases. If no objections or responses are timely filed and



served as set forth herein, the Debtors may, in accordance with the Local Rules, submit to the Court the Final Order, substantially in the form of **Exhibit B** attached to the Motion, which may be entered with no further notice or need for the Final Hearing.

3. Subject to the Adequate Assurance Procedures, the Proposed Adequate Assurance is hereby deemed to constitute adequate assurance of future payment to the Utility Companies as required by section 366 of the Bankruptcy Code.

4. Until such time as the Court enters the Final Order, the Utility Companies are prohibited from altering, refusing, or discontinuing Utility Services, or otherwise discriminating against the Debtors, on account of any unpaid prepetition charges, the commencement of these chapter 11 cases, or any perceived inadequacy of the Proposed Adequate Assurance.

5. The Debtors are directed to cause the Adequate Assurance Deposit to be held in the Adequate Assurance Account during the pendency of these chapter 11 cases. No liens shall encumber the Adequate Assurance Deposit or the Adequate Assurance Account.

6. The following Adequate Assurance Procedures are hereby approved on an interim basis:

- a. The Debtors shall serve a copy of the Motion and this Interim Order on each Utility Company listed on the Utility Services List as soon as practicable following entry thereof, in accordance with Local Rule 9013-1(m)(iv).
- b. Within fifteen (20) business days after entry of the Interim Order, the Debtors shall deposit \$17,500 into the Adequate Assurance Account.
- c. If any amount on account of postpetition Utility Services is unpaid, and remains unpaid beyond any applicable grace period, the applicable Utility Company may request a disbursement from the Adequate Assurance Account by giving notice to: (i) the Debtors, P.O. Box 220 Pleasanton, CA 94566; (ii) proposed counsel to the Debtors, Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, 16<sup>th</sup> Floor, P.O. Box 1347, Wilmington, DE 19899-1347, Attn: Robert J. Dehney Sr. (rdehney@morrisnichols.com); Curtis S. Miller (cmiller@morrisnichols.com); Dan B. Butz (dbutz@morrisnichols.com); Clint M. Carlisle (ccarlisle@morrisnichols.com); Avery Jue Meng

(ameng@morrisnichols.com); (iii) [counsel to the DIP Agent, DIP Lender] Latham & Watkins LLP, 1271 Avenue of the Americas, New York, NY 10020, Attn: Brian S. Rosen (Brian.Rosen@lw.com) and Adam Goldberg (Adam.Goldberg@lw.com); (iv) the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Rosa Sierra-Fox (rosa.sierra-fox@usdoj.gov); (v) counsel to UMB Bank, N.A.: (a) Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, NY 10065, Attn: Alexander Woolverton (awoolverton@kramerlevin.com); Douglas Buckley (dbuckley@kramerlevin.com), and (b) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Andrew Magaziner (amagaziner@ycst.com); and (vi) any statutory committee appointed in these chapter 11 cases (collectively, the “Adequate Assurance Notice Parties”). The Debtors shall honor such request within ten (10) business days after the date on which they receive the request, unless the Debtors and the requesting Utility Company resolve the issues raised in such request without resorting to disbursement from the Adequate Assurance Account. To the extent a Utility Company receives a disbursement from the Adequate Assurance Account, the Debtors shall replenish the Adequate Assurance Account in the amount so disbursed.

- d. Any Utility Company desiring additional assurance of payment in the form of deposits, prepayments, or otherwise must serve a request for such additional assurance (an “Adequate Assurance Request”) on the Adequate Assurance Notice Parties.
- e. Any Additional Assurance Request must (i) be in writing; (ii) identify the location(s) for which the applicable Utility Services are being provided and the applicable account number(s); (iii) provide evidence that the Debtors have a direct obligation to the Utility Company; (iv) summarize the Debtors’ payment history relevant to the affected account(s) for the past twelve (12) months, including the outstanding overdue amount and the amount of any security deposit(s); (v) certify that the Utility Company is not being paid in advance for its services; and (vi) set forth the Utility Company’s reasons for believing that the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.
- f. Any Utility Company that does not file an Additional Assurance Request shall be (i) deemed to have received adequate assurance of payment “satisfactory” to such Utility Company in compliance with section 366 of the Bankruptcy Code and (ii) forbidden to (1) discontinue, alter, refuse services to, or discriminate against, the Debtors on account of any unpaid prepetition charges or (2) require any assurance of payment other than the Proposed Adequate Assurance.

