Docket #0012 Date Filed: 09/11/2024

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

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

The above-captioned debtors and debtors in possession (the "Debtors") hereby move (this "Motion") this Court for entry of an order, in the form attached hereto as **Exhibit A** (the "Bidding Procedures Order"), (a) approving the bidding procedures (the "Bidding Procedures") attached as **Exhibit 1** to the Bidding Procedures Order in connection with the sale of all or substantially all of the Debtors' assets (the "Acquired Assets"); (b) approving various forms and the manner of notice of respective dates, times and places in connection therewith; (c)

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

2412008240910000000000010

authorizing the Debtors to enter into and perform under an asset purchase agreement attached hereto as **Exhibit B** (the "Stalking Horse Agreement") between the Debtors and Switch, Ltd. (the "Stalking Horse Bidder" or "Switch"), subject to the solicitation of higher or otherwise better offers for the Debtors' assets (the "Assets"); (d) approving the Bid Protections (defined below) granted to the Stalking Horse Bidder; (e) approving procedures for the assumption and assignment of designated executory contracts and unexpired leases (the "Designation Procedures"); (f) scheduling the auction (the "Auction") and the date and time of the hearing to approve the sale (the "Sale Hearing") of the Acquired Assets and assumption of certain liabilities of the Debtors (the "Assumed Liabilities"); and (g) granting related relief, by which the Debtors will solicit and select the highest or otherwise best offer for the purchase of the Acquired Assets and assumption of the Assumed Liabilities. The Debtors further request that, at the Sale Hearing, the Court (as defined below) enter an order (the "Sale Order"), the proposed form of which is attached hereto as **Exhibit C**, (i) authorizing the Sale of the Acquired Assets (the "Sale") free and clear of all liens, claims, interests and other encumbrances (collectively, "Encumbrances"); (ii) authorizing the assumption and assignment of certain executory contracts and unexpired leases; and (iii) granting related relief. In support of this Motion, the Debtors rely upon and incorporate by reference the *Declaration of Mark Smith in Support of Chapter 11 Petitions and First Day Relief* (the "First Day Declaration"), filed contemporaneously herewith.

As discussed herein, the Debtors propose the following timeline for conducting the Sale process:

Event	**Deadline**
Deadline for Debtors to File Notice of Proposed Cure Amounts and Adequate Assurance	Three (3) business days after entry of the Bidding Procedures Order
Cure Notice Objection Deadline	Fourteen (14) days after service of the Cure Notice
Sale Objection Deadline	October 25, 2024, at 4:00 p.m. (ET)
Bid Deadline	October 25, 2024, at 4:00 p.m. (ET)
Deadline to Designate Qualified Bids	October 29, 2024
Auction	November 1, 2024, at [10:00 a.m.] (ET)
Deadline to Serve Notice of Winning Bidder and Supplemental Cure Notice	One (1) business day after the close of the auction
Deadline to File Supplemental Sale Objection and Objection to Assumption or Cure Amount (If Winning Bidder is Different Than Stalking Horse Bidder)	November 6, 2024, at 4:00 p.m. (ET)
Sale Hearing (proposed)	November 11, 2024

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (the "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 the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. 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.

3. The statutory bases for the relief requested in this Motion are sections 105, 363, 364, 365, and 541 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004, 6006 and 9007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Local Rules 2002-1 and 6004-1.

BACKGROUND

4. On September 9, 2024 (the "Petition Date"), the Debtors each filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in this Court. The Debtors continue to manage their business as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or official committee has been appointed in these cases.

5. 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.

6. 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, enforcement actions by creditors in the past year, 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. Additional detail regarding

the Debtors, their business, the events leading to the commencement of these cases, and the facts and circumstances supporting the relief requested herein is set forth in the First Day Declaration, filed concurrently herewith and incorporated herein by reference.

7. As described in the First Day Declaration, in May of 2024, a marketing process spearheaded by indenture trustee for bonds secured by the Sierra Plant was initiated, and ultimately thirty-six (36) potential purchasers had discussions with the Debtors and the investment banker hired by the indenture trustee, RPA Advisors, LLC ("RPA"). Of those potential purchasers, six (6) parties submitted non-binding Letters of Intent (LOIs), three of which were liquidation offers. The LOI from Switch, Ltd. ("Switch") represented the highest value contemplated for the purchase of certain of the Debtors' assets, and the Fulcrum board determined that the transaction contemplated by the Switch LOI was in the best interests of the company and its stakeholders.

8. Between the execution of the LOI and the Petition Date, the Debtors have engaged in extensive, good faith and arm's-length negotiations with the Stalking Horse Bidder, ultimately resulting in the Stalking Horse Asset Purchase Agreement (the "Stalking Horse Agreement"). The Debtors also hired Development Specialists, Inc. ("DSI") to conduct a thorough marketing process to sell substantially all of the Debtors' assets through a Chapter 11 court supervised sale process. RPA has provided the Debtors and DSI with an overview of its pre-petition marketing process, and the Debtors have directed DSI to supplement the outreach done by RPA to date.

9. As described in the Debtors' Bidding Procedures, interested parties may contact DSI for information pertaining to the Debtors' marketing process:

DSI, Financial Advisor to Fulcrum
10 S. LaSalle Street, Suite 3300, Chicago, Illinois 60603
George Shoup (gshoup@dsiconsulting.com); Jack Donohue (jdonohue@dsiconsulting.com); and Steve Victor (svictor@dsiconsulting.com)

10. The $15,000,000 million bid submitted by the Stalking Horse Bidder for substantially all assets of Debtor BioFuels and documented in the binding Stalking Horse Agreement will serve the critical function of setting a "floor" for recoveries to Biofuels' creditors and a structure for further competitive bidding. The Stalking Horse Agreement is attached hereto as **Exhibit B**.

11. The terms of the stalking horse bid—including the Bid Protections (collectively, the "Stalking Horse Bid") the Debtors seek authority to provide by this Motion—are reasonable and were the product of extensive, good faith, arm's length negotiations between the Debtors and the Stalking Horse Bidder during the period leading up to the Petition Date.

12. The proposed marketing process ensures that the Debtors' assets will be comprehensively marketed without unduly delaying the progress of these cases. The marketing process contemplated by the Bidding Procedures will leave no doubt that, at the conclusion of that process, the Debtors will have explored all available alternatives and identified the highest or otherwise best offer for their assets.

13. The Debtors believe, in an exercise of their business judgment, that approval of the Stalking Horse Agreement and related Bid Protections, as well as the Bidding Procedures, will set these cases on a positive trajectory and are essential to the Debtors' ability to identify and consummate the sale or restructuring transaction offering the greatest value to their creditors. Accordingly, the Debtors respectfully submit that the Court should grant the relief requested herein.

THE PROPOSED SALE AND BIDDING PROCEDURES

A. Summary of Key Terms of the Stalking Horse Bid

14. By this Motion, the Debtors are requesting approval of the designation of the Stalking Horse Bidder as the Stalking Horse Bid on the terms provided in the Stalking Horse Agreement, as well as approval of reasonable and customary Bid Protections. Specifically, the Bid Protections consist of a break-up fee in the amount of $600,000. Given the Debtors' need to maximize the value of the Assets through a timely and efficient marketing and sale process, the ability to designate a Stalking Horse Bid and offer Bid Protections is justified, appropriate and essential.

15. In accordance with Local Rule 6004-1(b), the pertinent terms of the Stalking Horse Agreement are summarized in the following table.[2] The Debtors respectfully submit that all terms of the Stalking Horse Agreement, including those required to be highlighted under Local Rule 6004-1(b), are fair, reasonable, and appropriate under the circumstances in light of the parties' good faith, arm's-length negotiation of the Stalking Horse Bid, the support of the Debtors' key creditor constituencies for the Debtors' entry into such agreement, and the substantial benefits the Debtors and their estates will realize as a result thereof, including the establishment of a baseline price for the Debtors' assets.

Term	Description
Sellers:	Fulcrum Sierra BioFuels, LLC ("Biofuels")
Stalking Horse Bidder:	Switch, Ltd.
Purchase Price:	$15,000,000 plus the assumption of the Assumed Liabilities

[2] This summary is provided for the convenience of the Court and parties in interest. To the extent there is any conflict between this summary and the Stalking Horse Agreement, the latter governs in all respects. Capitalized terms used but not otherwise defined in this summary shall have the meanings set forth in the Stalking Horse Agreement.

Acquired Assets:	The Acquired Assets are set forth in Section 1.1 of the Stalking Horse Agreement and include, among other things, the Real Property and the Real Property Rights; the contract listed on Schedule 1.1(b) of the Stalking Horse Agreement; all causes of actions of Biofuels; all security deposits in favor of Biofuels.
Excluded Assets:	The Excluded Assets are set forth in Section 1.2 of the Stalking Horse Agreement.
Assumed Liabilities:	The Assumed Liabilities are set forth in Section 1.3 of the Stalking Horse Agreement and include, among other things, all liabilities and obligations associated with the Acquired Assets and Assigned Contracts after the Closing.

16. The following chart discloses certain information required to be disclosed pursuant to Local Rule 6004-1(b):[3]

Rule	**Disclosure/Location**
Sale to Insider *Local Bankr. R. 6004-1(b)(iv)(A)*	Not applicable.
Agreements with Management *Local Bankr. R. 6004-1(b)(iv)(B)*	Not applicable.
Releases *Local Bankr. R. 6004-1(b)(iv)(C)* Stalking Horse Agreement § 10.18	The Stalking Horse Agreement provides that the Sellers will release the Purchasers of any claims with respect to Assumed Assets and Assumed Liabilities. The Purchasers will release the Sellers of any claims with respect to Excluded Assets and Excluded Liabilities.
Private Sale/No Competitive Bidding *Local Bankr. R. 6004-1(b)(iv)(D)*	The Sale to the Stalking Horse Bidder is subject to the Auction and the Bidding Procedures.
Closing and Other Deadlines *Local Bankr. R. 6004-1(b)(iv)(E)* Stalking Horse Agreement, § 2.3	The Debtors' proposed timeline for the sale process in these chapter 11 cases is set forth on page 3, *supra*. Closing of the sale shall occur within two business days following the satisfaction or waiver of the conditions set forth in Article VII of the Stalking Horse Agreement.
Good Faith Deposit	$1,500,000

[3] Undefined terms used in the summary chart shall have the meanings ascribed to them in the Stalking Horse Agreement.

Local Bankr. R. 6004-1(b)(iv)(F) Stalking Horse Agreement, § 2.2	
Interim Arrangements with Stalking Horse Bidder *Local Bankr. R. 6004-1(b)(iv)(G)*	The Debtors are not entering into any interim arrangements with the Stalking Horse Bidder.
Use of Proceeds *Local Bankr. R. 6004-1(b)(iv)(H)*	Not Applicable for sale of the Acquired Assets.
Tax Exemption *Local Bankr. R. 6004-1(b)(iv)(I)*	Not Applicable
Record Retention *Local Bankr. R. 6004-1(b)(iv)(J)* Stalking Horse Agreement, § 1.1(j)	Section 1.1(j) of the Stalking Horse Agreement provides that the Books and Records are Acquired Assets. The Sale Order will provide that, until the earlier of the closure of these cases and three (3) years after the Closing Date, Stalking Horse Bidder will use reasonable best efforts to not dispose or destroy any of the Records received as Assets and will allow the Seller and any of its respective directors, officers, employees, counsel, Representatives, accountants and auditors reasonable access during normal business hours, upon reasonable advance notices, to any Record included in the Assets for the purposes relating to these cases and the wind-down of the operations.
Sale of Avoidance Actions *Local Bankr. R. 6004-1(b)(iv)(K)* Stalking Horse Agreement, § 1.1(f)	Section 1.1(f) of the Stalking Horse Agreement provides that Avoidance Actions against the Designated Parties are Acquired Assets, provided, however, that the Purchaser will not pursue or cause to be pursued any Avoidance Actions against any of the Designated Parties other than as a defense (to the extent permitted under applicable Law) against, or to assert a right of setoff or recoupment to, any claim or cause of action raised by such Designated Party
Successor Liability *Local Bankr. R. 6004-1(b)(iv)(L)*	The sale of the assets shall be free and clear of any successor liability claims.
Sale Free and Clear of Unexpired Leases *Local Bankr. R. 6004-1(b)(iv)(M)* Stalking Horse Agreement § 1.6	At the Closing, Seller shall assume and assign to Purchaser, all Assigned Contracts that may be assigned by Seller to Purchaser.

Credit Bid *Local Bankr. R. 6004-1(b)(iv)(N)*	The Stalking Horse Agreement seeks to permit the Purchaser to credit bid, pursuant to section 363(k) of the Bankruptcy Code consisting of, on a dollar for dollar basis, the full amount of the DIP Obligations outstanding as of the Closing Date.
Relief from Bankruptcy Rule 6004(h) *Local Bankr. R. 6004-1(b)(iv)(O)*	The Debtors seek a waiver of the 14-day stays under Bankruptcy Rules 6006(d) and 6004(h), as described in more detail below.

B. The Bid Protections

17. To induce the Stalking Horse Bidder to expend the time, energy and resources necessary to negotiate and ultimately execute the Stalking Horse Agreement and to keep the Stalking Horse Bid memorialized therein open and irrevocable through the Debtors' competitive auction process, the Debtors have agreed to provide the Stalking Horse Bidder with, and seek this Court's approval of, certain protections pursuant to the terms of the Stalking Horse Agreement. The Stalking Horse Agreement provides for a break-up fee in the amount of $600,000 (the "Break-Up Fee" or the "Bid Protections").

C. Bidding Procedures Order

18. By this Motion, the Debtors seek entry of the Bidding Procedures Order: (i) approving the Bidding Procedures; (ii) approving various forms and the manner of notice of respective dates, times and places in connection therewith; (iii) approving Switch as the Stalking Horse Bidder and the Bid Protections; (iv) establishing the Designation Procedures; and (v) scheduling the Auction and a Sale Hearing.

(i) The Bidding Procedures

19. To maximize the value of the Acquired Assets for the benefit of the Debtors' estates and stakeholders, the Debtors seek to continue their competitive marketing process by

implementing a process for soliciting higher or otherwise better bids than the bid set forth in the Stalking Horse Agreement. Specifically, the Bidding Procedures would provide 45 days between the filing of this Motion and the Bid Deadline, which the Debtors believe will be sufficient to allow potential bidders to conduct diligence and formulate competing bids. On the Petition Date, the Debtors' proposed investment banker, DSI, will continue the prepetition marketing process that was conducted by RPA as described in section 7 herein and in more detail in the First Day Declaration. The Debtors, in consultation with the Debtors' other advisors, entered into the Stalking Horse Agreement to provide a floor for a bid on the Debtors' assets.

20. As described more fully in the Bidding Procedures and the Bidding Procedures Order, the Debtors seek approval to sell the Acquired Assets to a Qualified Bidder, determined in accordance with the Bidding Procedures and Bidding Procedures Order, that makes the highest or otherwise best offer for the Acquired Assets. The Debtors request that competing bids for the Acquired Assets be governed by the Bidding Procedures and Bidding Procedures Order, which provide:

- the requirements a Potential Bidder must satisfy to be entitled to participate in the bidding process and become a Qualified Bidder;
- the requirements for Qualified Bidders to submit bids and the method and criteria by which such bids become Qualified Bids;
- the deadline by which bids must be submitted;
- the procedures for conducting the Auction;
- the assumption and assignment procedures for executory contracts and unexpired leases; and
- various other matters relating to the sale process generally, the Sale Hearing, return of any Good Faith Deposits, and designation of a Back-Up Bidder.

21. Local Rules 6004-1(c)(i)(A) and (B) further provide that a bid procedures motion must highlight "[a]ny provision governing an entity becoming a qualified bidder" and "[a]ny provision governing a bid being a qualified bid." Local Rule 6004-1(c)(i)(A) and (B). The Bidding Procedures provide as follows with respect to qualifying bids[3]:

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

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

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

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

b. **Due Diligence**. An Interested Party must deliver the Preliminary Bid Documents (a "Potential Bidder") to be eligible to receive due diligence information concerning the Debtors and their assets. The Debtors will provide to each Potential Bidder reasonable due diligence information, as requested, as soon as reasonably practicable after such request, provided that if any Potential Bidder is (or is affiliated with) a competitor of the Debtors, the Debtors will not be required to disclose to such Potential Bidder any trade

[3] To the extent any inconsistencies exist between the summary provided in this Motion and the actual terms of the Bidding Procedures, the Bidding Procedures shall control. Capitalized terms used but not otherwise defined in connection with this summary shall have the meanings ascribed to such terms in the Bidding Procedures.

secrets, proprietary information, or other commercially sensitive information unless, under the Debtors' business judgment in consultation with UMB Bank, N.A. ("UMB") "), in its capacity as trustee for the Sierra BioFuels Bonds (as defined in the First Day Declaration), and any official committee appointed in the Debtors' cases (the "Committee," together with UMB, the "Consultation Parties"), the Confidentiality Agreement executed by such Potential Bidder (i) sufficiently protects the Debtors' estates, and (ii) contains appropriate provisions to ensure that such trade secrets or proprietary information will not be used by such Potential Bidder or its Affiliates for an improper purpose or to gain an unfair competitive advantage. Each Potential Bidder will comply with all reasonable requests for additional information and due diligence access by the Debtors or their advisors regarding such Potential Bidder and its contemplated transaction. If the Debtors, after consultation with the Consultation Parties, determine at any time in their reasonable discretion that a Potential Bidder is not reasonably likely to be a Qualified Bidder (as defined below), then the Debtors' obligation to provide due diligence information to such Potential Bidder will terminate and all information provided by the Debtors prior to such time shall be returned to the Debtors or destroyed in accordance with the terms of the applicable Confidentiality Agreement. For the avoidance of doubt, to the extent that UMB pursues a bid for the assets subject to the Bidding Procedures, UMB shall cease being a Consultation Party until and if it irrevocably states, in writing, that it is no longer pursuing its bid.

c. **Bid Requirements.** To be eligible to participate in the Auction, each Potential Bidder must submit a proposal to purchase the Acquired Assets (a "Bid") by October 25, 2024 at 4:00 p.m. (ET) which must:

1) state that the applicable Potential Bidder offers to purchase the Acquired Assets upon substantially the terms and conditions set forth in the Stalking Horse Agreement pursuant to a transaction that is no less favorable to the Debtors' estates as the Debtors, in consultation with the Consultation Parties, may reasonably determine, than the transactions contemplated in the Stalking Horse Agreement;

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

3) specify the amount of cash or other consideration offered by the Potential Bidder (the "Purchase Price"), which Purchase Price must include an amount of cash consideration at closing that exceeds the aggregate sum of the following: (i) the aggregate consideration set forth in the Stalking Horse Agreement, including the assumption of the Assumed Liabilities; (ii) the Break-Up Fee, and (iii) the minimum

bid increment of $250,000 (such aggregate sum, the "Minimum Purchase Price"). For the avoidance of doubt, if a Bid includes the Acquired Assets, the Minimum Purchase Price must include cash consideration sufficient to pay, in full, in cash, the Payoff Amount (as defined in the Stalking Horse Purchase Agreement) from the proceeds of such Bid at the initial closing of the transaction.

