

**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 INTERIM AND FINAL ORDERS (I) AUTHORIZING  
DEBTORS TO (A) CONTINUE INSURANCE PROGRAMS AND SURETY BOND  
PROGRAM, (B) PAY ALL OBLIGATIONS WITH RESPECT THERETO, AND (II)  
GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) 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.

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”)

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<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>.



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. The United States Bankruptcy Court for the District of Delaware (this "Court") has jurisdiction over these chapter 11 cases and this Motion 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. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of these cases and the Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

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

6. 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”), the Debtors consent to the entry of a final order with respect to this Motion if it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

7. The statutory bases for the relief requested in this Motion are sections 105(a), 363, 507 and 541 of Bankruptcy Code, as supplemented by Rule 6003 and 6004(h) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Local Rule 9013-1(m).

### **RELIEF REQUESTED**

8. The Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Interim Order”) and **Exhibit B** (the “Final Order” and, together with the Interim Order, the “Proposed Orders”), authorizing but not directing the Debtors to (i) maintain existing Insurance Policies (as defined below) and to pay on an uninterrupted basis all premiums, Brokerage Fees (as defined below), deductibles and administration fees (collectively, the “Insurance Obligations”) arising thereunder or in connection therewith, including any Insurance Obligations for prepetition periods; and (iii) continue to honor their existing Premium Financing Obligations (as defined below).

9. The Debtors also request that this Court: (a) authorize and direct any and all banks with which the Debtors maintain accounts that the Debtors use to make payments related to the Insurance Policies, Insurance Obligations and the Premium Financing Obligations to receive, process, honor and pay all checks drawn on such accounts and fund transfers for payments with respect to the Insurance Policies, Insurance Obligations and the Premium Financing Obligations

whether presented before or after the Petition Date, provided that sufficient funds are on deposit in the applicable accounts to cover such payments; and (b) granting certain related relief.

### **INSURANCE POLICIES AND RELATED PAYMENT OBLIGATIONS**

10. In the ordinary course of business, the Debtors maintain seventeen insurance policies (each, an “Insurance Policy,” and collectively, the “Insurance Policies”) that are administered by fourteen insurance carriers (the “Insurance Carriers”). These policies provide coverage for both general and commercial business risks, including, but not limited to, coverage for the Debtors’ directors’ and officers’ liability, errors and omissions liability, commercial crime, fiduciary liability, general liability, business automobile, umbrella liability, employers’ liability, property and global property liability. The Debtors have selected policy specifications and insured limits that they believe to be appropriate given the relative risk of loss, the cost of coverage and the industry practice. A schedule of the Insurance Policies is attached hereto as **Exhibit C** to this Motion, which is incorporated herein by reference.<sup>3</sup> As of the Petition Date, the Debtors do not believe they have any accrued and outstanding Insurance Obligations.

11. The Insurance Policies are essential to preserving the value of the Debtors’ property and assets. Much of the coverage provided by the Insurance Policies is required by regulations, laws and contracts that govern the Debtors’ commercial activities. Furthermore, section 1112(b)(4)(C) of the Bankruptcy Code provides that “failure to maintain appropriate insurance that poses a risk to the estate or to the public” is “cause” for mandatory conversion or dismissal.

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<sup>3</sup> The descriptions of the Insurance Policies set forth in this Motion, including on **Exhibit C** to the Motion, constitute a summary only. The actual terms of the Insurance Policies and related agreements will govern in the event of any inconsistency with the descriptions in this Motion. The Debtors request authority to honor existing Insurance Policies and renew Insurance Policies, as applicable, regardless of whether the Debtors inadvertently failed to include a particular Insurance Policy on **Exhibit C** to the Motion, and any such omitted Insurance Policy is hereby included in the defined term “Insurance Policies” as used herein and in the Order.

**I. Insurance Premiums.**

12. In the ordinary course of business, the Debtors pay premium obligations associated with their Insurance Policies (the “Insurance Premiums”) through the Debtors Insurance Broker (as defined herein). The Debtors currently finance eight of their Insurance Policies through one Insurance Premium obligation. For the remaining nine Insurance Policies, the Debtors generally prepay the Insurance Premiums associated with the relevant Insurance Policies at the time of renewal. Most of the Insurance Policies are one year in length and renew at various times throughout the year.