- g. The Debtors shall have thirty (30) calendar days from the receipt of an Additional Assurance Request (the “Resolution Period”) to negotiate a resolution of such Additional Assurance Request.
- h. The Debtors may, and without further order of the Court, (i) resolve any Additional Assurance Request by mutual agreement with the applicable Utility Company and (ii) in connection with any such agreement, provide such Utility Company with additional adequate assurance of future payment, including, but not limited to, a cash deposit, prepayment, or another form of security.
- i. If the Debtors determine that the Additional Assurance Request is not reasonable and are unable to reach a resolution with the applicable Utility Company during the Resolution Period, they shall, during the Resolution Period or immediately thereafter, request a hearing before the Court to determine the adequacy of the Proposed Assurance of Payment with respect to such Utility Company pursuant to section 366(c)(3) of the Bankruptcy Code.
- j. Pending resolution of the Adequate Assurance Request by the Court, the applicable Utility Company shall be prohibited to alter, refuse, or discontinue its Utility Services to the Debtors on account of unpaid charges for prepetition services, a pending Adequate Assurance Request, or any objections to the Proposed Adequate Assurance.
- k. Without a further order of the Court, (i) the portion of the Adequate Assurance Deposit attributable to any Utility Company shall be returned to the Debtors (1) on the date on which the Debtors reconcile and pay such Utility Company’s final invoice in accordance with applicable non-bankruptcy law following the termination of the Utility Services provided by such Utility Company and (2) when there are no outstanding disputes related to postpetition payments due to such affected Utility Company and (ii) the Adequate Assurance Account may be closed, and any remaining portion of the Adequate Assurance Deposit returned to the Debtors, on the earlier of the effective date of the chapter 11 plan or such other time that the applicable chapter 11 case is closed. Any funds returned to the Debtors pursuant to this provision shall be subject to the terms and conditions of any then-applicable DIP Orders (as defined below).

7. The Utility Companies are prohibited from requiring additional adequate assurance of payment other than pursuant to the Adequate Assurance Procedures set forth herein.

8. Unless and until a Utility Company serves an Additional Assurance Request on the Debtors and the other Adequate Assurance Notice Parties, such Utility Company shall be: (i)

deemed to have received adequate assurance of payment “satisfactory” to such Utility Company in compliance with section 366 of the Bankruptcy Code and (ii) forbidden to (a) discontinue, alter, or refuse services to, or discriminate against, the Debtors on account of any unpaid prepetition charges, and (b) require additional assurance of payment other than the Proposed Adequate Assurance.

9. The inclusion of any entity in, as well as any omission of any entity from, the Utility Companies List shall not be deemed an admission by the Debtors that such entity is, or is not, a utility within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve all rights and defenses with respect thereto.

10. The Debtors are authorized to: (a) add any Subsequently Identified Utility Company to the Utility Companies List; (b) remove any Utility Company from the Utility Companies List; and (c) add to or subtract from the Adequate Assurance Deposit the portion of such deposit allocated to added or removed Utility Companies or Subsequently Identified Utility Companies; *provided* that the Debtors shall provide notice to the Subsequently Identified Utility Company of its addition to the Utility Companies List and of its corresponding proposed Adequate Assurance Deposit; *provided further*, that the Debtors shall provide fourteen (14) days’ notice to the Utility Company that it is being removed from the Utility Companies List and that the corresponding amount in the Adequate Assurance Deposit will be deducted from the Adequate Assurance Account. If an objection is received, the Debtors may request a hearing before this Court regarding such objection. The Debtors shall not deduct the Adequate Assurance Deposit in the amount set aside for any Utility Company that the Debtors seek to terminate or delete from the Utility Companies List unless and until the fourteen (14) day notice period has expired.

11. The Debtors must: (a) serve any Subsequently Identified Utility Company a copy of the Motion and Order within three (3) business days of such Company being added to the Utility Companies List; (b) allocate additional amounts to the Adequate Assurance Deposit in accordance with this Order; and (c) provide notice to the Subsequently Identified Utility Company of its proposed Adequate Assurance Deposit. Any Subsequently Identified Utility Company shall (a) be bound to the Adequate Assurance Procedures and (b) have twenty-one (21) days from the date of service of the Motion and the Order to make a request for additional adequate assurance of payment in accordance with the Adequate Assurance Procedures.