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

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

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

7) provide a commitment to close within 14 days after the Sale Hearing;

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

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

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

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

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

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

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

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

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

17) be received by the Bid Deadline.

d. **Qualified Bidder.** A qualified bidder ("Qualified Bidder") is a Potential Bidder that, in the Debtors' reasonable determination after consultation with the Consultation Parties, (i) has timely submitted a Bid that satisfies each of the requirements listed above in the sections entitled "Bid Requirements" or "Package Bid Requirements," as applicable, and (ii) is able to consummate

the proposed transaction within the required timeframe if selected as the Successful Bidder (such Bid submitted by a Qualified Bidder, a "Qualified Bid"); provided that the Debtors reserve the right to work with any Potential Bidder to cure any deficiencies in a Bid that is not initially deemed a Qualified Bid. Within two (2) business days after a Potential Bidder delivers all of the documents described above, the Debtors will determine in their reasonable discretion after consultation with the Consultation Parties whether such Potential Bidder is a Qualified Bidder, and notify the Potential Bidder of such determination. For the avoidance of doubt, (i) the Stalking Horse Bidder is a Qualified Bidder, (ii) the Stalking Horse Agreement is a Qualified Bid, and (iii) the Stalking Horse Bidder is authorized to submit any Overbids (as defined below) during the Auction, in each instance without further qualification required of the Stalking Horse Bidder.

22. If the Debtors receive one or more Qualified Bids (in addition to the Stalking Horse Bid), the Debtors will conduct the Auction to determine the highest or otherwise best Qualified Bid with respect to the Acquired Assets. If no Qualified Bids (other than the Stalking Horse Bid) are received by the Bid Deadline, then the Auction shall be cancelled, the Stalking Horse Bidder will be deemed the Successful Bidder, the Stalking Horse Agreement will be the Successful Bid, and, at the Sale Hearing, the Debtors will seek final Court approval of the sale of the Acquired Assets to the Stalking Horse Bidder in accordance with the terms of the Stalking Horse Agreement.

23. The Debtors propose that the following procedures govern any Auction:

a. **Baseline Bid**. No later than two days prior to the commencement of the Auction, the Debtors will (i) notify all Qualified Bidders and Notice Parties in writing of the highest or otherwise best Qualified Bid, as determined by the Debtors in their reasonable discretion after consultation with the Consultation Parties (the "Baseline Bid"), and (ii) provide all Qualified Bidders and Notice Parties with complete copies of all Transaction Documents and all other bid materials submitted by each other Qualified Bidder, subject to exclusion of any confidential financial information as determined by the Debtors in their reasonable discretion or which has been so designated by the applicable Qualified Bidder. The Debtors' determination of which Qualified Bid constitutes the Baseline Bid shall take into account factors such as the projected percentage recovery to general unsecured creditors pursuant to such Qualified Bid and the certainty of such recovery, whether all administrative, priority and secured claims will be paid

in full under such Qualified Bid and any other factors the Debtors reasonably deem relevant to the value of the Qualified Bid to the estates. No later than the day prior to the commencement of the Auction, each Qualified Bidder that has timely submitted a Qualified Bid must inform the Debtors whether it intends to attend the Auction; provided that in the event a Qualified Bidder elects not to attend the Auction, such Qualified Bidder's Qualified Bid will nevertheless remain fully enforceable against such Qualified Bidder; provided futher that the Stalking Horse Bidder will not be required to, but may, attend and participate at the Auction. If no Qualified Bids (other than the Stalking Horse Bid) are received by the Bid Deadline, then the Auction shall be cancelled, the Stalking Horse Bidder will be deemed the Successful Bidder, the Stalking Horse Agreement will be the Successful Bid, and, at the Sale Hearing, the Debtors will seek final Court approval of the sale of the Acquired Assets to the Stalking Horse Bidder in accordance with the terms of the Stalking Horse Agreement.

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

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

d. **Auction Procedures**. The Debtors and their professionals will direct and preside over the Auction. At the start of the Auction, the Debtors will describe the terms of the Baseline Bid. All Bids made thereafter must be Overbids (as defined below) and will be made and received on an open basis, and all material terms of each Bid will be fully disclosed to all other Qualified Bidders. The Debtors will maintain a transcript of all Bids made and announced at the Auction, including the Baseline Bid, all Overbids, the Successful Bid and the Back-Up Bid. Each Qualified Bidder will be required to confirm on the record of the Auction that it has not engaged in any collusion with respect to the bidding or the sale of any assets of the Debtors, including the Acquired Assets. The Debtors, in their reasonable discretion

> after consultation with the Consultation Parties, reserve the right to conduct the Auction in a manner designed to maximize value based upon the nature and extent of the Qualified Bids received.
>
> During the Auction, bidding will begin initially with the Baseline Bid and subsequently continue in minimum increments of at least $250,000 (each, an "Overbid"). The Debtors will announce at the Auction the material terms of each Overbid, value each Overbid in accordance with the Bidding Procedures and provide each Qualified Bidder with an opportunity to make a subsequent Overbid. Additional consideration in excess of the amount set forth in the Baseline Bid may include cash and/or other consideration acceptable to the Debtors in accordance with these Bidding Procedures. To the extent that an Overbid has been accepted entirely or in part because of the addition, deletion, or modification of a provision or provisions in the applicable Transaction Documents or the Stalking Horse Agreement, the Debtors will provide notice to each participant of the value ascribed by the Debtors to any such added, deleted, or modified provision or provisions, with such value being determined by the Debtors in their reasonable discretion after consultation with the Consultation Parties.
>
> Any Overbid made from time to time by a Qualified Bidder must remain open and binding on the Qualified Bidder until and unless (i) the Debtors accept a higher or otherwise better bid submitted by another Qualified Bidder during the Auction as an Overbid and (ii) such Overbid is not selected as the Back-Up Bid (as defined below). To the extent not previously provided (which will be determined by the Debtors), a Qualified Bidder submitting an Overbid must submit at the Debtors' request, as part of its Overbid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors) demonstrating such Qualified Bidder's ability to close the transaction at the purchase price contemplated by such Overbid.

24. As set forth in more detail in the Bidding Procedures and subject to the conditions provided for therein, at the conclusion of the Auction, the Debtors, in the exercise of their reasonable business judgment, in consultation with the Consultation Parties, will select as the Successful Bid the highest or otherwise best bid submitted by a Qualified Bidder during the Auction, and the Debtors may, in their discretion, select a Back-Up Bid as set forth in the Bidding Procedures; *provided that* the Stalking Horse Bidder may only be selected as the Back-Up Bid on the condition that the Outside Date (as defined in the Stalking Horse Agreement) shall remain

applicable. The Successful Bidder and Back-Up Bidder, following the completion of the Auction, must increase their Good Faith Deposit so that they equal 10% of such Successful Bid or Back-Up Bid, as applicable.

(ii) Expanded Asset Bids and Package Bids

25. The proposed marketing process is intended to comprehensively market the assets of Biofuels, which are the subject of the Stalking Horse Agreement, while also seeking any interest from Potential Bidders who might (i) submit a Bid for the Acquired Assets conditioned upon a purchase of some or all assets of a Debtor other than Biofuels (a "Non-BioFuels Debtor") and such Non-BioFuels assets (the "Expanded Assets") or (ii) submit a Bid for only the Expanded Assets. Based upon the experience of the Debtors and RPA in the prepetition marketing process, the Debtors anticipate that if the Bidding Procedures and postpetition marketing process were designed to strictly limit a transaction to only the Acquired Assets, third parties may nonetheless submit a Bid to purchase the Acquired Assets and the Expanded Assets (a "Package Bid"), and while not expected, it is also possible that third parties may submit a bid solely for the Expanded Assets (an "Expanded Assets Bid").

26. To anticipate the possible submission of a Package Bid and to provide comfort to the Biofuels creditors that such a Package Bid will not jeopardize the certainty, timing to close, and economics of the Stalking Horse Bid (or a marketing process that could generate a higher Successful Bid), the Debtors have incorporated the following provisions to the Bidding Procedures Order and Bidding Procedures:

a. In order to be considered a Qualifying Bid, a Package Bid must clearly meet the conditions for a Qualified Bid for the Acquired Assets, including without limitation that it sets forth (i) a Purchase Price in cash solely allocable to the Acquired Assets and that such allocation of the Purchase

Price be equal to or greater than the Minimum Purchase Price and (ii) a Purchase Price solely allocable to the Expanded Assets.

b. In order for a Package Bid to be considered a Qualifying Bid (a "Qualified Package Bid"), it must meet all conditions for a Qualifying Bid, except as applied to both (i) the Expanded Assets and the Debtor that would sell such Expanded Assets and (ii) the Acquired Assets. The Package Bid should include a separate executed asset purchase agreement, together with all exhibits and schedules thereto, pursuant to which the Potential Bidder proposes to effectuate a proposed transaction to purchase such Expanded Assets, which documents shall constitute "Transaction Documents" for the purpose of such Package Bid.[4] For the avoidance of doubt, a Qualified Package Bid that includes a Bid for the Acquired Assets must include cash consideration sufficient to pay, in full, in cash, the Payoff Amount (as defined in the Stalking Horse Purchase Agreement) from the proceeds of such Qualified Package Bid at the initial closing of the transaction.

c. If the Debtors have received any Package Bid, then at least two (2) business days prior to the Auction, the Debtors shall transmit to all Qualified Bidders (including all Qualified Bidders who submitted a Qualified Bid that was not a Package Bid) and the Consultation Parties a proposed form of asset purchase agreement for each Expanded Assets that are the subject of a Qualified Package Bid.

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

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

e. For the avoidance of doubt, consistent with the Bidding Procedures at the conclusion of any Auction the Debtors may (i) select a Successful Bid and Back-Up Bid for only the Acquired Assets; (ii) select a Successful Bid and Back-Up Bid that are each a Package Bid, or (iii) (a) select a Successful Bid (and potentially a Back-Up Bid) for only the Acquired Assets and (b) select a Successful Bid (and potentially a Back-Up Bid) for only the Expanded Assets[5].

(iii) Designation Procedures

27. The Debtors are seeking approval of the Designation Procedures for notifying counterparties to executory contracts and unexpired leases of proposed Cure Amounts (as defined below) and the timing of assumption and assignment or rejection with respect to those executory contracts and unexpired leases (the "Contracts" and "Leases") that the Debtors propose to assume and assign to the Successful Bidder or reject. The following is a summary of the Designation Procedures:

a. **Cure Notice.** On or before the date that is three (3) business days after entry of the Bidding Procedures Order, the Debtors shall file with the Court a notice of the proposed assumption and assignment of certain executory contracts and unexpired leases in connection with the Sale, substantially in the form attached as **Exhibit 2** to the Bidding Procedures Order (the "Cure Notice"). The Debtors will serve the Cure Notice via first class mail on all non-Debtor counterparties to Contracts and Leases, and their respective known counsel, and provide a copy of same to the Contract Party and the Stalking Horse Bidder. The Cure Notice shall inform each recipient that its respective Contract or Lease may be designated by the Contract Party (as defined below) as either assumed or rejected and the timing and procedures relating to such designation, and, to the extent practicable (i) the title of the Contract or Lease, (ii) the name of the counterparty to the Contract or Lease, (iii) the Debtors' good faith estimates of the cure amounts required in connection with such Contract or Lease (the "Cure Amount"), (iv) the identity of the Contract Party and (v) the deadline by which any such Contract or Lease counterparty may file an objection to the proposed assumption and assignment and/or cure amount, and the procedures relating thereto; provided, however, that service of a Cure Notice does not constitute

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

an admission that such Contract or Lease is an executory contract or unexpired lease. If the Debtors identify additional Contracts or Leases that might be assumed by the Debtors and assigned to the Contract Party, the Debtors will promptly send a supplemental Cure Notice to the applicable counterparties to such Contract or Lease.

b. **Adequate Assurance**. The Debtors shall serve by overnight mail (or by electronic mail, if available) no later than three (3) business days after entry of the Bidding Procedures Order the evidence of adequate assurance of future performance under the Contracts and Leases provided in connection with the Stalking Horse Bidder, including the legal name of the proposed assignee, the proposed use of any leased premises, the proposed assignee's financial ability to perform under the Contracts and Leases and a contact person with the proposed assignee whom counterparties may contact if they wish to obtain further information regarding the proposed assignee. No later than three (3) days after the Bid Deadline, the Debtors shall serve on affected counterparties and their respective known counsel by electronic mail (if available) or overnight mail the adequate assurance information provided by each Qualified Bidder.

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

Following the Debtors' selection of the Successful Bidder and the Back-Up Bidder, if any, at the conclusion of the Auction, the Debtors shall announce the Successful Bidder and the Back-Up Bidder, if any, and shall file with the Court a notice of the Successful Bidder and the Back-Up Bidder, if any. If and only if the Stalking Horse Bidder is not the Successful Bidder for the Acquired Assets, counterparties to the Debtors' Contracts and Leases shall have until November 6, 2024, at 4:00 p.m. (ET) to object to the assumption and assignment of a Contract or Lease solely on the issue of whether the Successful Bidder can provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code. For the avoidance of doubt, if the Stalking Horse Bidder is the Successful Bidder, all adequate assurance objections must be filed by the Sale Objection Deadline.

d. **Dispute Resolution**. Any objection to the proposed assumption and assignment or related cure of a Contract or Lease in connection with the proposed sale that remains unresolved as of the Sale Hearing shall be heard

> at the Sale Hearing or such later hearing if the objection is not resolved and the Debtors determine that an adjournment is appropriate. To the extent any such objection is resolved or determined unfavorably to the applicable Debtor, the Debtors may, subject to the terms of an agreement with the Successful Bidder, file a notice rejecting the applicable Contract or Lease after such determination.

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

B. <u>Scheduling and Notice</u>

29. Given the marketing efforts to date and the marketing and diligence period to be established by the Bidding Procedures, the proposed timeline is sufficient to complete a fair and open sale process that will maximize the value received for the Debtors' assets. The most likely interested bidders are among those who previously indicated interest and had access to the data room, and the opportunity to perform due diligence. Thus, these potential bidders need a shorter length of time for due diligence to submit competing bids. If new bidders emerge, the

proposed timeline will provide them with sufficient time to perform due diligence given that the process is well understood at this juncture. Thus, the schedule is sufficient, while respecting the necessity to consummate the Sale as quickly as possible to maximize the value received for the Debtors' assets.

30. **Notice of Sale Hearing**. Within three (3) days of the entry of the Bidding Procedures Order, or as soon thereafter as practicable, the Debtors shall cause to be served, by first-class mail, postage prepaid, a sale notice (the "Sale Notice") setting forth, among other things, the dates established for submission of Qualified Bids, the Auction and the Sale Hearing, substantially in the form attached to the Bidding Procedures Order as **Exhibit 3**, upon: (a) the United States Trustee for the District of Delaware (b) all known material creditors of the Debtors, including contingent, unliquidated and disputed creditors, as well as each creditor listed on the Debtors' consolidated list of thirty (30) largest unsecured creditors, as filed with the Debtors' chapter 11 petitions, (c) any official committee appointed in the Debtors' cases; (d) all parties asserting a security interest in the Acquired Assets to the extent any such interest is reasonably known to the Debtors; (e) applicable federal, state, county and city tax and regulatory authorities; (f) all entities known to have expressed a written interest in a transaction with respect to the Acquired Assets or that have been identified by the Debtors or their advisors as a potential purchaser of the Acquired Assets; (g) local, state and federal authorities and agencies that have issued licenses or permits to the Debtors with respect to the operation and use of the Acquired Assets; (h) each counterparty to the Debtors' Contracts and Leases; and (i) all parties requesting notice pursuant to Bankruptcy Rule 2002 (collectively, the "Sale Notice Parties").

31. **Post-Auction Supplement**. Following the Auction, the Debtors will promptly file with the Court a supplement (the "Supplement") that will inform the Court of the

results of the Auction. The Supplement will identify, among other things, (i) the Successful Bidder as the proposed purchaser of the Acquired Assets, (ii) the amount and form of consideration to be paid by the Successful Bidder for the Acquired Assets, (iii) the Assumed Liabilities to be assumed by the Successful Bidder, (iv) the Contracts and Leases that may be assumed by the Debtors and assigned to the Successful Bidder, or the Debtors' rights and interests therein sold and transferred to the Successful Bidder, as the case may be, in connection with the Sale, and (v) the executory contracts or unexpired leases designated to be rejected by the Debtors in connection with the Sale. The Supplement will also include similar information relating to the Back-Up Bidder and the Back-Up Bid. In addition, the Debtors will file as soon as practicable (i) any revised proposed Sale Order approving the Sale to the Successful Bidder, (ii) a copy of the purchase agreement entered into by the Debtors and the Successful Bidder following the Auction, and (iii) any additional information or documentation relevant to the Successful Bid. The Debtors will file the Supplement on the docket for the chapter 11 cases as promptly as is reasonably practicable prior to the Sale Hearing, but will not be required to serve the same on any parties-in-interest in the chapter 11 cases.

C. Sale Order

32. The Debtors request that this Court set the Sale Hearing for a date that is not later than November 11, 2024. At the Sale Hearing, the Debtors intend to seek entry of the Sale Order approving the Sale free and clear of all Encumbrances to the fullest extent possible pursuant to Bankruptcy Code section 363(f), including without limitation, successor liability or similar theories (except for those Assumed Liabilities and obligations expressly assumed by the Successful Bidder) and providing that the Successful Bidder will be protected from liability for any claims owed by the Debtors. In addition, the Sale Order will have findings that the Sale is not

a fraudulent conveyance. The Bidding Procedures provide proper and adequate notice for these and the other terms and conditions of the bidding, Auction and Sale processes.

BASIS FOR RELIEF REQUESTED

(i) Approval of the Sale is Warranted Under Bankruptcy Code Section 363(b), and the Bidding Procedures, Including Entry Into the Stalking Horse Agreement, are Appropriate and in the Best Interests of the Debtors' Estates and Creditors.

33. Section 363(b)(1) of the Bankruptcy Code provides that, "[t]he 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). Bankruptcy Code section 105(a) further provides, in relevant part, that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105.

34. A debtor should be authorized to sell assets out of the ordinary course of business pursuant to Bankruptcy Code section 363 if it demonstrates a sound business purpose for doing so. *See In re Federal Mogul Global, Inc.*, 293 B.R. 124, 126 (D. Del. 2003) (finding that a court should approve a debtor's use of assets outside ordinary course of business if debtor can demonstrate a sound business justification for proposed transaction); *see also In re Montgomery Ward Holding Corp.*, 242 B.R 147, 154 (Bankr. D. Del. 1999) (finding that the debtor's sound business purpose justified its sale of the assets outside of the ordinary course of business).

35. Indeed, the paramount goal of a chapter 11 process is to maximize the proceeds received by the estate. *See Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 564–65 (8th Cir. 1997) ("[A] primary objective of the [Bankruptcy] Code [is] to enhance the value of the estate at hand."); *In re Abbotts Dairies of Penn., Inc.*, 788 F.2d 143, 149 (3d Cir. 1986) (noting the fairness and reasonableness of prices); *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 659 (S.D.N.Y. 1992) ("It is a well-established principle of bankruptcy law that the . . . debtor's

duty . . . is to obtain the highest price or greatest overall benefit possible for the estate.") (quoting *Cello Bag Co. v. Champion Intl Corp. (In re Atlanta Packaging Prods., Inc.)*, 99 B.R. 124, 131 (Bankr. N.D. Ga. 1988)); *In re Summit Global Logistics, Inc.*, No. 08-11566, 2008 WL 819934, at *14 (Bankr. D.N.J. Mar. 26, 2008) (describing a proposed transaction as one that "maximize[d] value and return to interested parties."). To that end, courts have recognized that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate of a debtor and therefore are appropriate. *See Integrated*, 147 B.R. at 659 (providing that such procedures "encourage bidding . . . to maximize the value of the debtor's assets."); *In re Fin. News Network Inc.*, 126 B.R. 152, 156 (S.D.N.Y. 1991) ("[C]ourt-imposed rules for the disposition of assets [should] provide an adequate basis for comparison of offers, and [should] provide for a fair and efficient resolution of bankrupt estate.").