13. The aggregate annual amount of the Insurance Premiums for the Insurance Policies, not including applicable taxes and surcharges, deductibles, brokerage and consulting fees, or commissions, is approximately \$2.6 million. As of the Petition Date, the Debtors believe they owe approximately \$45,000 on account of the Insurance Premiums and certain third-party administration fees related to the Insurance Policies. To ensure uninterrupted coverage under the Insurance Policies, the Debtors seek authority to pay these outstanding prepetition Insurance Premiums owed, including any third-party administration fees related thereto, and to continue to honor their obligations under the Insurance Policies as they come due in the ordinary course of business on a postpetition basis consistent with past practice.

**II. Premium Financing Agreement.**

14. Eight of the Insurance Policies are or were financed through one premium financing agreement (the “Premium Financing Agreement” or “PFA”). The Premium Financing Agreement is between Fulcrum BioEnergy, Inc. and AFCO Credit Corporation (the “Premium Financing Provider”). The aggregate annual premium for the Insurance Policies financed under the Premium Financing Agreement is \$458,435.34 including applicable taxes and surcharges. Pursuant to the

PFA, the Debtors pay the financing premiums through a direct debit on the first business day of each month under the Premium Financing Agreement.

15. However, out of an abundance of caution, the Debtors request authority to pay any Premium Financing Obligations that may subsequently be determined to be owed either for the pre- or postpetition period, as the Debtors' failure to pay such obligations could result in the termination of the Insurance Policies that are financed through the PFA, which in turn would cause significant disruption and distraction to the Debtors' estates. The Debtors further seek authority to renew or enter into new premium financing arrangements in the ordinary course of business.

### **III. Deductible Fees.**

16. Certain of the Insurance Policies require the Debtors to pay a per-incident deductible (collectively, the "Deductibles"). Generally, if a claim is made against the Debtors' Insurance Policies, the Debtors' third-party administrator or applicable Insurance Carrier will administer the claim and make any payments in connection therewith. The Debtors then pay the Deductibles to the third-party administrator or Insurance Carrier (the "Deductible Fees").

17. The Debtors seek authority to continue the Deductibles under the Insurance Policies, including honoring any payment obligations under the Deductibles, in the ordinary course of business on a postpetition basis to ensure uninterrupted coverage thereunder.

### **IV. Insurance Brokerage Fees.**

18. Additionally, the Debtors obtain their Insurance Policies through their insurance broker, Marsh Risk & Insurance Services, and its various affiliates (the "Insurance Broker"). The Insurance Broker assists the Debtors in obtaining comprehensive insurance coverage and evaluating benefit plan offerings and advises the Debtors with respect to accounting and actuarial methodology. The Insurance Broker also helps the Debtors with the procurement and negotiation

of the Insurance Policies, enabling the Debtors to obtain the Insurance Policies on advantageous terms and at competitive rates.

19. The Debtors pay the Insurance Broker through commissions included in the Insurance Premiums for its services (the “Brokerage Fees”). As of the Petition Date, the Debtors do not owe any Brokerage Fees.

**V. Surety Bonds and Related Payment Obligation.**

20. In the ordinary course of business, the Debtors may be required by certain applicable statute, rules, and regulations to provide surety bonds to certain third parties, often governmental units or other public agencies, to secure the Debtors’ payment or performance of certain obligations (such provision, the “Surety Bond Program”). These obligations include payment obligations. Failure to provide, maintain, or timely replace the Surety Bonds (as defined herein) may prevent the Debtors from undertaking essential functions related to their operations.

21. Harco National Insurance Company (collectively, the “Surety”) has issued the Debtors’ current outstanding surety bond. As of the Petition Date, the Debtors maintain one surety bond totaling a bond amount of \$1,115,445 (the “Surety Bond”). The Debtors’ outstanding Surety Bond was arranged by Marsh Risk & Insurance Services (the “Surety Broker”). A schedule detailing the Surety Bond is attached hereto as **Exhibit D**.