12. Notwithstanding the relief granted herein and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in the Motion or any order granting the relief requested by the Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in the Motion are

valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

13. The banks and financial institutions on which checks were drawn or electronic funds transfer requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order.

14. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

15. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

16. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

17. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

18. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order.

19. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

**Exhibit B**

**Proposed Final Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

FULCRUM BIOENERGY, INC., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 24-12008 (TMH)

(Joint Administration Requested)

**Re: D.I. \_\_\_\_**

**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**

---

Upon the motion (the "Motion")<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an interim order: (i) prohibiting Utility Companies from altering, refusing, or discontinuing services to the Debtors; (ii) approving the Proposed Adequate Assurance; (iii) approving the proposed procedures for resolving Additional Assurance Requests; and (iv) granting certain related relief, all as more fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue in this district is proper pursuant

---

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

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.



to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the notice of the Motion and of the opportunity to be heard at the hearing thereon were appropriate under the circumstances and that no other notice need be provided, except as set forth herein; and this Court having reviewed the Motion and the First Day Declaration and having heard the statements and argument in support of the relief requested at a hearing before this Court (the “Hearing”); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for granting the requested relief on a final basis; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT:**

1. The Motion is granted on a final basis as set forth herein (this “Final Order”).
2. Subject to the Adequate Assurance Procedures, the Proposed Adequate Assurance is hereby deemed to constitute adequate assurance of future payment to the Utility Companies as required by section 366 of the Bankruptcy Code.
3. Until such time as the Court enters the Final Order, the Utility Companies are prohibited from altering, refusing, or discontinuing Utility Services, or otherwise discriminating against the Debtors, on account of any unpaid prepetition charges, the commencement of these chapter 11 cases, or any perceived inadequacy of the Proposed Adequate Assurance.
4. The Debtors are directed to cause the Adequate Assurance Deposit to be held in the Adequate Assurance Account during the pendency of these chapter 11 cases. No liens shall encumber the Adequate Assurance Deposit or the Adequate Assurance Account.
5. The following Adequate Assurance Procedures are hereby approved on a final basis:

- a. The Debtors shall serve a copy of the Motion and this Final Order on each Utility Company listed on the Utility Services List as soon as practicable following entry thereof, in accordance with Local Rule 9013-1(m)(iv).
- b. If any amount on account of postpetition Utility Services is unpaid, and remains unpaid beyond any applicable grace period, the applicable Utility Company may request a disbursement from the Adequate Assurance Account by giving notice to: (i) the Debtors, P.O. Box 220 Pleasanton, CA 94566; (ii) proposed counsel to the Debtors, (a) Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, 16<sup>th</sup> Floor, P.O. Box 1347, Wilmington, DE 19899-1347, Attn: Robert J. Dehney Sr. (rdehney@morrisnichols.com); Curtis S. Miller (cmiller@morrisnichols.com); Dan B. Butz (dbutz@morrisnichols.com); Clint M. Carlisle (ccarlisle@morrisnichols.com); Avery Jue Meng (ameng@morrisnichols.com); (iii) counsel to the DIP Agent, DIP Lender Latham & Watkins LLP, 1271 Avenue of the Americas, New York, NY 10020, Attn: Brian S. Rosen (Brian.Rosen@lw.com) and Adam Goldberg (Adam.Goldberg@lw.com); (iv) the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Rosa Sierra-Fox (rosa.sierra-fox@usdoj.gov); (v) counsel to UMB Bank, N.A.: (a) Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, NY 10065, Attn: Alexander Woolverton (awoolverton@kramerlevin.com); Douglas Buckley (dbuckley@kramerlevin.com), and (b) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Andrew Magaziner (amagaziner@ycst.com), and (vi) any statutory committee appointed in these chapter 11 cases (collectively, the “Adequate Assurance Notice Parties”). The Debtors shall honor such request within ten (10) business days after the date on which they receive the request, unless the Debtors and the requesting Utility Company resolve the issues raised in such request without resorting to disbursement from the Adequate Assurance Account. To the extent a Utility Company receives a disbursement from the Adequate Assurance Account, the Debtors shall replenish the Adequate Assurance Account in the amount so disbursed.
- c. Any Utility Company desiring additional assurance of payment in the form of deposits, prepayments, or otherwise must serve a request for such additional assurance (an “Adequate Assurance Request”) on the Adequate Assurance Notice Parties.
- d. Any Additional Assurance Request must (i) be in writing; (ii) identify the location(s) for which the applicable Utility Services are being provided and the applicable account number(s); (iii) provide evidence that the Debtors have a direct obligation to the Utility Company; (iv) summarize the Debtors’ payment history relevant to the affected account(s) for the past twelve (12) months, including the outstanding overdue amount and the amount of any security deposit(s); (v) certify that the Utility Company is