36. With this in mind, courts defer to a debtor's business judgment in the context of bidding and auction procedures. *See In re Trans World Airlines Inc.*, No. 01-0056, 2001 WL 1820326, at *10 (Bankr. D. Del. Apr. 2, 2001) ("It is not the function of a bankruptcy court to independently exercise a business judgment as to which proposal among competing proposals should be adopted by the debtor in effecting a § 363(b) sale.").

37. In exercising their fiduciary duties and in the sound exercise of the Debtors' business judgment, the Debtors have determined that the Bidding Procedures, including entry into the Stalking Horse Agreement, are the most appropriate method for encouraging competing bids that will maximize creditor recoveries and that will ensure the value received for their assets is the highest and best the market can generate.

38. The Bidding Procedures provide a framework to facilitate and entertain bids for the Acquired Assets and, if such bids are received, to conduct an Auction in an orderly yet

competitive fashion, thereby encouraging bids that maximize the value realized from a sale of the Acquired Assets. In particular, the Bidding Procedures contemplate an open and fair auction process with minimum barriers to entry and provide Potential Bidders with sufficient time to perform due diligence, many of whom will have likely performed due diligence in the very recent past, and acquire the information necessary to submit a timely and well-informed bid. *See In re Federal Mogul*, 293 B.R. 124, at 126.

39. The Bidding Procedures provide the Debtors with an adequate opportunity to consider competing bids and select the highest and best offer for the purchase of substantially all the Debtors' assets. The Debtors therefore believe that submitting the purchase of their assets to a market-based test will ensure maximum recovery for all stakeholders. Accordingly, the Debtors and their stakeholders can be assured that the consideration obtained will be fair and reasonable and at or above market. *In re Summit Global Logistics*, 2008 WL 819934, at *14.

40. If the Debtors do not receive any Qualified Bids (other than the Stalking Horse Bid), the Debtors will (i) notify all Potential Bidders and the Court in writing that (a) the Auction is cancelled and (b) the Stalking Horse Bid is the Successful Bid, and (ii) seek authority at the Sale Hearing to consummate the Sale transactions with the Stalking Horse Bidder contemplated by its Stalking Horse Agreement.

41. Similar bidding, auction and notice procedures have been previously approved by this Court in other chapter 11 cases. *See, e.g., In re Dermitech, Inc., 24-11378 (JTD) (Bankr. D. Del. 2024); In re Vyaire Medical, Inc., 24-11217 (BLS) (Bankr. D. Del. 2024); In re MRRC Hold Co., 24-11164 (CTG) (Bankr. D. Del. 2024); In re Coach USA, Inc., 24-11258 (MFW) (Bankr. D. Del. 2024); In re Ambri Inc., 24-10952 (LSS) (Bankr. D. Del. 2024);* In re Near Intelligence, Inc., 23-11962 (TMH) (Bankr. D. Del. 2023). *In re Tuscany Int'l Holdings (U.S.A.)*

LTD., Case No. 14-10193 (KG) (Bankr. D. Del. Mar. 21, 2014); *In re Oncure Holdings, Inc.*, Case No. 13-11540 (KG) (Bankr. D. Del. July 24, 2013); *In re Protostar Ltd.*, Case No. 09-12659 (MFW) (Bankr. D. Del. Aug. 24, 2009); *In re Midway Games Inc.*, Case No. 09-10465 (KG) (Bankr. D. Del. June 3, 2009).

42. In sum, the Debtors believe that the proposed Bidding Procedures, including entry into the Stalking Horse Agreement, create an appropriate framework for expeditiously establishing that the Debtors are receiving the best and highest offer for the Acquired Assets. Accordingly, the proposed Bidding Procedures and the Stalking Horse Agreement are reasonable, appropriate, and within the Debtors' sound business judgment under the circumstances.

(ii) Approval of the Bid Protections is Appropriate.

43. The Debtors believe that the Bid Protections are fair and reasonable under the circumstances. The Bid Protections provided for in the Stalking Horse Agreement were negotiated at arms' length and in good faith and were a necessary inducement to Stalking Horse Bidder's participation in the proposed sale transaction and willingness to subject its bid to a competitive auction process. As discussed below, the Stalking Horse Bid sets a "floor" value for the Assets that maximizes the likelihood that the Debtors will receive the highest or otherwise best offer for the Assets to the benefit of the Debtors' estates.

44. Approval of the Bid Protections is governed by standards for determining the appropriateness of bid protections in the bankruptcy context. In *O'Brien*, the Third Circuit reviewed the following nine (9) factors set forth by the lower court as relevant in deciding whether to award bid protections:

f. the presence of self-dealing or manipulation in negotiating the break-up fee;

g. whether the fee harms, rather than encourages, bidding;

h. the reasonableness of the break-up fee relative to the purchase price;

i. whether the unsuccessful bidder placed the estate property in a "sale configuration mode" to attract other bidders to the auction;

j. the ability of the request for a break-up fee to serve to attract or retain a potentially successful bid, establish a bid standard or minimum for other bidders or attract additional bidders;

k. the correlation of the fee to a maximum value of the debtor's estate;

l. the support of the principal secured creditors and creditors' committees of the break-up fee;

m. the benefits of the safeguards to the debtor's estate; and

n. the substantial adverse impact of the break-up fee on unsecured creditors, where such creditors are in opposition to the break-up fee.

See In re O'Brien Envtl. Energy, Inc., 181 F.3d at 536.

45. Although none of the factors is dispositive, an application of the facts to several of such factors supports the approval of the Bid Protections. In particular, the Bid Protections are necessary to preserve the value of the Debtors' estates because they will enable the Debtors to establish an adequate floor value for the Assets and to therefore insist that competing bids be materially higher or otherwise better than the Stalking Horse Bid—a clear benefit to the Debtors' estates. The Stalking Horse Bidder would not agree to act as a stalking horse without the Bid Protections given the substantial time and expense it has incurred in connection with negotiating definitive documentation and the risk that it will be outbid at the Auction. Without the Bid Protections, the Debtors might lose the opportunity to obtain the highest or otherwise best offer for the Assets and would certainly lose the downside protection that will be afforded by the existence of the Stalking Horse Bidder. As discussed in the First Day Declaration, the purchase price contemplated by the Stalking Horse Bid is substantially higher than any other potential bids received as of filing, and represents a superior recovery for the estate to the alternatives, including

the sizable risk of a chapter 7 liquidation. The bid of the Stalking Horse Bidder sends a message to all potential bidders that the Assets are at least worth the Purchase Price and puts pressure on potential competing bidders to "put their best foot forward" in formulating their bids. Therefore, without the benefit of the bid of the Stalking Horse Bidder, the bids received at auction for the Assets could be substantially lower than the bid offered by the Stalking Horse Bidder.

46. In addition, the Bid Protections were the product of hard-fought negotiations between the Debtors, their key creditor constituencies, and the Stalking Horse Bidder, in which the Debtors sought to both minimize the magnitude of Bid Protections payable and limit the circumstances under which they are payable. The resulting Bid Protections – consisting of only a Break-Up Fee – fall within the range of stalking horse bid protections approved in this District and others. *In re iSun, Inc.*, 24-11144 (TMH) (Bankr. D. Del. 2024) (approving a 5% Break-Up Fee); *In re Plastiq Inc.*, 23-10671 (BLS) (Bankr. D. Del. 2023) (Same); *In re Orexigen Therapeutics, Inc.*, 18-10518 (JTC) (Bankr. D. Del. 2018) (Same); *In re ATopTech, Inc.*, 17-10111 (MFW) (Bankr. D. Del. 2017) (Same).

47. Finally, payment of the Bid Protections in the context of a sale to another purchaser will not diminish the Debtors' estates to the extent they become payable, as the Bidding Procedures require that any competing bid must exceed the Stalking Horse Bid by an amount in excess of the Break-Up Fee. Accordingly, based on the foregoing, the Debtors submit that the Bid Protections reflect a sound business purpose, are fair and appropriate under the circumstances, and should be approved.

(iii) The Acquired Assets Should be Sold Free and Clear of Claims, Liens and Encumbrances Under 11 U.S.C. § 363(1).

48. In the interest of attracting the best offers, the Debtors request authorization to sell the Acquired Assets free and clear of any and all liens, claims, encumbrances, and other

interests in accordance with section 363(f) of the Bankruptcy Code, with any such liens, claims, encumbrances, and other interests attaching to the proceeds of the sale of the Acquired Assets and distributed as provided for in a further order of the Court.

49. Under section 363(f) of the Bankruptcy Code, a debtor may sell estate property free and clear of liens, claims, encumbrances, and other interests if one of the following conditions is satisfied:

> i. applicable nonbankruptcy law permits sale of such property free and clear of such interest;
>
> ii. such entity consents;
>
> iii. such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
>
> iv. such interest is in bona fide dispute; or
>
> v. such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). Because section 363(f) of the Bankruptcy Code is written in the disjunctive, satisfaction of any one of its five requirements will suffice to permit the sale of the Acquired Assets "free and clear" of liens, claims, encumbrances, and other interests. *See, e.g.*, *In re Dura Automotive Sys., Inc.*, 2007 WL 7728109, at *6 n.32 (Bankr. D. Del. Aug. 15, 2007).

50. Furthermore, section 105(a) of the Bankruptcy Code grants the Court broad discretionary powers, providing that "[t]he Court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions" of the Bankruptcy Code. 11 U.S.C. § 105(a). This equitable power may be utilized to effectuate the provisions of section 363(f). *See, e.g., In re Trans World Airlines, Inc.*, 2001 WL 1820325, at *6–7 (Bankr. D. Del. Mar. 27, 2001) (highlighting bankruptcy courts' equitable authority to authorize sale of estate assets free and clear).

51. The Debtors will present evidence at the Sale Hearing that the Sale satisfies the requirements of section 363(f). Accordingly, the Debtors request authorization to sell the Acquired Assets free and clear of all liens, claims, encumbrances, and other interests.

(iv) A Successful Bidder Should be Entitled to the Protections of Bankruptcy Code Section 363(m).

52. Pursuant to section 363(m) of the Bankruptcy Code, a good faith purchaser is one who purchases assets for value, in good faith, and without notice of adverse claims. *See In re Abbotts Dairies of Penn.*, 788 F.2d at 147; *Miami Ctr. Ltd. P'ship v. Bank of New York*, 838 F.2d 1547, 1554 (11th Cir. 1988); *In re Mark Bell Furniture Warehouse, Inc*., 992 F.2d 7, 9 (1st Cir. 1993); *In re Willemain v. Kivitz*, 764 F.2d 1019, 1023 (4th Cir. 1985); *In re Congoleum Corp*., Case No. 03-51524, 2007 WL 1428477 (Bankr. D.N.J. May 11, 2007); *In re Temtechco, Inc*., 1998 WL 887256, at *4 (D. Del. 1998).

53. As noted above, any Asset Purchase Agreement executed by a Successful Bidder (including the Stalking Horse Agreement) will have been negotiated at arm's-length and in good faith in accordance with the Bidding Procedures, with each of the parties represented by its own advisors and counsel. Accordingly, the Debtors request that the Sale Order include a provision that any Successful Bidder for the Acquired Assets is a "good faith" purchaser within the meaning of section 363(m) of the Bankruptcy Code. The Debtors maintain that providing the Successful Bidder with such protection will ensure that the maximum price will be received by the Debtors for the Acquired Assets.

(v) Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Should be Authorized.

54. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor in possession, "subject to the court's approval, may assume or reject any executory contract or [unexpired] lease of the debtor." 11 U.S.C. § 365(a). A debtor may assume or reject an

executory contract or unexpired lease if its reasonable business judgment supports assumption or rejection. *See, In re Stable Mews Assoc., Inc*., 41 B.R. 594, 596 (Bankr. S.D.N.Y. 1984); *see also Grp. of Institutional Investors v. Chicago M. St. P. & P.R.R. Co*., 318 U.S. 523 (1943); *Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp*., 872 F.2d 36, 39-40 (3d Cir. 1989). The business judgment test "requires only that the trustee [or debtor in possession] demonstrate that [assumption or] rejection of the contract will benefit the estate." *Wheeling-Pittsburgh Steel Corp. v. West Penn Power Co. (In re Wheeling-Pittsburgh Steel Corp.)*, 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987) (quoting *Stable Mews*). Any more exacting scrutiny would slow the administration of a debtor's estate and increase costs, interfere with the Bankruptcy Code's provision for private control of administration of the estate, and threaten the court's ability to control a case impartially. *See Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985).

55. Pursuant to section 365(b)(1) of the Bankruptcy Code, for a debtor to assume an executory contract, it must "cure, or provide adequate assurance that the debtor will promptly cure," any default which is required to be cured, including compensating or providing adequate assurance of prompt compensation for any "actual pecuniary loss" relating to such default. 11 U.S.C. § 365(b)(1). The Designation Procedures, as set forth in greater detail in the Bidding Procedures Order, are appropriate and reasonably tailored to provide counterparties to executory contracts and unexpired leases with adequate notice of the proposed assumption and assignment of their contracts and leases, as well as proposed cure amounts, if any. Such counterparties will then be given an opportunity to object to such cure amounts and assumption and assignment of their contracts and leases. The Designation Procedures further provide that, in the event an objection is not resolved, the Court will determine the disputed issues. Therefore, the

Debtors submit that implementation of the Designation Procedures is appropriate under the facts and circumstances of the chapter 11 cases and the proposed Sale.

56. Once an executory contract is assumed, the trustee or debtor in possession may elect to assign such contract. *See In re Rickel Home Centers, Inc.*, 209 F.3d 291, 299 (3d Cir. 2000) ("The Code generally favors free assignability as a means to maximize the value of the debtor's estate."); *see also In re Headquarters Dodge, Inc.*, 13 F.3d 674, 682 (3d Cir. 1994) (noting that the purpose of section 365(f) is to assist a trustee in realizing the full value of the debtor's assets). Section 365(f) of the Bankruptcy Code provides that the "trustee may assign an executory contract . . . only if the trustee assumes such contract . . . and adequate assurance of future performance is provided." 11 U.S.C. § 365(f)(2). The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but should be given "practical, pragmatic construction." *See Carlisle Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1989); *see also In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean absolute assurance that debtor will thrive and pay rent). Among other things, adequate assurance may be given by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned.

57. The Debtors submit that the assumption and assignment of executory contracts and unexpired leases to the Contract Party or other Successful Bidder (as applicable), as of the Closing Date is necessary to the consummation of the Sale and is well within the Debtors' sound business judgment. Those contracts and leases are essential to inducing the highest or otherwise best offer for the Acquired Assets because they are necessary to run the Debtors' business. It is unlikely that any purchaser would want to acquire any company on a going-concern

basis unless a significant number of the contracts and leases needed to conduct the business and manage the day-to-day operations are included in the transaction. In addition, the Stalking Horse Agreement and Sale Order provide that the Stalking Horse Bidder will have (i) cured and/or provided adequate assurance of cure of any default required to be cured and existing prior to the assumption and assignment; and (ii) provided compensation or adequate assurance of compensation to any counterparty for actual pecuniary loss to such party resulting from such default.

58. Counterparties to the Debtors' executory contracts and unexpired leases will be provided with a Cure Notice and will have an opportunity to object to the potential assumption and assignment of their contracts and leases prior to the entry of the Sale Order. The Debtors propose that any counterparty that fails to object to the proposed assumption and assignment of its contract or lease will be deemed to consent to that assumption and assignment pursuant to section 365 of the Bankruptcy Code on the terms set forth in the proposed Bidding Procedures Order and Sale Order, and to the cure amounts identified in the Cure Notice. *See, e.g.*, *In re Tabone, Inc.*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (holding that creditor was deemed to have consented to sale by not objecting to sale motion).

59. Accordingly, the Debtors submit that the assumption and assignment to the Stalking Horse Bidder or other Successful Bidder of the Debtors' contracts and leases should be approved as an exercise of the Debtors' sound business judgment.

E. The Proposed Notice is Appropriate Under Bankruptcy Rule 2002.

47. The notices contemplated by the Bidding Procedures give notice of the proposed Sale including a disclosure of the time and place of an Auction, the terms and conditions of the Sale, and the deadline for filing any objections. The Debtors submit that the notice procedures comply with Bankruptcy Rule 2002 and include information regarding the Bidding

Procedures necessary to enable interested bidders to participate in the Auction, and constitute good and adequate notice of the Bidding Procedures and the other components of the Auction. Therefore, the Debtors respectfully request this Court approve the proposed notice procedures.

F. Relief from Bankruptcy Rules 6004(h) and 6006(d) is Appropriate.

48. 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). To preserve the value of the Debtors' estates and limit the costs of administering and preserving the Acquired Assets, it is critical that the Debtors close the sale of the Acquired Assets as soon as possible after all closing conditions have been met or waived. Accordingly, the Debtors hereby request that the Court waive the fourteen-day stay periods under Bankruptcy Rules 6004(h) and 6006(d).

NOTICE

49. The Debtors will provide notice of this Motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) each of the Debtors' creditors holding the thirty (30) largest unsecured claims as set forth in the list filed with the Debtors' petitions; (c) UMB and its counsel; (d) the Securities and Exchange Commission; (e) the Internal Revenue Service; (f) the United States Department of Justice; (g) entities known to have expressed a bona fide interest in a transaction with respect to the Acquired Assets; (h) all entities known to have asserted any lien, claim or encumbrance in or upon any of the Acquired Assets; (i) all federal, state and local environmental, regulatory or taxing authorities or recording offices which have a reasonably known interest in the relief requested by the Motion; and (j) all parties who have requested notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002. In light of the nature

of the relief requested in this Motion, the Debtors respectfully submit that no further notice is necessary.

CONCLUSION

WHEREFORE, the Debtors request this Court to enter the Bidding Procedures Order, the Sale Order and further relief as the Court may deem just and appropriate.

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 Bidding Procedures Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

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

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

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

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

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

IT IS HEREBY FOUND AND DETERMINED THAT:

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

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

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

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

E. The Debtors have articulated good and sufficient reasons for the Court to approve the Bidding Procedures. Such good and sufficient reasons were set forth in the Motion, are incorporated by reference herein, and, among other things, form the basis for the findings of fact and conclusions of law set forth herein.

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

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

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

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

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

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

or Lease will be assumed and assigned, and all rights of the Debtors with respect to such Contracts and Leases are reserved.

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

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

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

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

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

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

The Bidding Procedures

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

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

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

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

b. **Auction**: **November 1, 2024 at 10:00 a.m. (Prevailing Eastern Time)** is the date and time of the Auction, if one is needed, which will be held at the offices of Morris Nichols Arsht & Tunnell LLP 1201 North Market Street, Wilmington, DE 19801; *provided, however*, that the Debtors, in their discretion, shall have the right to hold the Auction at another place or

virtually, with instructions for Qualified Bidders to participate to be provided prior to the Auction, with notice to all Qualified Bidders and any other invitees.

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

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

Approval of Debtors' Entry into the Stalking Horse Agreement

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

9. The Debtors are authorized, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, to enter into and perform under the Stalking Horse Agreement, subject to the solicitation of higher or otherwise better offers for the Acquired Assets (as defined in the Stalking Horse Agreement) and entry of the Sale Order. Subject to entry of the Sale Order, the Stalking Horse Agreement shall be binding and enforceable on the Debtors' estates and the parties thereto

in accordance with and subject to its terms, including as they relate to the Bidding Procedures and related termination provisions.

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

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

12. The Stalking Horse Agreement shall be binding and enforceable on the parties thereto in accordance with its terms subject to entry of the Sale Order. The failure to describe specifically or include any provision of the Stalking Horse Agreement or related documents in the Motion or herein shall not diminish or impair the effectiveness of such provision as to such parties. The Stalking Horse Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto, solely in accordance with the terms thereof, without further order of the Court.