22. The issuance of a surety bond lessens the risk of the Debtors’ nonperformance or nonpayment by providing that the surety will perform or tender payment. Unlike an insurance policy, if a surety incurs a loss on a surety bond, it is entitled to recover the full amount of that loss from the principal. In the ordinary course of business, the Debtors make premium payments to their Surety Broker on account of the Surety Bond (the “Surety Premiums”) on or about the renewal date of the Surety Bond. The Debtors pay such Surety Premiums directly to the Surety

Broker. The Debtors have paid approximately \$22,309 on account of the Surety Premiums for the existing Surety Bond.

23. As of the Petition Date, the Debtors do not believe they owe any outstanding amount on account of the Surety Premiums. However, out of an abundance of caution, to ensure uninterrupted coverage under the Surety Bond Program, the Debtors seek authority to honor any prepetition Surety Premiums owed, to pay any Surety Premiums that may arise on a postpetition basis in the ordinary course of business consistent with past practice, and, as necessary, to renew or enter into new surety bonds in the ordinary course of business.

### **BASIS FOR RELIEF REQUESTED**

#### **I. Continuation of the Insurance Policies Is Required by the Bankruptcy Code and U.S. Trustee Guidelines.**

24. Section 1112(b)(4)(C) of the Bankruptcy Code provides that “failure to maintain appropriate insurance that poses a risk to the estate or to the public” is “cause” for mandatory conversion or dismissal of a chapter 11 case. In addition, in many instances, the coverage of the Insurance Policies is required by various state and federal regulations, laws, certain credit agreements, and contracts that govern the Debtors’ commercial activities.

25. Section 363(b)(1) of the Bankruptcy Code provides: “The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate . . . .” 11 U.S.C. § 363(b)(1). Section 105(a) of the Bankruptcy Code provides:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a). Section 105(a) of the Bankruptcy Code grants bankruptcy courts broad authority and discretion to enforce the provisions of the Bankruptcy Code either under specific statutory fiat or under equitable common law principles.

26. A bankruptcy court may use its equitable powers to authorize the payment of prepetition debt when such payment is needed to facilitate rehabilitating the debtor. *See In re Just for Feet, Inc.*, 242 B.R. 821, 824 (D. Del. 1999) (acknowledging that “[c]ertain prepetition claims . . . may need to be paid to facilitate a successful reorganization” and that “[s]ection 105(a) of the [Bankruptcy] Code provides a statutory basis for the payment of prepetition claims”); *see also In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (“The ability of a Bankruptcy Court to authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.”). This equitable common law principle “was first articulated by the United States Supreme Court in *Miltenberger v. Logansport, C. & S.W Ry. Co.*, 106 U.S. 286 (1882) and is commonly referred to as either the ‘doctrine of necessity’ or the ‘necessity of payment’ rule.” *In re Ionosphere Clubs, Inc.*, 98 B.R. at 175–76.

27. In a long, well-established line of cases, courts consistently have permitted postpetition payment of prepetition obligations where necessary to preserve or enhance the value of a debtor’s estate for the benefit of all creditors. *See, e.g., Miltenberger*, 106 U.S. at 312 (payment of pre-receivership claim prior to reorganization permitted to prevent stoppage of crucial “business relations”); *In re Chateaugay Corp.*, 80 B.R. 279, 285–86 (S.D.N.Y. 1987) (approving lower court’s order authorizing payment of prepetition wages, salaries, expenses and benefits); *In re Just for Feet, Inc.*, 242 B.R. at 826 (granting approval to pay prepetition claims of certain trade vendors that were “critical to the Debtors’ reorganization”); *In re Columbia Gas Sys., Inc.*, 171

B.R. 189, 192 (Bankr. D. Del. 1994) (noting that debtors may pay prepetition claims that are essential to continued operation of business).

28. The Debtors submit that it is essential that they be permitted to maintain the Insurance Policies and pay the Insurance Obligations and Premium Financing Obligations. The Debtors currently maintain seventeen Insurance Policies and one Premium Financing Obligation as of the Petition Date. Nevertheless, out of an abundance of caution, and because of the importance of the coverage afforded by the Insurance Policies, the Debtors seek authority, but not direction, to pay all future Insurance Obligations and Premium Financing Obligations notwithstanding the fact that such payments could be based, in whole or in part, on prepetition liabilities. If the Insurance Policies were allowed to lapse or the Debtors do not pay the Insurance Obligations or the Premium Financing Obligations, the Debtors would be exposed to substantial potential liability for any damages or loss resulting to persons and/or property of the Debtors and others. It is essential to the continued operation of the Debtors' businesses and maximizing the value of these estates that Insurance Obligations and Premium Financing Obligations be paid on a timely basis.