not being paid in advance for its services; and (vi) set forth the Utility Company's reasons for believing that the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.

- e. Any Utility Company that does not file an Additional Assurance Request shall be (i) deemed to have received adequate assurance of payment "satisfactory" to such Utility Company in compliance with section 366 of the Bankruptcy Code and (ii) forbidden to (1) discontinue, alter, refuse services to, or discriminate against, the Debtors on account of any unpaid prepetition charges or (2) require any assurance of payment other than the Proposed Adequate Assurance.
- f. The Debtors shall have thirty (30) calendar days from the receipt of an Additional Assurance Request (the "Resolution Period") to negotiate a resolution of such Additional Assurance Request.
- g. The Debtors may, and without further order of the Court, (i) resolve any Additional Assurance Request by mutual agreement with the applicable Utility Company and (ii) in connection with any such agreement, provide such Utility Company with additional adequate assurance of future payment, including, but not limited to, a cash deposit, prepayment, or another form of security.
- h. If the Debtors determine that the Additional Assurance Request is not reasonable and are unable to reach a resolution with the applicable Utility Company during the Resolution Period, they shall, during the Resolution Period or immediately thereafter, request a hearing before the Court to determine the adequacy of the Proposed Assurance of Payment with respect to such Utility Company pursuant to section 366(c)(3) of the Bankruptcy Code.
- i. Pending resolution of the Adequate Assurance Request by the Court, the applicable Utility Company shall be prohibited to alter, refuse, or discontinue its Utility Services to the Debtors on account of unpaid charges for prepetition services, a pending Adequate Assurance Request, or any objections to the Proposed Adequate Assurance.
- j. Without a further order of the Court, (i) the portion of the Adequate Assurance Deposit attributable to any Utility Company shall be returned to the Debtors (1) on the date on which the Debtors reconcile and pay such Utility Company's final invoice in accordance with applicable non-bankruptcy law following the termination of the Utility Services provided by such Utility Company and (2) when there are no outstanding disputes related to postpetition payments due to such affected Utility Company and (ii) the Adequate Assurance Account may be closed, and any remaining portion of the Adequate Assurance Deposit returned to the Debtors, on the earlier of the effective date of the chapter 11 plan or such other time that the

applicable chapter 11 case is closed. Any funds returned to the Debtors pursuant to this provision shall be subject to the terms and conditions of any then-applicable DIP Orders (as defined below).

6. The Utility Companies are prohibited from requiring additional adequate assurance of payment other than pursuant to the Adequate Assurance Procedures set forth herein.

7. Unless and until a Utility Company serves an Additional Assurance Request on the Debtors and the other Adequate Assurance Notice Parties, such Utility Company shall be: (i) deemed to have received adequate assurance of payment “satisfactory” to such Utility Company in compliance with section 366 of the Bankruptcy Code and (ii) forbidden to (a) discontinue, alter, or refuse services to, or discriminate against, the Debtors on account of any unpaid prepetition charges, and (b) require additional assurance of payment other than the Proposed Adequate Assurance.

8. The inclusion of any entity in, as well as any omission of any entity from, the Utility Companies List shall not be deemed an admission by the Debtors that such entity is, or is not, a utility within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve all rights and defenses with respect thereto.