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

an administrative expense claim or proof of claim; (iv) shall be payable in accordance with the terms of and subject to the conditions set forth in the Stalking Horse Agreement and (v) shall survive the termination of the Stalking Horse Agreement and dismissal or conversion of these Chapter 11 Cases pursuant to the terms in the Stalking Horse Agreement.

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

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

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

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

Stalking Horse Agreement to terminate the Stalking Horse Agreement, solely to the extent permitted by the Stalking Horse Agreement, and assert any claims with respect to the Bid Protections.

Hearing and Objection Deadline

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

19. The deadline to file objections, if any, to the transactions contemplated by the Stalking Horse Agreement or to entry of the Sale Order is **October 25, 2024 at 4:00 p.m. (Prevailing Eastern Time)** (the "Sale Objection Deadline"). Objections, if any, **must**: (i) be in writing, (ii) conform to the applicable provisions of the Bankruptcy Rules, the Local Rules and any orders of the Court, (iii) state with particularity the legal and factual basis for the objection and the specific grounds therefor, and (iv) be filed with the Court and served so as to be **actually received** no later than the Sale Objection Deadline, as applicable, by the following parties (the "Notice Parties"): (a) the Debtors, P.O. Box 220 Pleasanton, CA 94566, Attn: Mark Smith; (b) proposed counsel to the Debtors, Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street. 16th Floor, P.O. Box 1347, Wilmington, DE 19899-1347, Attn: Robert J. Dehney Sr. (rdehney@morrisnichols.com); Daniel B. Butz (dbutz@morrisnichols.com); Clint M. Carlisle (ccarlisle@morrisnichols.com); Avery Jue Meng (ameng@morrisnichols.com); (c) the Office of

the United States Trustee for the District of Delaware (the "U.S. Trustee"): 844 King Street, Room 2207, Wilmington, Delaware 19801, Attn: Rosa Sierra-Fox (rosa.sierra-fox@usdoj.gov); (d) counsel to any official committee of unsecured creditors appointed in the cases (the "Committee"); (e) counsel to Switch, Ltd.: (i) Latham & Watkins LLP, 1271 Avenue of the Americas, New York, NY 10020, Attn: Brian S. Rosen (Brian.Rosen@lw.com) and Adam Goldberg (Adam.Goldberg@lw.com) and (ii) Richards Layton & Finger, P.A., 920 N. King Street, Wilmington, DE 19801, Attn: Michael J. Merchant (Merchant@RLF.com); and (f) counsel to UMB Bank, N.A.: (i) Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, NY 10065, Attn: Alexander Woolverton (awoolverton@kramerlevin.com); Douglas Buckley (dbuckley@kramerlevin.com), and (ii) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Andrew Magaziner (amagaziner@ycst.com).

Sale Notice and Related Relief

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

issued licenses or permits to the Debtors with respect to the operation and use of the Acquired Assets; (g) each counterparty to the Debtors' Contracts and Leases; and (h) all parties requesting notice pursuant to Bankruptcy Rule 2002.

Designation and Assumption Procedures

21. The procedures set forth below regarding the proposed assumption and assignment of certain Contracts and Leases that may be designated to be assumed by the Debtors pursuant to section 365(b) of the Bankruptcy Code and assigned to the Contract Party (or the Successful Bidder selected at the Auction, if any) pursuant to section 365(f) of the Bankruptcy Code (as defined in the Stalking Horse Agreement, collectively, the "Assigned Contracts and Leases") in connection with the sale of the Acquired Assets are hereby approved (the "Designation Procedures").

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

a. **Cure Notice.** On or before the date that is three (3) business days after entry of the Bidding Procedures Order, the Debtors shall file with the Court a notice of the proposed assumption and assignment of certain executory contracts and unexpired leases in connection with the Sale, substantially in the form attached as **Exhibit 2** to the Bidding Procedures Order (the "Cure Notice"). The Debtors will serve the Cure Notice via first class mail on all non-Debtor counterparties to Contracts and Leases, and their respective known counsel, and provide a copy of same to the Contract Party and the Stalking Horse Bidder. The Cure Notice shall inform each recipient that its respective Contract or Lease may be designated by the Contract Party (as defined below) as either assumed or rejected and the timing and procedures relating to such designation, and, to the extent practicable (i) the title of the Contract or Lease, (ii) the name of the counterparty to the Contract or Lease, (iii) the Debtors' good faith estimates of the cure amounts required in connection with such Contract or Lease (the "Cure Amount"), (iv) the identity of the Contract Party and (v) the deadline by which any such Contract or Lease counterparty may file an objection to the proposed assumption and assignment and/or cure amount, and the procedures relating thereto; provided, however, that service of a Cure Notice does not constitute an admission that such Contract or Lease is an executory contract or

unexpired lease. If the Debtors identify additional Contracts or Leases that might be assumed by the Debtors and assigned to the Contract Party, the Debtors will promptly send a supplemental Cure Notice to the applicable counterparties to such Contract or Lease.

b. **Adequate Assurance**. The Debtors shall serve by overnight mail (or by electronic mail, if available) no later than three (3) business days after entry of the Bidding Procedures Order the evidence of adequate assurance of future performance under the Contracts and Leases provided in connection with the Stalking Horse Bidder, including the legal name of the proposed assignee, the proposed use of any leased premises, the proposed assignee's financial ability to perform under the Contracts and Leases and a contact person with the proposed assignee whom counterparties may contact if they wish to obtain further information regarding the proposed assignee. No later than three (3) days after the Bid Deadline, the Debtors shall serve on affected counterparties and their respective known counsel by electronic mail (if available) or overnight mail the adequate assurance information provided by each Qualified Bidder.

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

Following the Debtors' selection of the Successful Bidder and the Back-Up Bidder, if any, at the conclusion of the Auction, the Debtors shall announce the Successful Bidder and the Back-Up Bidder, if any, and shall file with the Court a notice of the Successful Bidder and the Back-Up Bidder, if any. If and only if the Stalking Horse Bidder is not the Successful Bidder for the Acquired Assets, counterparties to the Debtors' Contracts and Leases shall have until November 6, 2024, at 4:00 p.m. (ET) to object to the assumption and assignment of a Contract or Lease solely on the issue of whether the Successful Bidder can provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code. For the avoidance of doubt, if the Stalking Horse Bidder is the Successful Bidder, all adequate assurance objections must be filed by the Sale Objection Deadline.

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

> the Debtors determine that an adjournment is appropriate. To the extent any such objection is resolved or determined unfavorably to the applicable Debtor, the Debtors may, subject to the terms of an agreement with the Successful Bidder, file a notice rejecting the applicable Contract or Lease after such determination.

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

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

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

26. Nothing in this Order shall be construed to modify the requirements and provisions of sections 365(b), 365(d)(3), 365(d)(4) or 365(f) of the Bankruptcy Code, or to

determine the effective date of rejection for any Contract or Lease which the Debtors may seek to reject.

Other Relief Granted

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

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

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

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

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

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

EXHIBIT 1 To Bidding Procedures Order

Bidding Procedures

BIDDING PROCEDURES

On September 9 2024, Fulcrum BioEnergy, Inc.; Fulcrum Sierra BioFuels, LLC; Fulcrum Sierra Finance Company, LLC; and Fulcrum Sierra Holdings, LLC, debtors and debtors in possession (collectively, the "Debtors") in the chapter 11 cases (the "Cases") pending in the United States Bankruptcy Court for the District of Delaware ("Court") and jointly administered under Case No. 24 -12008 (TMH), filed a motion [D.I. [___]] (the "Sale Motion"), seeking, among other things, authorization for the Debtors to perform their obligations under that certain Asset Purchase Agreement (together with all exhibits thereto, the "Stalking Horse Agreement")[8] entered into by and among the Debtor Fulcrum Sierra Biofuels, LLC and Switch, Ltd. (the "Stalking Horse Bidder"), substantially in the form attached to the Sale Motion as Exhibit B. As described in the Sale Motion, the Stalking Horse Agreement contemplates, pursuant to the terms and subject to the conditions contained therein, the sale of the Acquired Assets in exchange for cash consideration in the amount of $15,000,000 plus the assumption of Assumed Liabilities.

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

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

Notice Parties

Information required to be provided under these Bidding Procedures must be provided to the following parties (collectively, the "Notice Parties"): (a) the Debtors, P.O. Box 220 Pleasanton, CA 94566, Attn: Mark Smith; (b) Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street. 16th Floor, P.O. Box 1347, Wilmington, DE 19899-1347, Attn: Robert J. Dehney Sr. (rdehney@morrisnichols.com); Curtis S. Miller (cmiller@morrisnichols.com); Daniel B. Butz (dbutz@morrisnichols.com); Clint M. Carlisle (ccarlisle@morrisnichols.com); Avery Jue Meng (ameng@morrisnichols.com); (c) DSI Specialists, Inc. ("DSI"), 10 S. LaSalle Street, Suite 3300,

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

Chicago, Illinois 60603, Attn: George Shoup (gshoup@dsiconsulting.com); Jack Donohue (jdonohue@dsiconsulting.com); and Steve Victor (svictor@dsiconsulting.com) (d) the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"): 844 King Street, Room 2207, Wilmington, Delaware 19801, Attn: Rosa Sierra-Fox (rosa.sierra-fox@usdoj.gov); (e) counsel to UMB: (i) Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, NY 10065, Attn: Alexander Woolverton (awoolverton@kramerlevin.com); Douglas Buckley (dbuckley@kramerlevin.com), and (ii) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Andrew Magaziner (amagaziner@ycst.com); (f) counsel to the Committee; and (g) counsel to Switch, Ltd.: (i) Latham & Watkins LLP, 1271 Avenue of the Americas, New York, NY 10020, Attn: Adam Goldberg (Adam.Goldberg@lw.com) and Brian S. Rosen (Brian.Rosen@lw.com) and (ii) Richards, Layton & Finger, P.A. 920 N. King Street, Wilmington, DE 19801, Attn: Michael J. Merchant (Merchant@RLF.com).

Participation Requirements

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

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

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

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

Due Diligence

An Interested Party must deliver the Preliminary Bid Documents (a "Potential Bidder") to be eligible to receive due diligence information concerning the Debtors and their assets. The Debtors will provide to each Potential Bidder reasonable due diligence information, as requested, as soon as reasonably practicable after such request, provided that if any Potential

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

Bid Requirements

To be eligible to participate in the Auction, each Potential Bidder must submit a proposal to purchase the Acquired Assets (a "Bid") by October 25, 2024 at 4:00 p.m. (ET) (the "Bid Deadline") which must:

1) state that the applicable Potential Bidder offers to purchase the Acquired Assets upon substantially the terms and conditions set forth in the Stalking Horse Agreement pursuant to a transaction that is no less favorable to the Debtors' estates as the Debtors, in consultation with the Consultation Parties, may reasonably determine, than the transactions contemplated in the Stalking Horse Agreement;

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

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

4) be irrevocable by the Potential Bidder until the selection of the Successful Bid in accordance with the terms of these Bidding

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

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

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

7) provide a commitment to close within 14 days after the Sale Hearing;

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

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

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

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

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

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

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

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

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

17) be received by the Bid Deadline.

Package Bid Requirements

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

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

2) In order for a Package Bid to be considered a Qualifying Bid (a "Qualified Package Bid"), it must meet all conditions for a Qualifying Bid, except as applied to the Expanded Assets and the Debtor that would sell such Expanded Assets. The Package Bid should include a separate executed asset purchase agreement, together with all exhibits

and schedules thereto, pursuant to which the Potential Bidder proposes to effectuate a proposed transaction to purchase such Expanded Assets, which documents shall constitute "Transaction Documents" for the purpose of such Package Bid.[9] For the avoidance of doubt, a Qualified Package Bid that includes a Bid for the Acquired Assets must include cash consideration sufficient to pay, in full, in cash, the Payoff Amount (as defined in the Stalking Horse Purchase Agreement) from the proceeds of such Qualified Package Bid at the initial closing of the transaction.

If the Debtors have received any Package Bids, then at least two (2) business days prior to the Auction, the Debtors shall transmit to all Qualified Bidders (including all Qualified Bidders who submitted a Qualified Bid that was not a Package Bid) and the Consultation Parties a proposed form of asset purchase agreement for the Expanded Assets that are the subject of a Qualified Package Bid.

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

For the avoidance of doubt, consistent with these Bidding Procedures at the conclusion of any Auction the Debtors may (i) select a Successful Bid that is a Qualified Bid for only the Acquired Assets and a Back-Up Bid that is only for the Acquired Assets; (ii) select a Successful Bid and Back-Up Bid that are each a Package Bid, or (iii) select a Successful Bid for the Acquired Assets and select a Successful Bid and Back-Up Bid that are for only the Expanded Assets.[10]

Designation as Qualified Bidder

A qualified bidder ("Qualified Bidder") is a Potential Bidder that, in the Debtors' reasonable determination after consultation with the Consultation Parties, (i) has timely submitted a Bid that satisfies each of the requirements listed above in the sections entitled "Bid Requirements" or "Package Bid Requirements," as applicable, (ii) is able to consummate the proposed transaction within the required timeframe if selected as the Successful Bidder (such Bid submitted by a Qualified Bidder, a "Qualified Bid"); provided that the Debtors reserve the right to work with any Potential Bidder to cure any deficiencies in a Bid that is not initially deemed a Qualified Bid. Within two (2) business days after a Potential Bidder delivers all of the documents described above, the Debtors will determine in their reasonable discretion after consultation with the Consultation Parties whether such Potential Bidder is a Qualified Bidder, and notify the Potential Bidder of such determination. For the avoidance of doubt, (i) the Stalking Horse Bidder is a Qualified Bidder, (ii) the Stalking Horse Agreement is a Qualified Bid, and (iii) the Stalking

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

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

Horse Bidder is authorized to submit any Overbids (as defined below) during the Auction, in each instance without further qualification required of the Stalking Horse Bidder.

"As Is, Where Is"

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

Auction

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

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

Auction Date and Location. The Auction will commence on or before November 1, 2024 at 10:00 a.m. (Prevailing Eastern Time) at the offices of **Morris Nichols Arsht & Tunnell, LLP, 1201 N. Market Street, Wilmington, DE 19801**, or on such other date and/or at such other

location as determined by the Debtors. The Debtors may determine that the Auction will be held virtually.

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

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

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

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

Selection of Successful Bid

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

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

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

Implementation of the Sale

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

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

Consent to Jurisdiction as Condition to Bidding

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

Return of Good Faith Deposit

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

Reservation of Rights

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

EXHIBIT 2 To Bidding Procedures Order

Cure Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

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

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

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

Relief [D.I.___] (the "Sale Motion")[2], with the United States Bankruptcy Court for the District of Delaware (the "Court"), seeking, among other things, entry of an order (the "Sale Order") authorizing and approving: (a) the sale (the "Sale") of certain assets (the "Acquired Assets") free and clear of all liens, claims, encumbrances, and other interests (other than Permitted Post-Closing Encumbrances), with all such liens, claims, encumbrances, and other interests attaching with the same validity and priority to the Sale proceeds, to Switch, Ltd. (the "Stalking Horse Bidder"), except as set forth in the Stalking Horse Agreement and subject to higher or otherwise better offers; and (b) certain procedures for the assumption and assignment of executory contracts (the "Contracts") and unexpired leases (the "Leases") in connection with the Sale.

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

PLEASE TAKE FURTHER NOTICE that, pursuant to the Bidding Procedures Order, a hearing will be held before the Honorable Thomas M. Horan, United States Bankruptcy Judge, on **November 11, 2024, at [__:__ _.m.] (Prevailing Eastern Time)**, in Courtroom [**7**] of the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801 to consider approval of the Sale (the "Sale Hearing"). The Sale Hearing may be rescheduled or continued from time to time without further notice other than the

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

announcement of the adjourned date(s) at the Sale Hearing or any continued hearing or on the applicable hearing agenda or other notice filed on the docket of these chapter 11 cases.

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

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

PLEASE TAKE FURTHER NOTICE that if you disagree with the proposed Cure Amounts, object to the ability of the Debtors to provide adequate assurance of future performance with respect to the Contract or Lease, or otherwise object to the potential assumption and assignment of the Contract or Lease to the Stalking Horse Bidder or other Successful Bidder, as applicable, you must file with the Court and serve an objection (an "Objection") on the

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

following parties so as to be actually received before **4:00 p.m. (prevailing Eastern Time) on [•], 2024** (the "Cure Notice Objection Deadline"): (a) the Debtors, P.O. Box 220 Pleasanton, CA 94566, Attn: Mark Smith; (b) proposed counsel to the Debtors, Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street. 16th Floor, P.O. Box 1347, Wilmington, DE 19899-1347, Attn: Robert J. Dehney Sr. (rdehney@morrisnichols.com); Curtis S. Miller (cmiller@morrisnichols.com); Daniel B. Butz (dbutz@morrisnichols.com); Clint M. Carlisle (ccarlisle@morrisnichols.com); Avery Jue Meng (ameng@morrisnichols.com); (c) the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"): 844 King Street, Room 2207, Wilmington, Delaware 19801, Attn: Rosa Sierra-Fox (rosa.sierra-fox@usdoj.gov); (d) counsel to any official committee of unsecured creditors appointed in the cases (the "Committee"); (e) counsel to Switch, Ltd.: (i) Latham & Watkins LLP, 1271 Avenue of the Americas, New York, NY 10020, Attn: Adam Goldberg (Adam.Goldberg@lw.com) and Brian S. Rosen (Brian.Rosen@lw.com) and (ii) Richards, Layton & Finger, P.A., 920 N. King Street, Wilmington, DE 19801, Attn: Michael J. Merchant (Merchant@RLF.com); and (f) counsel to UMB Bank, N.A.: (A) Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, NY 10065, Attn: Alexander Woolverton (awoolverton@kramerlevin.com); Douglas Buckley (dbuckley@kramerlevin.com), and (B) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Andrew Magaziner (amagaziner@ycst.com). All Objections must: (i) be in writing; (ii) comply with the applicable provisions of the Bankruptcy Rules, Local Rules and any orders of the Court; and (iii) state with specificity the nature of the objection and, if the objection pertains to the Cure Amount, the correct cure amount alleged by the objecting counterparty, together with any applicable and appropriate documentation in support thereof.

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

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

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

PLEASE TAKE FURTHER NOTICE that the Debtors hereby reserve all rights to amend, revise or supplement any documents relating to the Sale and/or to be executed, delivered,

assumed and/or performed in connection with the Sale or the Stalking Horse Agreement or Successful Bidder Purchase Agreement, as applicable, including the Contract and Lease Schedule.

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

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

Dated: September [•], 2024
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Draft

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

Proposed Counsel to the Debtors and Debtors in Possession

EXHIBIT 3 To Bidding Procedures Order

Sale Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

NOTICE OF SALE, BIDDING PROCEDURES, AUCTION AND SALE HEARING

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

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

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

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

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

PLEASE TAKE FURTHER NOTICE THAT ANY PARTY OR ENTITY WHO FAILS TO TIMELY MAKE AN OBJECTION TO THE SALE IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER SHALL BE FOREVER BARRED FROM ASSERTING ANY OBJECTION TO THE SALE, INCLUDING WITH RESPECT TO THE TRANSFER OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, AND THE ABSENCE OF SUCCESSOR LIABILITY.