29. Moreover, other considerations support authorizing the Debtors to maintain and continue their insurance programs. For example, the Operating Guidelines and Reporting Requirements of the United States Trustee for Chapter 11 Debtors in Possession and Chapter 11 Trustees require chapter 11 debtors to maintain insurance coverage customary and appropriate for their industry.

30. As stated above, the Debtors believe they owe approximately \$45,000 on all Insurance Obligations and Premium Financing Obligations. To the extent this Motion is granted,

the Debtors intend to pay all Insurance Obligations and Premium Financing Obligations in accordance with the terms of the PFA and the Insurance Policies, and any related agreements.

31. To the extent that any Insurance Policy, PFA or other agreement described herein is deemed an executory contract within the meaning of section 365 of the Bankruptcy Code, the Debtors are not at this time seeking to assume such agreements. The Debtors submit that court authorization of payments to be made with respect to the Insurance Policies, the PFA or Brokerage Fees should not be deemed to constitute postpetition assumption or adoption, pursuant to section 365 of the Bankruptcy Code, of any such Insurance Policy, PFA or broker or agency agreement. The Debtors will continue to review the Insurance Policies, PFA and services during the course of these cases, and hereby reserve all of their rights with respect thereto.

**II. Cause exists to authorize the Debtors' financial institutions to honor checks and electronic fund transfers.**

32. The Debtors represent that they will have sufficient availability of funds to pay the amounts described herein in the ordinary course of business by virtue of cash reserves and expected cash flows from ongoing business operations, or otherwise through the use of cash collateral. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently and that all applicable banks should be authorized, when requested by the Debtors, to receive, process, honor and pay any and all checks or wire transfer requests with respect to any Insurance Obligations.

**SATISFACTION OF BANKRUPTCY RULE 6003**

33. Bankruptcy Rule 6003 empowers the Court to issue an order, within 21 days after the Petition Date, granting a motion to "use . . . property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition" if such requested relief "is necessary to avoid immediate and irreparable harm." Fed. R. Bankr. P. 6003(b). For the reasons discussed

above, entry of an interim order granting this Motion is integral to the Debtors' ability to successfully transition into chapter 11. As described above, any lapse in payment of Insurance Obligations could subject the Debtors to significant loss of the value of the Debtors' assets, thereby causing immediate and irreparable harm to the Debtors' estates and, consequently, other interested parties. Accordingly, the Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

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

34. The Debtors also request that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtors seek in this Motion is necessary for the Debtors to continue its business operations without interruption and to preserve value for the estate. Accordingly, the Debtors respectfully request that the Court waive the 14-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

35. To implement the foregoing immediately, the Debtors respectfully request a waiver of the notice requirements of Bankruptcy Rule 6004(a) to the extent they are deemed to apply.

**RESERVATION OF RIGHTS**

36. 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**

37. Notice of this Motion will be provided to: (a) the Office of the United States Trustee (Attn: Rosa Sierra-Fox (rosa.sierra-fox@usdoj.gov)); (b) the DIP Lender; (c) the Debtors' prepetition secured lenders; (d) UMB Bank, N.A. and its counsel; (e) the Internal Revenue Service; (f) Wells Fargo Bank, N.A.; (g) the parties included on the Debtors' consolidated list of their 30 largest unsecured creditors; (h) the United States Attorney's Office for the District of Delaware; (i) the Securities and Exchange Commission; and (j) 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 submits that no further notice of this Motion is required under the circumstances.

**CONCLUSION**

WHEREFORE, the Debtors request that the Court enter the Proposed Orders, granting the relief requested herein and such other and further relief as is just and proper.