9. The Debtors are authorized to: (a) add any Subsequently Identified Utility Company to the Utility Companies List; (b) remove any Utility Company from the Utility Companies List; and (c) add to or subtract from the Adequate Assurance Deposit the portion of such deposit allocated to added or removed Utility Companies or Subsequently Identified Utility Companies; *provided* that the Debtors shall provide notice to the Subsequently Identified Utility Company of its addition to the Utility Companies List and of its corresponding proposed Adequate Assurance Deposit; *provided further*, that the Debtors shall provide fourteen (14) days’ notice to the Utility Company that it is being removed from the Utility Companies List and that the corresponding amount in the Adequate Assurance Deposit will be deducted from the Adequate

Assurance Account. If an objection is received, the Debtors may request a hearing before this Court regarding such objection. The Debtors shall not deduct the Adequate Assurance Deposit in the amount set aside for any Utility Company that the Debtors seek to terminate or delete from the Utility Companies List unless and until the fourteen (14) day notice period has expired.

10. The Debtors must: (a) serve any Subsequently Identified Utility Company a copy of the Motion and Order within three (3) business days of such Company being added to the Utility Companies List; (b) allocate additional amounts to the Adequate Assurance Deposit in accordance with this Order; and (c) provide notice to the Subsequently Identified Utility Company of its proposed Adequate Assurance Deposit. Any Subsequently Identified Utility Company shall (a) be bound to the Adequate Assurance Procedures and (b) have twenty-one (21) days from the date of service of the Motion and the Order to make a request for additional adequate assurance of payment in accordance with the Adequate Assurance Procedures.

11. Notwithstanding the relief granted herein and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in the Motion or any order granting the relief requested by the Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of

the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

12. The banks and financial institutions on which checks were drawn or electronic funds transfer requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order.

13. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

14. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

15. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

16. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

17. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order.

18. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

**Exhibit C****Utility Providers**

<b>Name</b>	<b>Utility Provider Address</b>	<b>Category</b>	<b>Account #</b>	<b>Average Monthly Cost</b>	<b>Arrears</b>	<b>Location of Services</b>
<b>AT&amp;T</b>	208 S. Akard St. Dallas, TX 75202	Internet	831-001-0920 778	\$1,326	-	350 Saddle Ct, Sparks, NV 89434
<b>Canyon General Improvement District</b>	800 Peri Ranch Rd, Sparks, NV 89434	Water	3902001	\$100	-	350 Saddle Ct, Sparks, NV 89434
<b>NV Energy</b>	6100 Neil Rd, Reno, NV 89511	Electricity	1000239555808110394	\$22,000	-	350 Saddle Ct, Sparks, NV 89434
			1000239555807260992			350 Saddle Ct, Sparks, NV 89434
			1000239555807946962			3600 Peru Dr, McCarran, NV 89437
			1000239555808000793			3600 Peru Dr, McCarran, NV 89437
<b>NV Energy</b>	6100 Neil Rd, Reno, NV 89511	Gas	1000239555808127091	\$3,000	-	3600 Peru Dr, McCarran, NV 89437
	6100 Neil Rd, Reno, NV 89511		1000239555808127083			3600 Peru Dr, McCarran, NV 89437
	6100 Neil Rd, Reno, NV 89511		1000239555808128131			3600 Peru Dr, McCarran, NV 89437



<b>Sky Fiber Internet</b>	8975 Double Diamond Parkway A9, Sparks, NV 89434	Internet	13479	\$1,900	-	3600 Peru Dr, McCarran, NV 89437
<b>Tri General Improvement District</b>	440 USA Parkway, McCarran, NV 89437	Water & Sewer	1001165.00	\$2,500	\$271,912.61	3600 Peru Dr, McCarran, NV 89437
			1000661.00			3600 Peru Dr, McCarran, NV 89437
			1000662.00			3600 Peru Dr, McCarran, NV 89437
<b>Waste Management</b>	LOCKWOOD REGIONAL LANDFILL, PO Box 54165, Los Angeles, CA 90054	Trash	23-71684-73001	\$4,000	\$69,489.15	3600 Peru Dr, McCarran, NV 89437
			25-03442-23003			3600 Peru Dr, McCarran, NV 89437
			26-27645-53008			3600 Peru Dr, McCarran, NV 89437
			26-43778-33009			690 Overmyer Rd. Sparks, NV 89431