PLEASE TAKE FURTHER NOTICE that the Debtors are soliciting offers for the purchase of the Acquired Assets and assumption of the Assumed Liabilities (as defined in the Stalking Horse Agreement) of the Debtors consistent with the bid procedures (the "Bidding

Procedures") approved by the Court by entry of an order on [•], 2024 [D.I_] (the "Bidding Procedures Order"). The deadline for each Potential Bidder to submit a proposal to purchase the Acquired Assets is **October 25, 2024 at 4:00 p.m. (Prevailing Eastern Time)** (the "Bid Deadline"). **All interested bidders should carefully read the Bidding Procedures and Bidding Procedures Order**. To the extent that there are any inconsistencies between this notice and the Bidding Procedures or Bidding Procedures Order, the Bidding Procedures or Bidding Procedures Order, as applicable, shall govern in all respects.

PLEASE TAKE FURTHER NOTICE that, if the Debtors receive qualified competing bids within the requirements and time frame specified by the Bidding Procedures, the Debtors will conduct an auction (the "Auction") of the Acquired Assets on **November 1, 2024 at 10:00 a.m. (prevailing Eastern Time)** at the offices of **Morris Nichols Arsht & Tunnell LLP, 1201 North Market Street, Wilmington, DE 19801** (or virtually, or at any other location as the Debtors may hereafter provide notice of in accordance with the Bidding Procedures and Bidding Procedures Order).

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

PLEASE TAKE FURTHER NOTICE that, except as otherwise set forth in the Bidding Procedures or Stalking Horse Agreement with respect to (i) matters arising under Contracts and Leases following the Closing or (ii) the assignment of Contracts and Leases to parties other than the Stalking Horse Bidder, the deadline to file objections, if any, to the transactions contemplated by the Stalking Horse Agreement or to entry of the Sale Order is **October 25, 2024 at 4:00 p.m. (Prevailing Eastern Time)** (the "Sale Objection Deadline"). Objections, if any, must: (i) be in writing, (ii) conform to the applicable provisions of the Bankruptcy Rules, the Local Rules and any orders of the Court, (iii) state with particularity the legal and factual basis for the objection and the specific grounds therefor and (iv) be filed with the Court and served so as to be actually received no later than the Sale Objection Deadline by the following parties: (a) the Debtors, P.O. Box 220 Pleasanton, CA 94566, Attn: Mark Smith; (b) proposed counsel to the Debtors, Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street. 16th Floor, P.O. Box 1347, Wilmington, DE 19899-1347, Attn: Robert J. Dehney Sr. (rdehney@morrisnichols.com); Curtis S. Miller (cmiller@morrisnichols.com); Daniel B. Butz (dbutz@morrisnichols.com); Clint M. Carlisle (ccarlisle@morrisnichols.com); Avery Jue Meng (ameng@morrisnichols.com); (c) the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"): 844 King Street, Room 2207, Wilmington, Delaware 19801, Attn: Rosa Sierra-Fox (rosa.sierra-fox@usdoj.gov); (d) counsel to any official committee of unsecured creditors appointed in the cases (the "Committee"); (e) counsel to Switch, Ltd.: (i) Latham & Watkins LLP, 1271 Avenue of the Americas, New York, NY 10020, Attn: Brian S. Rosen (Brian.Rosen@lw.com) and Adam Goldberg (Adam.Goldberg@lw.com) and (ii) Richards Layton & Finger, P.A., 920 N. King Street, Wilmington, DE 19801, Attn: Michael J. Merchant (Merchant@RLF.com); and (f) counsel to UMB Bank, N.A.: (i) Kramer Levin Naftalis & Frankel

LLP, 1177 Avenue of the Americas, New York, NY 10065, Attn: Alexander Woolverton (awoolverton@kramerlevin.com); Douglas Buckley (dbuckley@kramerlevin.com), and (ii) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Andrew Magaziner (amagaziner@ycst.com).

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

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

Dated: September [•], 2024
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Draft

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

Proposed Counsel to the Debtors and Debtors in Possession

EXHIBIT B

Form of Stalking Horse Agreement

Execution Version

ASSET PURCHASE AGREEMENT

DATED AS OF SEPTEMBER 10, 2024

BY AND BETWEEN

SWITCH, LTD.

AND

FULCRUM SIERRA BIOFUELS, LLC

TABLE OF CONTENTS

Page

ARTICLE I PURCHASE AND SALE OF THE ACQUIRED ASSETS; ASSUMPTION OF ASSUMED LIABILITIES 4
1.1 Purchase and Sale of the Acquired Assets 4
1.2 Excluded Assets 6
1.3 Assumption of Certain Liabilities 6
1.4 Excluded Liabilities 6
1.5 Risk of Loss 8
1.6 Assumption/Rejection of Certain Contracts. 8

ARTICLE II CONSIDERATION; PAYMENT; CLOSING 10
2.1 Consideration; Payment 10
2.2 Deposit. 10
2.3 Closing 11
2.4 Closing Deliveries by Seller 11
2.5 Closing Deliveries by Purchaser 12
2.6 Withholding 12

ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLER 12
3.1 Organization and Qualification 12
3.2 Authorization of Agreement 13
3.3 Conflicts; Consents 13
3.4 Title to Acquired Assets 14
3.5 Permits; Compliance with Laws 14
3.6 Intellectual Property 14
3.7 Contracts 14
3.8 Real Property 15
3.9 Environmental 15
3.10 Water Rights 16
3.11 Actions 16
3.12 No Other Representations or Warranties 16

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF PURCHASER 17
4.1 Organization and Qualification 17
4.2 Authorization of Agreement 17
4.3 Conflicts; Consents 17
4.4 No Litigation 18
4.5 No Additional Representations or Warranties 18

ARTICLE V BANKRUPTCY COURT MATTERS 18
5.1 Bankruptcy Actions 18
5.2 Cure Costs 19
5.3 Sale Order 19
5.4 Bidding Procedures Order 19

TABLE OF CONTENTS

Page

ARTICLE VI COVENANTS AND AGREEMENTS 19
6.1 Conduct of Seller 19
6.2 Access to Information 21
6.3 Regulatory Approvals. 22
6.4 Reasonable Efforts; Cooperation 23
6.5 Notification of Certain Matters 23
6.6 Further Assurances 24
6.7 Insurance Matters 24
6.8 Receipt of Misdirected Assets 24
6.9 Acknowledgments 24
6.10 No Right to Employment 27
6.11 Casualty 27
6.12 Confidentiality; Use of Acquired Assets 27
6.13 Intellectual Property 28

ARTICLE VII CONDITIONS TO CLOSING 29
7.1 Conditions Precedent to the Obligations of Purchaser and Seller 29
7.2 Conditions Precedent to the Obligations of Purchaser 29
7.3 Conditions Precedent to the Obligations of Seller 30
7.4 Waiver of Conditions 30

ARTICLE VIII TERMINATION 30
8.1 Termination of Agreement 30
8.2 Effect of Termination 33
8.3 Break-Up Fee 34

ARTICLE IX TAXES 35
9.1 Transfer Taxes 35
9.2 Allocation of Purchase Price 35
9.3 Cooperation 35
9.4 Allocation of Tax Liability 36
9.5 Property Taxes 36

ARTICLE X MISCELLANEOUS 36
10.1 Non-Survival of Representations and Warranties and Certain Covenants; Certain Waivers 36
10.2 Expenses 37
10.3 Notices 37
10.4 Binding Effect; Assignment 38
10.5 Amendment and Waiver 39
10.6 Third Party Beneficiaries 39
10.7 Non-Recourse 39
10.8 Severability 39
10.9 Construction 39
10.10 Schedules 39
10.11 Complete Agreement 40

TABLE OF CONTENTS

Page

10.12 Specific Performance 40
10.13 Jurisdiction and Exclusive Venue 41
10.14 Governing Law; Waiver of Jury Trial 41
10.15 Counterparts and PDF 42
10.16 Publicity 42
10.17 Bulk Sales Laws 43
10.18 Release. 43

ARTICLE XI ADDITIONAL DEFINITIONS AND INTERPRETIVE MATTERS 44
11.1 Certain Definitions 44
11.2 Rules of Interpretation 51

ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this "Agreement"), dated as of September 10, 2024, is made by and between Switch, Ltd., a Delaware limited liability company ("Purchaser"), and Fulcrum Sierra BioFuels, LLC, a Delaware limited liability company (the "Seller"). Purchaser and Seller are referred to herein individually as a "Party" and collectively as the "Parties". Capitalized terms used herein shall have the meanings set forth herein or in Article XI.

RECITALS

WHEREAS, Seller intends to file a voluntary petition for relief under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court", such petition, the "Bankruptcy Case", and the date of filing of such petition, the "Petition Date");

WHEREAS, prior to filing a voluntary petition in the Bankruptcy Case, Seller purchased approximately 29 gross acres of certain real property in Storey County, NV, consisting of APNs 004-111-37 and 005-071-49 (the "Real Property") as well as certain utility rights, including electrical and water, easements, improvements, and other rights and credits appurtenant to the Real Property (the "Real Property Rights"); and

WHEREAS, in connection with the Bankruptcy Case and subject to (i) the terms and conditions contained herein and (ii) entry of the Sale Order approving Purchaser as the highest and best bid and (subject to the terms and conditions thereof), Purchaser desires to purchase and take delivery of the Acquired Assets and assume the Assumed Liabilities from Seller, and Seller desires to sell, convey, assign, transfer, and deliver to Purchaser the Acquired Assets together with the Assumed Liabilities, in a sale authorized by the Bankruptcy Court pursuant to, *inter alia*, sections 105, 363 and 365 of the Bankruptcy Code, in accordance with the other applicable provisions of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure and the local rules for the Bankruptcy Court.

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants, and agreements set forth herein, and intending to be legally bound hereby, Purchaser and Seller hereby agree as follows.

ARTICLE I

PURCHASE AND SALE OF THE ACQUIRED ASSETS; ASSUMPTION OF ASSUMED LIABILITIES

1.1 Purchase and Sale of the Acquired Assets. Pursuant to sections 105, 363, and 365 of the Bankruptcy Code, on the terms and subject to the conditions set forth herein and in the Sale Order, at the Closing, Seller shall and shall cause its Affiliates to sell, transfer, assign, convey, and deliver to Purchaser, and Purchaser shall purchase, acquire, and accept from Seller, all of Seller's right, title and interest in, to and under the Acquired Assets, free and clear of all liens, Claims, and Encumbrances other than Permitted Encumbrances. "Acquired Assets" means only the following assets of Seller and, in all cases, excluding any of the Excluded Assets:

(a) The Real Property and the Real Property Rights, including any and all fixtures, improvements, and appurtenances thereto;

(b) the Contracts listed on Schedule 1.1(b), including (i) that certain Rule 9, Section B.2 High Voltage Distribution Agreement (Agreement No. 18-00017), dated as of March 12, 2018, by and between Seller and Sierra Pacific Power Company d/b/a NV Energy (the "NV Energy Contract"), (ii) that certain Water Supply Agreement, dated as of June 29, 2009, by and among Tahoe-Reno Industrial Center, LLC, Seller and Tri General Improvement District (as amended, the "2009 Water Supply Agreement") and (iii) any other contracts deemed by Purchaser in its sole discretion to be an Assigned Contract in accordance with Section 1.6(b) (all of the foregoing described in clauses (i), (ii) and (iii), collectively, the "Assigned Contracts"), subject to Section 1.6(c);

(c) all inventory, merchandise, finished goods, raw materials (except for the FT Catalyst and FT Cans), works in progress, packaging, supplies, parts and other inventories;

(d) the Permits set forth on Schedule 1.1(d) and all other Permits, approvals or licenses held by Seller (in each case to the extent transferable without the consent of any Governmental Body);

(e) all equipment, machinery, furniture, fixtures, supplies, office equipment, computers, tablets, hardware, information technology infrastructure, telephones, motor vehicles, trailers and other rolling stock, and all other tangible personal property of any kind (including the items listed on Schedule 1.1(e));

(f) all causes of action, lawsuits, judgments, claims, refunds, rights of recovery, rights of set-off, counterclaims, defenses, demands, warranty claims, rights to indemnification, contribution, advancement of expenses or reimbursement, or similar rights of Seller (at any time or in any manner arising or existing, whether choate or inchoate, known or unknown, now existing or hereafter acquired, contingent or noncontingent), including all Claims, rights, lawsuits, rights of recovery, objections, causes of action, avoidance actions and similar rights of Seller arising under or pursuable through Chapter 5 of the Bankruptcy Code (whether or not asserted as of the Closing Date) and all proceeds thereof, in each case, to the extent related to the Acquired Assets or the Assumed Liabilities, along with all rights and interests to the extent necessary or appropriate for Purchaser to effectively prosecute, defend or obtain the benefits of the foregoing;

(g) all rights under warranties, indemnities, and all similar rights against third parties to the extent related to any Acquired Assets or the Assumed Liabilities;

(h) all security deposits, utility deposits, and other deposits to the extent related to any Acquired Assets or the Assumed Liabilities;

(i) all rights in connection with prepaid expenses to the extent related to any Acquired Assets or the Assumed Liabilities; and

(j) all books and records, including blueprints, plans, drawings and other technical papers, maintenance and asset history records, property reports, surveys and similar items

and Occupational Safety and Health Administration and Environmental Protection Agency files, in each case, to the extent related to any Acquired Assets or the Assumed Liabilities.

1.2 Excluded Assets. Notwithstanding anything to the contrary in this Agreement, in no event shall Seller be deemed to sell, transfer, assign, or convey, and Seller shall retain all right, title and interest to, in and under the Excluded Assets, which shall specifically include:

(a) the FT Catalyst and FT Cans; and

(b) all other assets of Seller that are not Acquired Assets.

1.3 Assumption of Certain Liabilities. On the terms and subject to the conditions set forth herein and in the Sale Order, effective as of the Closing, in addition to the payment of the Cash Payment in accordance with Section 2.1, Purchaser shall irrevocably assume from Seller (and from and after the Closing pay, perform, discharge, or otherwise satisfy in accordance with their respective terms) the following (and only the following) liabilities and obligations (collectively, the "Assumed Liabilities"):

(a) all Liabilities and obligations of Seller for payment and performance under the Assigned Contracts by which Seller is bound as of the Closing Date, but only to the extent such obligations (i) relate to payment or performance for the period beginning from and after the Closing Date and (ii) do not arise from or relate to any actual or alleged breach of contract, breach of warranty, violation of law, tort, infringement, failure to perform, improper performance, default or any Action, in each case with respect to this clause (ii), arising as of, or related to the period prior to, Closing; and

(b) all Liabilities, claims, liens, Actions or other interests in or against the Acquired Assets of any kind whatsoever arising after the Closing as a result of any action, omission, or circumstances taking place after the Closing.

1.4 Excluded Liabilities. Purchaser shall not assume, be obligated to pay, perform or otherwise discharge or in any other manner be liable or responsible for any Liabilities of, or Action against, Seller or relating to the Acquired Assets, of any kind or nature whatsoever, whether absolute, accrued, contingent or otherwise, liquidated or unliquidated, due or to become due, known or unknown, currently existing or hereafter arising, matured or unmatured, direct or indirect, and however arising, whether existing on the Closing Date or arising thereafter as a result of any act, omission, or circumstances taking place prior to the Closing and any contract or other agreement rejected pursuant to section 365 of the Bankruptcy Code, other than the Assumed Liabilities (all such Liabilities that are not Assumed Liabilities being referred to collectively herein as the "Excluded Liabilities") and such Excluded Liabilities shall be retained by and remain the Liabilities of Seller. Without limiting the generality of the foregoing, the Excluded Liabilities shall include, but not be limited to, the following:

(a) any Liability (i) for Taxes of Seller (or any member or Affiliate of Seller) including any Liability for Taxes of Seller (or any member or Affiliate of Seller) for which Purchaser may be liable under any common law doctrine of de facto merger or transferee or successor liability or otherwise by operation of contract or Law; (ii) for Taxes relating to or arising from the Acquired Assets or the Assumed Liabilities for any taxable period (or portion thereof)

ending on or before the Closing Date; and (iii) of Seller for the Taxes of any other Person under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local or foreign Law), as a transferee or successor, by contract or otherwise;

(b) all current Liabilities, including all accounts payable and trade payables existing on the Closing Date (including, for the avoidance of doubt, (i) invoiced accounts payable and (ii) accrued but uninvoiced accounts payable), of Seller;

(c) all Liabilities owed to vendors and customers that are provided goods or services to, or purchased products or services from, Seller prior to the Closing;

(d) all Liabilities arising under section 503(b)(9) of the Bankruptcy Code;

(e) all Liabilities of Seller arising or incurred in connection with the negotiation, preparation, investigation and performance of this Agreement, the Ancillary Documents and the transactions contemplated hereby and thereby, including fees and expenses of counsel, accountants, consultants, advisers, and any other Person;

(f) all Liabilities relating to or arising out of the Excluded Assets;

(g) all Liabilities in respect of any pending or threatened Action arising out of, relating to, or otherwise in respect of the operation of the Acquired Assets to the extent such Action relates to such operation on or prior to the Closing Date;

(h) all product Liability or similar claim for injury to a Person or property that arises out of or is based upon any express or implied representation, warranty, agreement, or guaranty made by Seller, or by reason of the improper performance or malfunctioning of a product, improper design or manufacture, failure to adequately package, label, or warn of hazards or other related product defects of any products at any time manufactured or sold or any service performed by Seller;

(i) all recall, design defect, or similar claims of any products manufactured or sold or any service performed by Seller prior to the Closing;

(j) all Liabilities of Seller arising under or in connection with any employee benefit plan providing benefits to any present or former employee of Seller and all Liabilities of Seller for any present or former employees, officers, directors, retirees, independent contractors, or consultants of Seller, including any Liabilities associated with any claims for wages or other benefits, bonuses, accrued vacation, workers' compensation, or employee deferred compensation, including stock option plans, grants, and agreements, severance, retention, termination, or other payments;

(k) all Liabilities for injury to a Person that arises out of or is related to the use of any of the Acquired Assets prior to the Closing, including any loss, damage, or injury sustained by any present or former employee or independent contractor of Seller or any other Person while engaging in manufacturing, engineering or similar activities in connection with any Acquired Asset prior to the Closing;

(l) all Liabilities to indemnify, reimburse, or advance amounts to any present or former officer, director, employee, agent or other Person of Seller (including with respect to any breach of fiduciary obligations by same);

(m) all Liabilities under any Contracts (a) that are not validly and effectively assigned to Purchaser pursuant to this Agreement; or (b) to the extent such Liabilities arise out of or relate to a breach by Seller of such Contracts prior to the Closing;

(n) all Liabilities associated with debt, loans, or credit facilities of Seller;

(o) the Cure Costs; and

(p) all Liabilities arising out of, in respect of, or in connection with the failure by Seller or any of its Affiliates to comply with any Law or Order.

1.5 Risk of Loss. Risk of loss of the Acquired Assets shall pass to Purchaser at the time of the Closing. Seller shall bear all risk of loss or damage to, or destruction of, the Acquired Assets until the time of the Closing and Purchaser shall bear all such risk of loss from and after the time of the Closing. In the event that the Acquired Assets, taken as a whole, are subject to any Material Adverse Effect prior to the Closing, the Deposit shall be returned to Purchaser in total.