*[Remainder of page intentionally left blank]*

Dated: September 10, 2024  
Wilmington, Delaware

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

/s/ Clint M. Carlisle

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*Proposed Counsel for 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 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**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (the “Debtors”) for entry of an interim order (this “Interim Order”) and final order pursuant to sections 105(a), 363(b), 363(c) and 1107(a) of the Bankruptcy Code, as supplemented by Bankruptcy Rules 6003 and 6004(h), authorizing the 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; and upon consideration of the First Day Declaration; and due and sufficient notice of the Motion having been given under the circumstances; and it appearing that no other or further notice need be provided under the circumstances; and it appearing that the relief requested by this Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT:**

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, 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: <https://www.veritaglobal.net/Fulcrum>.

<sup>2</sup> Capitalized terms not defined in this Order are used as defined in the Motion.

1. The Motion is granted as set forth herein.

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. 16th 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 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); 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. The Debtors are authorized, but not directed, to maintain their Insurance Policies and to pay the Insurance Obligations and Premium Financing Obligations arising under or in connection with the Insurance Policies in the ordinary course of business as such Insurance Obligations and Premium Financing Obligations become due, without regard to whether such Insurance Policies are listed on **Exhibit C** to the Motion, and without regard to whether such Insurance Obligations relate to the period before or after the Petition Date or whether due and payable before, on, or after the Petition Date.

4. The Debtors are authorized, but not directed, to renew or obtain, in their sole discretion and consistent with the ordinary course of their business, new insurance policies or surety bonds or execute other agreements in connection with their Insurance Policies and Surety Bond Programs, including upon the expiration or termination of any Insurance Program or Surety Bond Program.

5. The Debtors are authorized, but not directed, to continue their insurance premium financing and to make payments under the Debtors' premium financing agreement as the same become due, and, as necessary, to renew or enter into new premium financing arrangements in the ordinary course of business.

6. This Interim Order shall not create any obligation on the part of the Debtors or their officers, directors, attorneys or agents to pay any of the obligations discussed herein or in the Motion, and none of the foregoing persons shall have any liability on account of any decision by the Debtors not to pay such obligations, and nothing in this order shall be deemed to increase, reclassify, elevate to an administrative expense status or otherwise affect such obligations to the extent they are not paid.

7. All applicable banks and other financial institutions are hereby authorized and required to receive, process, honor, and pay any and all checks and transfer requests evidencing amounts paid by the Debtors under this Interim Order whether presented prior to or after the Petition Date, provided that sufficient funds are on deposit in the applicable accounts to cover such payments. Such banks and financial institutions are authorized to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Interim Order.

8. Nothing in this Interim Order (i) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as

to the validity of any claim against the Debtors; (ii) shall impair, prejudice, waive or otherwise affect the rights of the Debtors or their estates with respect to the validity, priority or amount of any claim against the Debtors and their estates; (iii) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to any and all claims or causes of action; or (iv) shall be construed as a promise to pay a claim.

9. Nothing in this Interim Order or the Motion is intended or shall be construed to grant relief from the automatic stay pursuant to section 362 of the Bankruptcy Code.

10. The Debtors are authorized to take any and all actions necessary to effectuate the relief granted herein.

11. The requirements of Bankruptcy Rule 6003(b) have been satisfied because the relief set forth in this Interim Order is necessary to avoid immediate and irreparable harm.

12. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order shall be effective and enforceable immediately upon its entry.

13. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Interim 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 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**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (the “Debtors”) for entry of an interim order (the “Interim Order”) and a final order (this “Final Order”) pursuant to sections 105(a), 363(b), 363(c) and 1107(a) of the Bankruptcy Code, as supplemented by Bankruptcy Rules 6003 and 6004(h), authorizing the 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; and the Court having previously entered the Interim Order; and upon consideration of the First Day Declaration; and due and sufficient notice of the Motion having been given under the circumstances; and it appearing that no other or further notice need be provided under the circumstances; and it appearing that the relief requested by this Motion is in the best interests of the Debtors, their

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, 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 not defined in this Order are used as defined in the Motion.

estates, their creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefor; **IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED as set forth herein.
2. The Debtors are authorized, but not directed, to maintain their Insurance Policies and to pay the Insurance Obligations and Premium Financing Obligations arising under or in connection with the Insurance Policies in the ordinary course of business as such Insurance Obligations and Premium Financing Obligations become due, without regard to whether such Insurance Policies are listed on Exhibit C to the Motion, and without regard to whether such Insurance Obligations relate to the period before or after the Petition Date.
3. The Debtors are authorized, but not directed, to continue their insurance premium financing and make payments under the Debtors' premium financing agreement as the same become due.
4. The Debtors are authorized, but not directed, to renew or obtain, in their sole discretion and consistent with the ordinary course of their business, new insurance policies or surety bonds or execute other agreements in connection with their Insurance Policies and Surety Bond Program, including upon the expiration or termination of any Insurance Program or Surety Bond Program.
5. This order shall not create any obligation on the part of the Debtors or their officers, directors, attorneys or agents to pay any of the obligations discussed herein or in the Motion, and none of the foregoing persons shall have any liability on account of any decision by the Debtors not to pay such obligations, and nothing in this Final Order shall be deemed to increase, reclassify, elevate to an administrative expense status or otherwise affect such obligations to the extent they are not paid.

6. All applicable banks and other financial institutions are hereby authorized and required to receive, process, honor, and pay any and all checks and transfer requests evidencing amounts paid by the Debtors under this Final Order whether presented prior to or after the Petition Date, provided that sufficient funds are on deposit in the applicable accounts to cover such payments. Such banks and financial institutions are authorized to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Final Order.

7. Nothing in this Final Order (i) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors; (ii) shall impair, prejudice, waive or otherwise affect the rights of the Debtors or their estates with respect to the validity, priority or amount of any claim against the Debtors and their estates; (iii) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to any and all claims or causes of action; or (iv) shall be construed as a promise to pay a claim.

8. Nothing in this Final Order or the Motion is intended or shall be construed to grant relief from the automatic stay pursuant to section 362 of the Bankruptcy Code

9. The Debtors are authorized to take any and all actions necessary to effectuate the relief granted herein.

10. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Final Order shall be effective and enforceable immediately upon its entry.

11. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Final Order.

**Exhibit C****Insurance Policies<sup>1</sup>**

<b>Insurance Policy</b>	<b>Insurer</b>	<b>Policy Number</b>	<b>Policy Year</b>	<b>Approximate Annualized Premium</b>
General Liability, Employee Benefits, Errors and Omissions <u>Named Insured:</u> <i>Fulcrum BioEnergy, Inc.</i>	Chubb – Federal Insurance Company	3607-59-70 DAL	11/01/2023 - 11/01/2024	\$73,714.00
Non-owned & Hired Auto Liability <u>Named Insured:</u> <i>Fulcrum BioEnergy, Inc.</i>	Chubb – Federal Insurance Company	(23) 7363-06-42	11/01/2023 - 11/01/2024	\$11,935.00
Workers Compensation and Employers Liability <u>Named Insured:</u> <i>Fulcrum BioEnergy, Inc.</i>	Chubb Indemnity Insurance Company	(24) 7183-58-47	11/01/2023 - 11/01/2024	\$129,219.00
Umbrella Liability (\$5 million excess of primary coverage) <u>Named Insured:</u> <i>Fulcrum BioEnergy, Inc.</i>	Chubb – Federal Insurance Company	7819-77-10	11/01/2023 - 11/01/2024	\$66,615.00
Excess Liability (\$10 million excess of \$5 million) <u>Named Insured:</u> <i>Fulcrum BioEnergy, Inc.</i>	Everest National Insurance Company	XC6EX00086-231	11/01/2023 – 11/01/2024	\$68,450.00

<sup>1</sup> The Debtors request authority to honor and renew existing Insurance Policies, as applicable, regardless of whether the Debtors inadvertently failed to include a particular Insurance Policy herein.