1.6 Assumption/Rejection of Certain Contracts.

(a) Assumption and Assignment of Executory Contracts. Seller shall provide timely and proper written notice of the Sale Order to all parties to any executory Contracts or unexpired leases to which Seller is a party that are Assigned Contracts and take all other actions reasonably necessary to cause such Contracts to be assumed by Seller and assigned to Purchaser pursuant to section 365 of the Bankruptcy Code to the extent that such Contracts are Assigned Contracts at Closing. The Sale Order shall provide that as of and conditioned on the occurrence of the Closing, Seller shall assign or cause to be assigned to Purchaser, as applicable, the Assigned Contracts, each of which shall be identified by the name or appropriate description and date of the Assigned Contract (if available), the other party to the Assigned Contract and the address of such party for notice purposes, a notice filed in connection with the Sale Order or a separate motion for authority to assume and assign such Assigned Contracts. Such notice shall also set forth the Seller's good faith estimate(s) of the amounts necessary to cure any defaults under each of the Assigned Contracts as determined by Seller based on Seller's books and records or as otherwise determined by the Bankruptcy Court. At the Closing, Seller shall, pursuant to the Sale Order, assume and assign to Purchaser (the consideration for which is included in the Purchase Price), all Assigned Contracts that may be assigned by Seller to Purchaser pursuant to sections 363 and 365 of the Bankruptcy Code, subject to adjustment pursuant to Section 1.6(b). At the Closing, Seller shall (i) pay Cure Costs and (ii) assume and assign such Assigned Contracts to Purchaser, who thereafter in due course and in accordance with each Assigned Contract's respective terms, shall pay, fully satisfy, discharge and perform all of the obligations under each Assigned Contract pursuant to section 365 of the Bankruptcy Code other than any Cure Costs.

(b) Excluding or Adding Assigned Contracts Prior to Closing. Purchaser shall have the right to notify Seller in writing of (x) any Assigned Contract that it does not wish to assume or (y) a Contract to which Seller is a party that Purchaser wishes to add as an Assigned

Contract up to the Closing Date, and (i) any such previously considered Assigned Contract that Purchaser no longer wishes to assume shall be automatically deemed removed from the Schedules related to Assigned Contracts and automatically deemed added to the Schedules related to Excluded Contracts, in each case, without any adjustment to the Purchase Price, and (ii) any such previously considered Excluded Contract that has not been rejected by Seller that Purchaser wishes to assume as an Assigned Contract shall be automatically deemed added to the Schedules related to Assigned Contracts, automatically deemed removed from the Schedules related to Excluded Contracts, and assumed by Seller to sell and assign to Purchaser, in each case, without any adjustment to the Purchase Price and with any Cure Costs associated therewith paid by Seller. Other than Cure Costs, Purchaser shall be solely responsible for the payment, performance and discharge when due of the liabilities and obligations under the Assigned Contracts that relate to payment or performance for the period beginning from and after the Closing, in each case, as set forth in, and subject to the terms of, Section 1.3(a).

(c) Non-Assignment. Notwithstanding the foregoing, a Contract and Permit shall not be an Assigned Contract hereunder and shall not be assigned to, or assumed by, Purchaser to the extent that such Contract or Permit (i) is rejected by Seller or terminated by Seller or any other party thereto, (ii) terminates or expires by its terms, on or prior to such time as it is to be assumed by Purchaser as an Assigned Contract or Permit hereunder and is not continued or otherwise extended upon assumption or (iii) requires a Consent or authorization of a Governmental Body (a "Governmental Authorization") (other than, and in addition to, that of the Bankruptcy Court) in order to permit the sale or transfer to Purchaser of Seller's rights under such Contract or Permit; provided that such Consent or Governmental Authorization (A) is required to be obtained prior to the Contract or Permit being assigned to Purchaser by applicable Law, and (B) has not been obtained prior to such time as it is to be assumed by Purchaser as an Assigned Contract or Permit hereunder. In addition, a Permit shall not be assigned to, or assumed by, Purchaser to the extent that such Permit requires a Consent or Governmental Authorization (other than, and in addition to, that of the Bankruptcy Court) in order to permit the sale or transfer to Purchaser of Seller's rights under such Permit, and no such Consent or Governmental Authorization has been obtained prior to the Closing. In the event that any Assigned Contract or Permit is deemed not to be assigned pursuant to clause (iii) of the first sentence of this Section 1.5(c), the Closing shall nonetheless take place subject to the terms and conditions set forth herein and, thereafter, through the earlier of such time as such Consent or Governmental Authorization is obtained and six (6) months following the Closing (or the remaining term of such Contract or Permit or the closing of the Bankruptcy Case, if shorter), Seller and Purchaser shall (A) use reasonable best efforts to secure such Consent or Governmental Authorization as promptly as practicable after the Closing and (B) cooperate in good faith in any lawful and commercially reasonable arrangement reasonably proposed by Purchaser, including subcontracting, licensing, or sublicensing to Purchaser any or all of Seller's rights and obligations with respect to any such Assigned Contract or Permit, under which (1) Purchaser shall obtain (without infringing upon the legal rights of such third party or violating any Law) the economic rights and benefits (net of the amount of any related Tax costs imposed on Seller or its Affiliates) under such Assigned Contract or Permit with respect to which the Consent and/or Governmental Authorization has not been obtained and (2) Purchaser shall assume any related burden (including the amount of any related Tax benefit obtained by Seller or its Affiliates) and obligation (including performance) with respect to such Assigned Contract or Permit. Upon satisfying any requisite Consent or Governmental Authorization requirement applicable to such Assigned Contract or Permit after the Closing, such Assigned

Contract or Permit shall promptly be transferred and assigned to Purchaser in accordance with the terms of this Agreement, the Sale Order and the Bankruptcy Code.

ARTICLE II

CONSIDERATION; PAYMENT; CLOSING

2.1 Consideration; Payment.

(a) The aggregate consideration (collectively, the "Purchase Price") to be paid by Purchaser for the purchase of the Acquired Assets (and otherwise with respect to the transactions contemplated hereunder) shall be a cash payment of $15,000,000 to Seller (the "Cash Payment"), and (ii) the assumption of the Assumed Liabilities.

(b) At the Closing, Purchaser shall deliver, or cause to be delivered to Seller, the Cash Payment, which shall at the option of Purchaser be reduced by the Payoff Amount and the Deposit (the "Closing Date Payment"). The Closing Date Payment and any payment required to be made pursuant to any other provision hereof shall be made in cash by wire transfer of immediately available funds to such bank account as shall be designated in writing by the applicable Party at least two (2) Business Days prior to the date such payment is to be made.

2.2 Deposit.

(a) Purchaser will make an earnest money deposit (the "Deposit") into escrow with the Escrow Agent in the amount of ten percent (10%) of the Cash Payment by wire transfer of immediately available funds within the later of (x) one (1) Business Day after the execution of this Agreement and (y) one (1) Business Day after the delivery of Seller to Purchaser of the appropriate instructions to deliver the Deposit to the Escrow Agent. The Deposit shall not be subject to any lien, attachment, trustee process, or any other judicial process of any creditor of any of Seller or Purchaser and shall be applied against payment of the Purchase Price on the Closing Date. At the Closing, the Deposit shall be delivered to Seller and credited toward payment of the Purchase Price.

(b) If this Agreement has been validly terminated by Seller pursuant to Section 8.1(d) or 8.1(f) (or by Purchaser pursuant to Section 8.1(c), in circumstances where Seller would be entitled to terminate this Agreement pursuant to Section 8.1(d) or 8.1(f)) (each, a "Purchaser Default Termination") then within three (3) Business Days after the date of such termination Seller shall execute any instructions necessary to permit the Escrow Agent to disburse the Deposit to Seller.

(c) If this Agreement has been terminated by any Party other than as contemplated by Section 2.2(b), then within three (3) Business Days after the date of such termination and, at Purchaser's request, Seller shall execute any instructions necessary to permit the Escrow Agent to disburse the Deposit to Purchaser.

(d) The Parties agree that Seller's right to retain the Deposit, as set forth herein, is not a penalty, but rather is liquidated damages in a reasonable amount that will compensate Seller for its efforts and resources expended and the opportunities foregone while negotiating this

Agreement and in reliance on this Agreement and on the expectation of the consummation of the transactions contemplated hereby, which amount would otherwise be impossible to calculate with precision, and in respect of Purchaser's breach such payment of the Deposit shall constitute the sole and exclusive remedy of Seller in the event of a Purchaser Default Termination in lieu of all other rights and remedies which Seller may have against Purchaser or any member of Purchaser Group at law or in equity or otherwise, all of which Seller hereby expressly waives; provided that the foregoing shall not limit any Person's obligations under the Confidentiality Agreement.

2.3 Closing. The closing of the purchase and sale of the Acquired Assets, the delivery of the Purchase Price, the assumption of the Assumed Liabilities and the consummation of the other transactions contemplated by this Agreement (the "Closing") will take place by telephone conference and electronic exchange of documents on the second (2nd) Business Day following full satisfaction or due waiver (by the Party entitled to the benefit of such condition) of the closing conditions set forth in Article VII (other than conditions that by their terms or nature are to be satisfied at the Closing), or at such other place and time as the Parties may agree. The date on which the Closing actually occurs is referred to herein as the "Closing Date".

2.4 Closing Deliveries by Seller. At or prior to the Closing, Seller shall deliver to Purchaser:

(a) a copy of the final, non-appealable Sale Order, as entered by the Bankruptcy Court;

(b) an officer's certificate, dated as of the Closing Date, executed by a duly authorized officer of Seller certifying that the conditions set forth in Sections 7.2(a) and 7.2(b) have been satisfied;

(c) a bill of sale and assignment and assumption agreement in a form mutually agreed to by Purchaser and Seller (the "Bill of Sale"), duly executed by Seller, evidencing the assignment and assumption by Purchaser of the Assigned Contracts and the Assumed Liabilities, and the transfer of the tangible personal property included in the Acquired Assets to Purchaser;

(d) an IRS Form W-9, completed and duly executed by Seller; provided that in no event shall Seller's failure to provide such form be deemed to be a failure of any condition set forth in Section 7.1 or 7.2 to have been met;

(e) the Title Policy, or an irrevocable commitment by the Title Company to issue the Title Policy, subject to no conditions other than payment of the applicable title premium on the Closing Date;

(f) the Survey;

(g) instructions to the Escrow Agent to deliver the Deposit to Seller;

(h) if not otherwise included in the Sale Order, a final, non-appealable order assigning the NV Energy Contract and 2009 Water Supply Agreement to Purchaser, as entered by the Bankruptcy Court;

(i) a grant deed in a form mutually agreed to by Purchaser and Seller, duly executed by Seller, evidencing the transfer by Seller of the Real Property to Purchaser; and

(j) all other instruments of transfer, assumption, filings, or documents, reasonably requested by Purchaser in form and substance reasonably satisfactory to Purchaser, as may be required to give effect to this Agreement.

2.5 Closing Deliveries by Purchaser. At the Closing, Purchaser shall deliver to (or at the direction of) Seller:

(a) the Cash Payment;

(b) an officer's certificate, dated as of the Closing Date, executed by a duly authorized officer of Purchaser certifying that the conditions set forth in Sections 7.3(a) and 7.3(b) have been satisfied; and

(c) the Bill of Sale, duly executed by Purchaser.

2.6 Withholding. Notwithstanding anything contained in this Agreement to the contrary, Purchaser shall be entitled to deduct and withhold from any amounts otherwise payable pursuant to this Agreement to the extent required under the Code or any provision of state, local or foreign Tax Law. Except in connection with a failure of Seller to provide an IRS Form W-9 pursuant to Section 2.4(d), Purchaser shall use commercially reasonable efforts to provide Seller (a) with reasonable advance notice of the intent to deduct and withhold and (b) a reasonable opportunity to provide forms or other evidence that would exempt such amounts from withholding (or reduce such withholding). To the extent that amounts are so deducted or withheld and timely paid over to the appropriate Governmental Body, such amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding were made. Purchaser and Seller shall cooperate in good faith to reduce or otherwise eliminate any such withholding obligation to the extent permitted by applicable Law.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth in the Schedules delivered by Seller concurrently herewith, Seller represents and warrants to Purchaser that the statements contained in this Article III are true and correct as of the date hereof and as of the Closing Date.

3.1 Organization and Qualification. Seller (a) is an entity duly formed, validly existing and in good standing under the Laws of the State of Delaware, (b) has all requisite power and authority to own, operate and lease the properties and assets now owned, operated or leased by Seller, including the Acquired Assets, and to carry on its businesses as now conducted, subject to the provisions of the Bankruptcy Code, and (c) is qualified to do business and is in good standing (or its equivalent) in every jurisdiction in which its ownership of property or the conduct of its business as now conducted requires it to qualify, except where the failure to be so qualified would not reasonably be expected to be material to the Acquired Assets and the Assumed Liabilities, taken as a whole.

3.2 Authorization of Agreement. The execution, delivery, and performance of this Agreement by Seller and the Ancillary Documents to which Seller is a party, the performance of the obligations of Seller contemplated hereunder and thereunder and the consummation by Seller of the transactions contemplated hereby and thereby, subject to requisite Bankruptcy Court approvals, have been duly and validly authorized by all requisite corporate or similar organizational action, and no other corporate or similar organizational proceedings on Seller's part are necessary to authorize the execution, delivery or performance of this Agreement by Seller and the Ancillary Documents to which Seller is a party, the performance of the obligations of Seller contemplated hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby. Subject to requisite Bankruptcy Court approvals, this Agreement and each of the Ancillary Documents to which Seller is a party have been or will be duly and validly executed and delivered by Seller, and, assuming this Agreement is a valid and binding obligation of Purchaser, this Agreement constitutes a valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as limited by the application of bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium, or other Laws relating to or affecting creditors' rights or general principles of equity (whether considered in a proceeding in equity or at law) (the "Enforceability Exceptions").

3.3 Conflicts; Consents.

(a) Except as set forth on Schedule 3.3(a) and assuming that (y) requisite Bankruptcy Court approvals are obtained and (z) the notices, authorizations, approvals, Orders, Permits or Consents set forth on Schedule 3.3(b) are made, given or obtained (as applicable), the execution, delivery and performance by Seller of this Agreement and the Ancillary Documents to which Seller is a party, and the consummation by Seller of the transactions contemplated hereby and thereby, does not and will not: (i) violate the certificate (or articles) of incorporation, the bylaws, the certificate of formation, limited liability company agreement or equivalent organizational documents of Seller; (ii) violate any Law applicable to Seller or by which any property or asset of Seller is bound; or (iii) result in any breach of, constitute a default (or an event that, with notice or lapse of time or both, would become a default) under, create in any party thereto the right to terminate or cancel, or require any Consent under, or result in the creation or imposition of any Encumbrance (other than a Permitted Encumbrance) on any property or asset of Seller under, any material Contract or material Permit; except, in each case, for any such violations, breaches, defaults or other occurrences that are not material to the Acquired Assets taken as a whole.

(b) Except as set forth on Schedule 3.3(b), (i) Seller is not required to file, seek or obtain any notice, authorization, approval, Order, Permit, or Consent of or with any Governmental Body in connection with the execution, delivery and performance by Seller of this Agreement or any Ancillary Documents to which Seller is a party or the consummation by Seller of the transactions contemplated hereby and thereby, except (x) requisite Bankruptcy Court approvals and (y) where failure to obtain such Consent, approval, authorization or action, or to make such filing or notification, is not material to the Acquired Assets taken as a whole, and (ii) to the knowledge of Seller, there is no Contract binding upon Seller requiring a Consent or other action by any Person as a result of the execution, delivery and performance of this Agreement (except to the extent the Bankruptcy Code overrides such provision).

3.4 Title to Acquired Assets

(a) Subject to requisite Bankruptcy Court approvals and except as a result of the commencement of the Bankruptcy Case, Seller has good, valid, marketable and undivided title to the Acquired Assets and as of the Closing Date and subject to the entry of the Sale Order, Purchaser will acquire good, valid, marketable and undivided title in and to the Acquired Assets, free and clear of all Encumbrances, except for Permitted Encumbrances, other than any failure to own or hold such tangible property (other than any Real Property or Real Property Rights) that is not material to the Acquired Assets, taken as a whole.

(b) All of the tangible personal property located at the Real Property constitutes Acquired Assets.

3.5 Permits; Compliance with Laws

(a) Except as set forth on Schedule 3.5, to the knowledge of Seller, Seller (a) has at all times been and is in compliance, in all material respects, with all applicable Laws with respect to the ownership and operation of the Acquired Assets, and during the prior two (2) years, to the knowledge of Seller, Seller has not received any notice of any Action, and to the knowledge of Seller, no such Action has been threatened, against Seller alleging any failure to comply in any material respect with any such Laws, and (b) Seller and each of its Subsidiaries holds all licenses, franchises, permits, certificates, approvals and authorizations from Governmental Bodies necessary for the lawful ownership and operation of the Acquired Assets (collectively, "Permits"), except in each case as would not reasonably be expected to be material to the Acquired Assets. To the knowledge of Seller, Schedule 1.1(d) sets forth a complete and correct list of all Permits required to own and operate the Acquired Assets as used by Seller on the date hereof. To the knowledge of Seller, no investigation or Action by any Governmental Body with respect to the Acquired Assets, Assumed Liabilities or Permits is pending or threatened, and during the prior two (2) years, Seller has not received any written notice of any such investigation or Action or any notice of violation of any Permit, and, to the knowledge of Seller, no Action is threatened by any Governmental Body seeking the revocation, limitation or non-renewal of any such Permit, except, in each case, for any such investigation or Action that would not reasonably be expected to be material to the Acquired Assets.

3.6 Intellectual Property.

(a) To the knowledge of Seller, Schedule 3.6(a) sets forth all Intellectual Property Agreements to which Seller is a party.

3.7 Contracts.

(a) Schedule 3.7(a) lists the following Contracts to which Seller is a party or by which Seller is bound and that are currently in effect (or by which the Acquired Assets may be bound or affected) (all Contracts listed or required to be listed herein, whether or not disclosed on Schedule 3.7, are referred to as "Material Contracts") as of the date of this Agreement.

(i) all Contracts under which Seller leases personal property in connection with the Acquired Assets; and

(ii) all Contracts that are Assigned Contracts.

(b) Seller has delivered to Purchaser true and complete copies of such Material Contracts and any and all amendments, modifications, supplements, exhibits and restatements thereto and thereof.

(c) As of the date hereof, each of the Material Contracts is in full force and effect and is the legal, valid and binding obligation of Seller and of the other parties thereto, enforceable against them in accordance with such Material Contract's terms and, upon consummation of the transactions contemplated hereby, shall continue in full force and effect regardless of notice or the lapse of time without default, penalty or other adverse consequence. As of the date hereof, except as set forth on Schedule 3.7(c), there has not been any default, breach or violation by Seller under any Material Contract, nor, to the knowledge of Seller, has there been any default, breach or violation by any other party to any Material Contract. As of the date hereof, except as set forth on Schedule 3.7(c), no party to any of the Material Contracts has exercised any termination rights with respect thereto, and no party has given notice of any significant dispute with respect to any Material Contract.

3.8 Real Property

(a) Seller owns good and valid fee simple title to the Real Property free and clear of all liens other than (i) Permitted Encumbrances and (ii) any Encumbrances that will not be enforceable against the Real Property following the Closing in accordance with the Sale Order. Other than the rights of Purchaser pursuant to this Agreement, there are no outstanding options, rights of first offer or rights of first refusal to purchase any Real Property or any portion thereof or interest therein. Seller is not a party to any agreement or option to purchase any real property or interest therein relating to, or intended to be used in the operation of, the Acquired Assets. Seller has not executed any lease, sublease, license, or other Contract permitting any Person, and no Person otherwise has, the right to occupy, use, or acquire all or any portion of the Real Property.

(b) Seller does not own, lease or otherwise hold any rights or interests in any real property other than the Real Property and the Real Property Rights.

(c) To the knowledge of Seller, none of the Real Property is subject to an eminent domain or condemnation proceeding.

(d) No Person is entitled to any royalty or other payment in the nature of a royalty on any minerals, metals or concentrates or any other such products removed or produced from the Real Property

(e) To the knowledge of Seller, Seller's real property interests in the Real Property and the Real Property Rights constitute all of the interests in real property necessary to operate Seller's business.