Insurance Policy	Insurer	Policy Number	Policy Year	Approximate Annualized Premium
Excess Liability (\$10 million excess of \$15 million) <u>Named Insured:</u> <i>Fulcrum BioEnergy, Inc.</i>	Endurance American Specialty Insurance Company	ELD30002102103	11/01/2023 – 11/01/2024	\$52,021.29
Excess Liability (\$10 million excess of \$25 million) <u>Named Insured:</u> <i>Fulcrum BioEnergy, Inc.</i>	RSUI Indemnity Company	NHA105111	11/01/2023 – 11/01/2024	\$40,000.00
Excess Liability (\$15 million excess of \$25 million) <u>Named Insured:</u> <i>Fulcrum BioEnergy, Inc.</i>	Starr Indemnity & Liability Co.	1000031316231	11/01/2023 – 11/01/2024	\$60,600.00
Directors & Officers Employment Practices Liability/Fiduciary (\$5 million limit) <u>Named Insured:</u> <i>Fulcrum BioEnergy, Inc.</i>	Argonaut Insurance Company	ML4243654-4	03/15/2024 - 09/15/2024	\$400,000.00
Directors & Officers Employment Practices Liability/Fiduciary (\$5 million excess \$5 million) <u>Named Insured:</u> <i>Fulcrum BioEnergy, Inc.</i>	AIG/National Union Fire Insurance Company of Pittsburgh, PA	02-842-96-56	03/15/2024 - 09/15/2024	\$290,000.00
Directors & Officers Additional Side-A (\$5 million) <u>Named Insured:</u> <i>Fulcrum BioEnergy, Inc.</i>	Sompro/Endurance American Specialty Insurance Company	ADL30055956500	03/15/2024 - 09/15/2024	\$290,000.00

Insurance Policy	Insurer	Policy Number	Policy Year	Approximate Annualized Premium
Commercial Crime <u>Named Insured:</u> <i>Fulcrum BioEnergy, Inc.</i>	AIG/National Union Fire Insurance Company of Pittsburgh, PA	02-824-08-29	03/15/2024 - 03/15/2025	\$3,010.00
Property and Boiler and Machinery <u>Named Insured:</u> <i>Fulcrum BioEnergy, Inc.</i> <u>Paid by:</u> <i>Fulcrum Sierra BioFuels, LLC</i>	Starr Technical Risks Agency	23SSLDOLD308061	06/05/2023 – 10/05/2024	\$611,149.00
Environmental Liability – Product Offtake <u>Named Insured:</u> <i>Fulcrum Sierra BioFuels, LLC</i>	Great American Insurance Group	PRE E812592 01	02/08/2024 – 02/08/2025	\$18,338.00
Inland Marine – Mobile Equipment <u>Named Insured:</u> <i>Fulcrum BioEnergy, Inc.</i> <u>Paid by:</u> <i>Fulcrum Sierra BioFuels, LLC</i>	Starr Surplus Lines Insurance Company	ITL11937823	11/12/2023 – 11/12/2024	\$60,907.00
Builders Risk for Sierra Biorefinery <u>Named Insured:</u> <i>Fulcrum Sierra BioFuels, LLC</i>	Indian Harbor Insurance Company/XL Catlin	US00082039CA17A	12/31/2017 – 09/30/2024	\$625,000.00
Employers' Liability (United Kingdom) <u>Named Insured:</u> <i>Fulcrum BioEnergy, Ltd.</i>	Zurich Insurance Company Ltd	54/2H02/JP883529/3	09/12/2023 – 09/11/2024	\$1,334.47

**Exhibit D****Surety Bonds<sup>1</sup>**

<b>Bond Number</b>	<b>Surety / Issuing Carrier</b>	<b>Principal</b>	<b>Beneficiary</b>	<b>Type of Bond</b>	<b>Bond Term<sup>2</sup></b>	<b>Bond Premium</b>
0846400	International Fidelity Insurance Company and/or Harco Insurance Company	Fulcrum Sierra BioFuels, LLC	Nevada Power Company dba Nevada Energy Bond Amount of \$1,115,445	Commercial	09/27/2023 – 09/27/2024	\$22,309

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<sup>1</sup> The Debtors request authority to honor and renew existing Surety Bonds, as applicable, regardless of whether the Debtors inadvertently failed to include a particular Surety Bond herein.

<sup>2</sup> For the avoidance of doubt, the Surety Bond listed herein remains active as of the Petition Date. Each expiration date herein reflects the billing dates for annual Surety Bonds or the original expected expiration date for projects related thereto.