3.9 Environmental. Except as set forth on Schedule 3.9, to the knowledge of Seller,

(a) The Acquired Assets are and have been in compliance with applicable Environmental Laws and Environmental Permits.

(b) Seller holds, and Seller owns, all Environmental Permits required for the operation of the Acquired Assets, and Seller has delivered to Purchaser true and complete copies of all such Permits. Seller shall cooperate with the transfer of Environmental Permits.

(c) Seller has not received, with respect to the Acquired Assets or the Assumed Liabilities, any written communication alleging that Seller or any of the Acquired Assets currently is not or was not in compliance with or is liable or potentially liable under applicable Environmental Laws or Environmental Permits.

(d) There are no Actions pending or threatened against or affecting the Acquired Assets related to Environmental Laws.

3.10 Water Rights. To the knowledge of Seller,

(a) There are no Actions pending or threatened against or affecting the Water Rights.

(b) Seller controls and has the sole right to appropriate and use the Water Rights in necessary quantities and quality at the Real Property.

3.11 Actions. Except as set forth in Schedule 3.11, as of the date hereof, there are no Actions pending or, to the knowledge of Seller, threated by or against Seller or any of its members relating to or affecting the Assigned Contracts.

3.12 No Other Representations or Warranties

(a) Except for the representations and warranties expressly contained in this Article III (as qualified by the Schedules and in accordance with the express terms and conditions (including limitations and exclusions) of this Agreement) (it being understood that Purchaser and Purchaser Group have relied only on such express representations and warranties), Purchaser acknowledges and agrees, on its own behalf and on behalf of Purchaser Group, that neither Seller nor any other Person on behalf of Seller makes, and neither Purchaser nor any member of Purchaser Group has relied on, any other express or implied representation or warranty with respect to Seller or any of its Subsidiaries, the Acquired Assets or the Assumed Liabilities or with respect to any information, statements, disclosures, documents, projections, forecasts or other material of any nature made available or provided by any Person (including in any projections, any confidential information memorandum or similar document, or in any diligence materials, including in any dataroom or datasite or elsewhere) to Purchaser or any of its Affiliates or Advisors on behalf of Seller or any of its Affiliates or Advisors. Without limiting the foregoing, except for fraud by any Person, neither Seller nor any other Person will have or be subject to any Liability whatsoever to Purchaser, or any other Person, resulting from the distribution to Purchaser or any of its Affiliates or Advisors, or Purchaser's or any of its Affiliates' or Advisors' use of or reliance on, any such information, including any information, statements, disclosures, documents, projections, forecasts or other material made available to Purchaser or any of its Affiliates or Advisors or any discussions with respect to any of the foregoing information.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to Seller as follows as of the date hereof.

4.1 Organization and Qualification. Purchaser (a) is an entity duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization, (b) has all requisite power and authority to own and operate its properties and to carry on its businesses as now conducted, and (c) is qualified to do business and is in good standing (or its equivalent) in every jurisdiction in which its ownership of property or the conduct of its business as now conducted requires it to qualify, except where the failure to be so qualified would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on Purchaser's ability to consummate the transactions contemplated hereby.

4.2 Authorization of Agreement. The execution, delivery and performance of this Agreement by Purchaser, and the consummation by Purchaser of the transactions contemplated hereby, have been duly and validly authorized by all requisite corporate or similar organizational action, and no other corporate or similar organizational proceedings on its part are necessary to authorize the execution, delivery or performance of this Agreement by Purchaser. This Agreement has been duly and validly executed and delivered by Purchaser, and, assuming this Agreement is a valid and binding obligation of Seller, this Agreement constitutes a valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, except as limited by the Enforceability Exceptions.

4.3 Conflicts; Consents.

(a) The execution, delivery and performance by Purchaser of this Agreement and the consummation by Purchaser of the transactions contemplated hereby, do not: (i) violate the certificate of formation, limited liability company agreement or equivalent organizational documents of Purchaser; (ii) violate any Law applicable to Purchaser or by which any property or asset of Purchaser is bound; or (iii) result in any breach of, constitute a default (or an event that, with notice or lapse of time or both, would become a default) under, create in any party thereto the right to terminate or cancel, or require any consent under, or result in the creation or imposition of any Encumbrance on any property or asset of Purchaser under, any material Contract; except, in each case, for any such violations, breaches, defaults or other occurrences that would not, individually or in the aggregate, reasonably be expected to prevent or materially delay the ability of Purchaser to consummate the transactions contemplated hereby.

(b) Purchaser is not required to file, seek or obtain any notice, authorization, approval, Order, Permit or Consent of or with any Governmental Body in connection with the execution, delivery and performance by Purchaser of this Agreement or the consummation by Purchaser of the transactions contemplated hereby, except where failure to obtain such Consent, approval, authorization or action, or to make such filing or notification, would not, individually or in the aggregate, reasonably be expected to prevent or materially delay the ability of Purchaser to consummate the transactions contemplated hereby.

4.4 No Litigation. There are no Actions pending or, to Purchaser's knowledge, threatened against or affecting Purchaser that will materially and adversely affect Purchaser's performance under this Agreement or Purchaser's ability to consummate the transactions contemplated by this Agreement.

4.5 No Additional Representations or Warranties. Except for the representations and warranties expressly contained in this Article IV (as qualified by the Schedules and in accordance with the express terms and conditions (including limitations and exclusions) of this Agreement) (it being understood that Seller and Seller Parties have relied only on such express representations and warranties), Seller acknowledges and agrees, on its own behalf and on behalf of Seller Parties, that neither Purchaser nor any other Person on behalf of Purchaser makes, and neither Seller nor any member of Seller Parties has relied on, any other express or implied representation or warranty with respect to Purchaser or with respect to any information, statements, disclosures, documents, projections, forecasts or other material of any nature made available or provided by any Person (including in any projections, any confidential information memorandum or similar document, or in any diligence materials, including in any dataroom or datasite or elsewhere) to Seller or any of its Affiliates or Advisors on behalf of Purchaser or any of its Affiliates or Advisors. Without limiting the foregoing, except for fraud by any Person, neither Purchaser nor any other Person will have or be subject to any Liability whatsoever to Seller, or any other Person, resulting from the distribution to Seller or any of its Affiliates or Advisors, or Seller's or any of its Affiliates' or Advisors' use of or reliance on, any such information, including any information, statements, disclosures, documents, projections, forecasts or other material made available to Seller or any of its Affiliates or Advisors or any discussions with respect to any of the foregoing information.

ARTICLE V

BANKRUPTCY COURT MATTERS

5.1 Bankruptcy Actions.

(a) From the date hereof until the earlier of (i) the termination of this Agreement in accordance with Article VIII and (ii) the Closing Date, Seller shall use best efforts to obtain entry by the Bankruptcy Court of the Bidding Procedures Order and the Sale Order. Seller shall also consult with Purchaser regarding pleadings that Seller intends to file with the Bankruptcy Court in connection with, and which might reasonably affect the Bankruptcy Court's approval of the Bidding Procedures Order or the Sale Order, including, sharing in advance of filing any drafts thereof.

(b) Purchaser shall promptly take all actions as are reasonably requested by Seller to assist in obtaining the Bankruptcy Court's entry of the Sale Order and any other Order reasonably necessary in connection with the transactions contemplated by this Agreement as promptly as practicable, including furnishing affidavits, financial information, or other documents or information for filing with the Bankruptcy Court and making such employees and representatives of Purchaser and its Affiliates available to testify before the Bankruptcy Court for the purposes of, among other things providing necessary assurances of performance by Purchaser under this Agreement and demonstrating that Purchaser is a "good faith" purchaser under section 363(m) of the Bankruptcy Code.

(c) Each of Seller and Purchaser shall (i) appear formally or informally in the Bankruptcy Court if reasonably requested by the other Party or required by the Bankruptcy Court in connection with the transactions contemplated by this Agreement and (ii) keep the other reasonably apprised of the status of material matters related to the transactions contemplated by this Agreement, including, upon reasonable request promptly furnishing the other with copies of notices or other communications received by Seller from the Bankruptcy Court or any third party and/or any Governmental Body with respect to the transactions contemplated by this Agreement.

(d) Seller's obligations under this Agreement and in connection with the transactions contemplated hereby and thereby are subject to entry of and, to the extent entered, the Sale Order. Nothing in this Agreement shall require Seller to give testimony to or submit a motion to the Bankruptcy Court that is untruthful or to violate any duty of candor or other fiduciary duty to the Bankruptcy Court or its stakeholders.

5.2 Cure Costs. Subject to the entry of the Sale Order, Seller shall, on or prior to the Closing (or, in the case of any Contract that is to be assigned following the Closing, on or prior to the date of such assignment), pay the Cure Costs and cure any and all other defaults and breaches under the Assigned Contracts so that such Assigned Contracts may be assumed by Seller and assigned to Purchaser in accordance with the provisions of section 365 of the Bankruptcy Code and this Agreement. Notwithstanding anything to the contrary herein, Purchaser shall bear no responsibility for any Cure Costs.

5.3 Sale Order. The Sale Order shall, among other things, (a) approve, pursuant to sections 105, 363, and 365 of the Bankruptcy Code, (i) the execution, delivery and performance by Seller of this Agreement, (ii) the sale of the Acquired Assets to Purchaser on the terms set forth herein and free and clear of all Encumbrances (other than Permitted Encumbrances), and (iii) the performance by Seller of its obligations under this Agreement; (b) find that Purchaser is a "good faith" buyer within the meaning of section 363(m) of the Bankruptcy Code and grant Purchaser the protections of section 363(m) of the Bankruptcy Code; (c) find that Purchaser is not the successor of Seller; (d) find that Purchaser has not, de facto, or otherwise, merged with or into Seller; (e) find that Purchaser is not a mere continuation or substantial continuation of Seller or its enterprise; and (f) find that Purchaser shall not be liable for any acts or omissions of Seller arising under or related to the Acquired Assets other than as set forth in this Agreement.

5.4 Bidding Procedures Order. The terms of this Agreement shall be subject in all respects to the Bidding Procedures Order.

ARTICLE VI
COVENANTS AND AGREEMENTS

6.1 Conduct of Seller.

(a) From the date hereof until the earlier of the valid termination of this Agreement and the Closing, except (w) for any limitations on operations imposed by the Bankruptcy Court or the Bankruptcy Code, (x) as required by applicable Law, (y) as otherwise required by or reasonably necessary to carry out the terms of this Agreement or as set forth on

Schedule 6.1 or (z) with the prior written consent of Purchaser (which consent shall not be unreasonably withheld, conditioned or delayed), Seller shall not:

(i) sell, assign, license, transfer, convey, lease, surrender, relinquish or otherwise dispose of any Acquired Asset or reject any Assigned Contract;

(ii) move or remove, or permit to be moved or removed, any Acquired Asset from or at the Real Property or move, place or locate, or permit to be moved, placed or located, any Excluded Asset from or at the Real Property;

(iii) permit, offer, agree or commit to subject any portion of the Acquired Assets to any Encumbrance, directly or indirectly, except for Permitted Encumbrances already existing prior to the date of this Agreement;

(iv) authorize or enter into any Contract, arrangement, or commitment, in each case, to the extent exclusively relating to or that materially impacts the Acquired Assets;

(v) (A) amend, modify or extend any Intellectual Property Agreement that is an Assigned Contract or (B) grant a release, immunity or covenant not to sue under any Licensed Intellectual Property;

(vi) undertake or approve any renovation or rehabilitation of the Real Property;

(vii) acquire any material properties or assets that would be Acquired Assets;

(viii) cancel or compromise any debt or Claim or waive or release any right of Seller that constitutes an Acquired Asset;

(ix) resolve any Liability that would be an Assumed Liability other than Ordinary Course payments to vendors and suppliers;

(x) transfer, to the extent that following such transfer such amounts would be treated as Excluded Assets, any security deposits, prepaid rentals, unbilled charges, fees, deposits, cash, cash equivalents or negotiable instruments, in each case constituting Acquired Assets;

(xi) satisfy any Excluded Liability with an Acquired Asset;

(xii) make, change or revoke any material Tax election; change an annual accounting period with respect to Taxes; adopt or change any accounting method with respect to Taxes; file any amended material Tax Return; enter into any closing agreement with respect to material Taxes; settle or compromise any material Tax claim or assessment; or consent to any extension or waiver of the limitation period after the Closing Date applicable to any claim or assessment with respect to material Taxes;

(xiii) terminate, amend, waive, or modify in any material manner any right under the NV Energy Contract or the 2009 Water Supply Agreement, or let lapse the NV Energy Contract or the 2009 Water Supply Agreement; or

(xiv) agree or commit to do any of the foregoing.

(b) From the date hereof until the earlier of the termination of this Agreement and the Closing, except (w) for any limitations on operations imposed by the commencement of Seller's Bankruptcy Case and wind down of its estate, Bankruptcy Court or the Bankruptcy Code, (x) as required by applicable Law, (y) as otherwise required by or reasonably necessary to carry out the terms of this Agreement or as set forth on Schedule 6.1, or (z) with the prior written consent of Purchaser (which consent shall not be unreasonably withheld, conditioned or delayed), Seller shall:

(i) contingent upon Purchaser providing funding in accordance with the DIP Loan Documents, maintain the current status of the Acquired Assets as of the date hereof and preserve intact the Acquired Assets;

(ii) pay all undisputed post-petition bills and invoices for post-petition goods or services promptly when due through the Closing Date;

(iii) use its commercially reasonable efforts to keep and maintain possession of and compliance with the terms of all Permits required by Law or used in, held for use in, or otherwise necessary for the operation of the Acquired Assets, including the Permits set forth on Schedule 1.1(d), including by taking all actions and submitting all payments, applications, and filings necessary to renew any such Permit due to expire at any time before the Closing Date;

(iv) protect, defend and maintain the validity and enforceability of all Intellectual Property licensed to it which is part of the Acquired Assets, including by taking all actions and timely submitting all payments due before the Closing Date;

(v) maintain in full force in all respects the NV Energy Contract and the 2009 Water Supply Agreement; and

(vi) contingent upon Purchaser providing funding in accordance with the DIP Loan Documents, maintain insurance coverage with financially responsible insurance companies substantially similar in all material respects to the insurance coverage maintained by Seller on the date hereof.

Nothing contained in this Agreement is intended to give Purchaser or its Affiliates, directly or indirectly, the right to control or direct the business of Seller prior to the Closing.

6.2 Access to Information.

(a) From the date hereof until the Closing (or the earlier termination of this Agreement pursuant to Article VIII), Seller will provide Purchaser and its Advisors with reasonable access in accordance with the Bidding Procedures Order and upon reasonable advance

notice and during regular business hours to the Acquired Assets, including books and records of Seller and its Subsidiaries with respect to any Acquired Asset or Assumed Liability, offices, warehouses or other facilities of or relating to the Acquired Assets, and to officers and other employees of Seller for the purposes of evaluating the Acquired Assets, in order for Purchaser and its Advisors to access such information regarding the Acquired Assets as Purchaser reasonably deems necessary in connection with effectuating the transactions contemplated by this Agreement; provided that (i) such access will occur in such a manner as Seller reasonably determines to be appropriate to protect the confidentiality of the transactions contemplated by this Agreement, (ii) such access is permitted in accordance with the Bidding Procedures Order and the Bankruptcy Case, (iii) nothing herein will require Seller to provide access to, or to disclose any information to, Purchaser if such access or disclosure (A) would cause significant competitive harm to Seller or any of its Subsidiaries if the transactions contemplated by this Agreement are not consummated, (B) would require Seller or any of its Subsidiaries to disclose any financial or proprietary information of or regarding the Affiliates of Seller or otherwise disclose information regarding the Affiliates of Seller that Seller deems to be commercially sensitive, (C) would waive any legal privilege or (D) would be in violation of applicable Laws or the provisions of any material agreement to which Seller or any of its Subsidiaries is a party; provided that, in the event that Seller withholds access or information in reliance on the foregoing clauses (A) through (D), Seller shall provide (to the extent possible without waiving or violating the applicable legal privilege or Law) notice to Purchaser that such access or information is being so withheld and shall use commercially reasonable efforts to provide such access or information in a way that would not risk waiver of such legal privilege or applicable Law.

(b) The information provided pursuant to this Section 6.2 will be used solely for the purpose of effecting the transactions contemplated hereby, and will be governed by all the terms and conditions of the Confidentiality Agreement. Purchaser will, and will cause its Affiliates and Advisors to, abide by the terms of the Confidentiality Agreement with respect to such access and any information furnished to Purchaser or any of its Affiliates or Advisors.

(c) Purchaser will not, and will use reasonable best efforts to cause each member of Purchaser Group not to, contact any officer, manager, director, employee, customer, supplier, lessee, lessor, lender, noteholder or other material business relation of Seller or its Subsidiaries prior to the Closing with respect to Seller, its Subsidiaries, their business or the transactions contemplated by this Agreement without the prior consent of Seller for each such contact, which consent shall not be unreasonably delayed, withheld or conditioned.

6.3 Regulatory Approvals.

(a) Seller will, will cause its Subsidiaries and direct its Affiliates and Advisors to, (i) make or cause to be made all filings and submissions required to be made by Seller Parties under any applicable Laws for the consummation of the transactions contemplated by this Agreement, including the sale and assignment of the Acquired Assets, and obtain, at no cost to Purchaser, such consents, waivers or approvals of any third party or Governmental Body required for the consummation of the transactions contemplated hereby, (ii) cooperate with Purchaser in exchanging such information and providing such assistance as Purchaser may reasonably request in connection with the foregoing and (iii) (A) supply promptly any additional information and documentary material that may be requested in connection with such filings and (B) use reasonable

best efforts to take all actions necessary to obtain all required clearances in connection with such filings. Seller shall take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or proper, consistent with applicable Law, to consummate and make effective as soon as possible the transactions contemplated hereby.

(b) Purchaser will, and will cause its Affiliates and Advisors to, (i) make or cause to be made all filings and submissions required to be made by any member of Purchaser Group under any applicable Laws for the consummation of the transactions contemplated by this Agreement, including the sale and assignment of the Acquired Assets, (ii) cooperate with Seller in exchanging such information and providing such assistance as Seller may reasonably request in connection with all of the foregoing, and (iii) (A) supply promptly any additional information and documentary material that may be requested in connection with such filings and (B) use reasonable best efforts to take all actions necessary to obtain all required clearances. Purchaser shall use its reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or proper, consistent with applicable Law, to consummate and make effective as soon as possible the transactions contemplated hereby.

6.4 Reasonable Efforts; Cooperation.

(a) Each Party shall, and shall cause its Advisors to, use its reasonable best efforts to perform its obligations hereunder and to take, or cause to be taken, and do, or cause to be done, all things necessary, proper or advisable under applicable Law to cause the transactions contemplated herein to be effected as soon as practicable and the closing conditions set forth in Article VII to be satisfied, but in any event on or prior to the Outside Date, in accordance with the terms hereof and to cooperate with each other Party and its Advisors in connection with any step required to be taken as a part of its obligations hereunder. The "reasonable best efforts" of Seller or Purchaser, as applicable, will not require Seller or Purchaser, as applicable, or any of their respective Subsidiaries, Affiliates or Advisors to expend any money to remedy any breach of any representation, to commence any Action, or to waive or forego any right, remedy or condition hereunder.

(b) The obligations of Seller pursuant to this Agreement, including this Section 6.4, shall be subject to any Orders entered, or approvals or authorizations granted or required, by or under the Bankruptcy Court or the Bankruptcy Code (including in connection with the Bankruptcy Case) and Seller's obligations as a debtor-in-possession to comply with any Order of the Bankruptcy Court (including the Sale Order) and Seller's duty to seek and obtain the highest or otherwise best price for the Acquired Assets as required by the Bankruptcy Code.

6.5 Notification of Certain Matters.

(a) Seller will promptly notify Purchaser of, and furnish Purchaser any information it may reasonably request with respect to: (i) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement; (ii) any notice or other communication from any Governmental Body pertaining directly to the transactions contemplated by this Agreement; (iii) the receipt of a Qualified Bid (as defined in the Bidding Procedures Order); (iv) any Actions relating to or involving or otherwise affecting Seller or its Affiliates that relate to the transactions

contemplated by this Agreement; and (v) promptly upon discovery thereof, any variances from, or the existence or occurrence of any event, fact or circumstance arising after the execution of this Agreement that would reasonably be expected to cause, (1) any breach or inaccuracy of any representation or warranty contained in this Agreement at any time prior to the Closing that would reasonably be expected to cause the conditions set forth in Article VII not to be satisfied, (2) any other conditions to Purchaser's obligations to consummate the transactions contemplated by this Agreement or by any Ancillary Document not to be fulfilled, or (3) directly or indirectly, any Material Adverse Effect; provided that the delivery of any notice pursuant to this Section 6.5(a) will not limit the remedies available to Purchaser under or with respect to this Agreement.

(b) Purchaser will promptly notify Seller of: (i) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement; (ii) any notice or other communication from any Governmental Body pertaining directly to the transactions contemplated by this Agreement; (iii) any Actions relating to or involving or otherwise affecting Purchaser or its Affiliates that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to Section 4.4 or that relate to the transactions contemplated by this Agreement; and (iv) any breach or inaccuracy of any representation or warranty contained in this Agreement at any time prior to the Closing that would reasonably be expected to cause the conditions set forth in Article VII not to be satisfied; provided that the delivery of any notice pursuant to this Section 6.5(b) will not limit the remedies available to Seller under or with respect to this Agreement.

6.6 Further Assurances. From time to time, as and when requested by any Party and at such requesting Party's expense, any other Party will execute and deliver, or cause to be executed and delivered, all such documents and instruments and will take, or cause to be taken, all such further or other actions as such requesting Party may reasonably deem necessary or desirable to evidence and effectuate the transactions contemplated by this Agreement.

6.7 Insurance Matters. Purchaser acknowledges that, upon Closing, all insurance coverage provided in relation to the Acquired Assets that is maintained by Seller or any of its Affiliates (whether such policies are maintained with third party insurers or with Seller or its Affiliates) shall cease to provide any coverage with respect to the Acquired Assets and no further coverage shall be available to Purchaser or the Acquired Assets under any such policies.

6.8 Receipt of Misdirected Assets. From and after the Closing, if Seller or any Affiliate of Seller receives any right, property or asset that is an Acquired Asset, Seller shall promptly transfer or cause such of its Affiliates to transfer such right, property or asset (and shall promptly endorse and deliver any such right, property or asset that is received in the form of cash, checks or other documents) to Purchaser, and such asset will be deemed the property of Purchaser held in trust by Seller for Purchaser until so transferred. From and after the Closing, if Purchaser or any of its Affiliates receives any right, property or asset that is an Excluded Asset, Purchaser shall promptly transfer or cause such of its Affiliates to transfer such right, property or asset (and shall promptly endorse and deliver any such right, property or asset that is received in the form of cash, checks, or other documents) to Seller, and such asset will be deemed the property of Seller held in trust by Purchaser for Seller until so transferred.

6.9 Acknowledgments.

(a) Purchaser acknowledges and agrees, on its own behalf and on behalf of Purchaser Group, that it has conducted to its full satisfaction an independent investigation and verification with respect to the Acquired Assets and the Assumed Liabilities, and, in making its determination to proceed with the transactions contemplated by this Agreement, Purchaser and Purchaser Group have relied solely on the results of Purchaser Group's own independent investigation and verification and have not relied on, are not relying on, and will not rely on, Seller, any Subsidiary, any information, statements, disclosures, documents, projections, forecasts or other material made available to Purchaser or any of its Affiliates or Advisors in any dataroom, any information presentation, or any projections or any information, statements, disclosures or materials, in each case, whether written or oral, made or provided by, or as part of, any of the foregoing or any other Seller Party, or any failure of any of the foregoing to disclose or contain any information, except for the representations and warranties made by Seller to Purchaser in Article III (as qualified by the Schedules and in accordance with the express terms and conditions (including limitations and exclusions) of this Agreement) (the "Express Representations") (it being agreed that Purchaser and Purchaser Group have relied only on the Express Representations). Purchaser acknowledges and agrees, on its own behalf and on behalf of Purchaser Group, that (i) the Express Representations are the sole and exclusive representations, warranties and statements of any kind made to Purchaser or any member of Purchaser Group and on which Purchaser or any member of Purchaser Group may rely in connection with the transactions contemplated by this Agreement; and (ii) all other representations, warranties and statements of any kind or nature expressed or implied, whether in written, electronic or oral form, including (1) the completeness or accuracy of, or any omission to state or to disclose, any information (other than solely to the extent expressly set forth in the Express Representations) including in any dataroom, information presentation, projections, meetings, calls or correspondence with management of Seller and its Subsidiaries, any of Seller Parties or any other Person on behalf of Seller, its Subsidiaries or any of Seller Parties or any of its Affiliates or Advisors and (2) any other statement relating to the historical, current or future business, condition, results of operations, assets, Liabilities, properties, contracts, and prospects of the Seller or any of its Subsidiaries, or the quality, quantity or condition of Seller's or its Subsidiaries' assets, are, in each case, specifically disclaimed by Seller, on its behalf and on behalf of Seller Parties. Purchaser, on its own behalf and on behalf of Purchaser Group: (x) disclaims reliance on the items in clause (ii) in the immediately preceding sentence and (y) acknowledges and agrees that it has relied on, is relying on and will rely on only the items in clause (i) in the immediately preceding sentence. Without limiting the generality of the foregoing, except for fraud by any Person, Purchaser acknowledges and agrees, on its own behalf and on behalf of Purchaser Group, that neither Seller, nor any other Person (including Seller Parties), has made, is making or is authorized to make, and Purchaser, on its own behalf and on behalf of Purchaser Group, hereby waive, all rights and Claims it or they may have against any Seller Party with respect to the accuracy of, any omission or concealment of, or any misstatement with respect to, (A) any potentially material information regarding Seller, its Subsidiaries or any of their respective assets (including the Acquired Assets), Liabilities (including the Assumed Liabilities) or operations and (B) any warranty or representation (whether in written, electronic or oral form), express or implied, as to the quality, merchantability, fitness for a particular purpose, or condition of Seller's or its Subsidiaries' business, operations, assets, Liabilities, prospects or any portion thereof, except, in each case, solely to the extent expressly set forth in the Express Representations.

(b) Purchaser acknowledges and agrees, on its own behalf and on behalf of Purchaser Group, that it will not assert, institute, or maintain, and will cause each member of

Purchaser Group not to assert, institute or maintain, any Action that makes any claim contrary to the agreements and covenants set forth in this Section 6.9, including any such Action with respect to the distribution to Purchaser or any member of the Purchaser Group, or Purchaser's or any member of Purchaser Group's use, of the information, statements, disclosures or materials in any information presentation, dataroom, or projections or any other information, statements, disclosures, or materials, in each case whether written or oral, provided by them or any other Seller Party or any failure of any of the foregoing to disclose any information.

(c) Purchaser acknowledges and agrees, on its own behalf and on behalf of Purchaser Group, that the covenants and agreements contained in this Section 6.9 (i) require performance after the Closing to the maximum extent permitted by applicable Law and will survive the Closing in accordance with their terms; and (ii) are an integral part of the transactions contemplated by this Agreement and that, without these agreements set forth in this Section 6.9, Seller would not enter into this Agreement.

(d) Seller acknowledges and agrees, on its own behalf and on behalf of its Seller Parties, that, in making its determination to proceed with the transactions contemplated by this Agreement, Seller and its Seller Parties have relied solely on the results of Seller Parties' own independent investigation and verification and have not relied on, are not relying on, and will not rely on, Purchaser, any Affiliate of Purchaser, any information, statements, disclosures, documents, projections, forecasts or other material made available to Seller or any of its Affiliates or Advisors in any dataroom, any information presentation, or any projections or any information, statements, disclosures or materials, in each case, whether written or oral, made or provided by, or as part of, any of the foregoing or any other member of Purchaser Group, or any failure of any of the foregoing to disclose or contain any information, except for the representations and warranties made by Purchaser to Seller in Article IV (as qualified by any schedules and in accordance with the express terms and conditions (including limitations and exclusions) of this Agreement) (the "Express Purchaser Representations") (it being agreed that Seller and its Seller Parties have relied only on the Express Purchaser Representations). Seller acknowledges and agrees, on its own behalf and on behalf of its Seller Parties, that (i) the Express Purchaser Representations are the sole and exclusive representations, warranties and statements of any kind made to Seller or any of its Seller Parties and on which Seller or any of its Seller Parties may rely in connection with the transactions contemplated by this Agreement; and (ii) all other representations, warranties and statements of any kind or nature expressed or implied, whether in written, electronic or oral form, including (1) the completeness or accuracy of, or any omission to state or to disclose, any information (other than solely to the extent expressly set forth in the Express Purchaser Representations) including in any dataroom, information presentation, projections, meetings, calls or correspondence with management of Purchaser, any member of Purchaser Group or any other Person on behalf of Purchaser, its Affiliates or any member of Purchaser Group or any of their respective Affiliates or Advisors and (2) any other statement relating to the historical, current or future business, condition, results of operations, assets, Liabilities, properties, contracts, and prospects of Purchaser or any of its Affiliates are, in each case, specifically disclaimed by Purchaser, on its behalf and on behalf of each member of Purchaser Group. Seller, on its own behalf and on behalf of Seller Parties: (x) disclaims reliance on the items in clause (ii) in the immediately preceding sentence and (y) acknowledges and agrees that it has relied on, is relying on and will rely on only the items in clause (i) in the immediately preceding sentence. Without limiting the generality of the foregoing, except for fraud by any Person, Seller acknowledges and agrees, on its own behalf and on behalf of its

Seller Parties, that neither Purchaser, nor any other Person (including each member of Purchaser Group), has made, is making or is authorized to make, and Seller, on its own behalf and on behalf of each Seller Party, hereby waives, all rights and claims it or they may have against any member of Purchaser Group with respect to the accuracy of, any omission or concealment of, or any misstatement with respect to, (A) any potentially material information regarding Purchaser or its Affiliates and (B) any warranty or representation (whether in written, electronic or oral form), express or implied, as to the quality, merchantability, fitness for a particular purpose, or condition of Purchaser or its Affiliates' business, operations, financing, assets, Liabilities, prospects or any portion thereof, except, in each case, solely to the extent expressly set forth in the Express Purchaser Representations.

(e) Seller acknowledges and agrees, on its own behalf and on behalf of its Seller Parties, that it will not assert, institute, or maintain, and will cause each Seller Party not to assert, institute or maintain, any Action that makes any Claim contrary to the agreements and covenants set forth in this Section 6.9, including any such Action with respect to the distribution to Seller or any of its Seller Parties, or Seller's or any of its Seller Parties' use, of the information, statements, disclosures or materials in any information presentation, dataroom, or projections or any other information, statements, disclosures, or materials, in each case whether written or oral, provided by them or any other member of Purchaser Group or any failure of any of the foregoing to disclose any information.

(f) Seller acknowledges and agrees, on its own behalf and on behalf of its Seller Parties, that the covenants and agreements contained in this Section 6.9 (i) require performance after the Closing to the maximum extent permitted by applicable Law and will survive the Closing in accordance with their terms; and (ii) are an integral part of the transactions contemplated by this Agreement and that, without these agreements set forth in this Section 6.9, Purchaser would not enter into this Agreement.

6.10 No Right to Employment. Nothing herein shall be deemed to create any right to employment or continued employment or to a particular term or condition of employment with Purchaser or any of its Affiliates and nothing herein shall be construed to create any third-party beneficiary right in any employee or other Person other than the Parties to this Agreement.

6.11 Casualty. If, between the date of this Agreement and the Closing, any of the Acquired Assets shall be destroyed or damaged by fire, earthquake, hurricane, flood, explosion, storm surge, natural disaster, other casualty or any other cause or act of god (each a "Casualty"), then Purchaser may acquire such Acquired Assets on an "as is" basis, without any adjustment to the Purchase Price, and take an assignment from Seller of an amount of insurance proceeds payable to Seller in respect of the applicable Casualty, up to the amount of the Cash Payment, with the remainder going with Seller or its Affiliates.

6.12 Confidentiality; Use of Acquired Assets.

(a) As of the Closing, Purchaser's obligations under the Confidentiality Agreement related to non-use, non-disclosure and return or destruction of Confidential Information (as defined in the Confidentiality Agreement) exclusively related to the Acquired Assets and the Assumed Liabilities shall terminate. All other provisions of the Confidentiality

Agreement shall remain in full force and effect in accordance with their terms, including, without limitation, Purchaser's, or any other Person's, obligations under the Confidentiality Agreement with respect to Confidential Information that is not exclusively related to the Acquired Assets and Assumed Liabilities.

(b) From and after the Closing, Seller shall, and shall cause its Subsidiaries and direct the other Seller Parties to, hold in confidence all Confidential Information (as defined in the applicable Confidentiality Agreement as if such party were the receiving party under such Confidentiality Agreement) and any and all other information, whether written or oral, concerning the Acquired Assets or provided to or retained by them in connection with this Agreement. If Seller or any Seller Parties are compelled to disclose any information by judicial or administrative process or by other requirements of Law, Seller shall (to the extent reasonably practicable and legally permissible) promptly notify Purchaser in writing (email being sufficient) so that Purchaser may seek at its own cost and expense an appropriate protective order and Seller shall disclose only that portion of such information which Seller is advised by its counsel is legally required to be disclosed and to such Persons to whom disclosure is required; provided, however, that Seller shall, at the request of Purchaser, use commercially reasonable efforts to obtain at Purchaser's cost and expense an appropriate protective order or other reasonable assurance that confidential treatment will be accorded such information and cooperate to a commercially reasonable extent with Purchaser's efforts to obtain such protective order or such other reasonable assurances. Notwithstanding anything in this Section 6.12 to the contrary, unless disclosure is required by applicable Law, the confidentiality of any trade secrets of the operation of the Acquired Assets shall be maintained by Seller and Seller Parties for so long as such trade secrets continue to be entitled to protection as trade secrets under applicable Law.

(c) Seller shall cease to make use of any Acquired Assets after the Closing.

6.13 Intellectual Property. Without limiting any other provision of this Agreement, prior to, on and after the Closing Date, Seller shall cooperate with Purchaser, without any further consideration, (a) to obtain, execute and deliver, or use best efforts to obtain, execute and deliver to Purchaser, or cause to be executed and delivered, all instruments, including any instruments of conveyance, assignment and transfer as Purchaser may request, (b) to make, or cause to be made, all filings with, and to obtain, or cause to be obtained, all consents of any Governmental Body or any other Person under any Permit, license, agreement, indenture or other instrument, and (c) to take, or cause to be taken, all such other actions Purchaser may reasonably request from time to time in order to effectuate the provisions and purposes of this Agreement and any and all transfers of Intellectual Property pursuant to this Agreement and the Ancillary Documents. In the event Purchaser (or its designee) is unable for any reason, after reasonable effort, to secure Seller's signature on any document needed in connection with the actions specified in this paragraph, Seller hereby irrevocably designates and appoints Purchaser and its duly authorized officers and agents as Seller's agent and attorney in fact, which appointment is coupled with an interest, to act for and in Seller's behalf to execute, verify and file any such documents and to do all other lawfully permitted acts to further the purposes of the preceding paragraph with the same legal force and effect as if executed by Seller.

ARTICLE VII

CONDITIONS TO CLOSING

7.1 Conditions Precedent to the Obligations of Purchaser and Seller. The respective obligations of each Party to this Agreement to consummate the transactions contemplated by this Agreement are subject to the satisfaction (or to the extent permitted by Law, written waiver by Seller and Purchaser) on or prior to the Closing, of each of the following conditions:

(a) No court or other Governmental Body has issued, enacted, entered, promulgated or enforced any Law or Order (that is final and non-appealable and that has not been vacated, withdrawn or overturned) restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement;

(b) the Bankruptcy Court shall have entered the Bidding Procedures Order, which shall remain in full force and effect in all respects; and

(c) the Bankruptcy Court shall have entered a final and unappealable Sale Order approving (i) the "free and clear" sale of the Acquired Assets pursuant to section 363, including for the avoidance of doubt, "free and clear" of all liens, claims, and encumbrances of the Storey County Treasurer (the "Storey County Liens"); *provided* that any such Storey County Liens may alternatively be paid and extinguished with written consent of the Storey County Treasurer by Seller upon the Closing Date; and (ii) the assignment of the Assigned Contacts, including the NV Energy Contract and Water Supply Contract, pursuant to section 365 of the Bankruptcy Code in form and substance acceptable to Purchaser and such Sale Order shall not be stayed, modified or vacated.

7.2 Conditions Precedent to the Obligations of Purchaser. The obligations of Purchaser to consummate the transactions contemplated by this Agreement are subject to the satisfaction (or to the extent permitted by Law, written waiver by Purchaser in its sole discretion), on or prior to the Closing, of each of the following conditions:

(a) the representations and warranties made by Seller in Article III shall be true and correct as of the Closing Date (disregarding all qualifications or limitations as to "materiality" or "Material Adverse Effect" and words of similar import set forth therein), as though such representations and warranties had been made on and as of the Closing Date (except that representations and warranties that are made as of a specified date need be true and correct only as of such date), except where the failure of such representations and warranties to be true and correct has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; provided that the representations and warranties set forth in Sections 3.1 (*Organization and Qualification*), 3.2 (*Authorization of Agreement*), 3.3 (*Conflict; Consents*), and 3.4(a) (*Title to Acquired Assets*) shall be true and correct in all respects on and as of the Closing Date with the same effect as though made at and as of the Closing Date.

(b) Seller shall have performed and complied with in all material respects all of the covenants and agreements required to be performed by Seller under this Agreement and each of the Ancillary Documents at or prior to the Closing;

(c) Seller shall have delivered, or caused to be delivered, to Purchaser all of the items set forth in Section 2.4;

(d) Seller shall have assigned to Purchaser the NV Energy Contract and the 2009 Water Supply Agreement and such assignments of the NV Energy Contract and the 2009 Water Supply Agreement shall be approved by a final, binding, and non-appealable Order of the Bankruptcy Court which shall provide that each assignment is effective as of the date of Closing; and

(e) No Material Adverse Effect shall have occurred or been discovered since the date of this Agreement.

7.3 Conditions Precedent to the Obligations of Seller. The obligations of Seller to consummate the transactions contemplated by this Agreement are subject to the satisfaction (or to the extent permitted by Law, written waiver by Seller in its sole discretion), on or prior to the Closing, of each of the following conditions:

(a) the representations and warranties made by Purchaser in Article IV shall be true and correct (without giving effect to any materiality or similar qualification contained therein), as of the Closing Date, with the same force and effect as though all such representations and warranties had been made as of the Closing Date (other than representations and warranties that by their terms address matters only as of another specified date, which shall be so true and correct only as of such other specified date), except where the failure of such representations or warranties to be so true and correct has not had, and would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on Purchaser's ability to consummate the transactions contemplated hereby;

(b) Purchaser shall have performed in all material respects all of the covenants and agreements required to be performed by it under this Agreement at or prior to the Closing; and

(c) Purchaser shall have delivered, or caused to be delivered, to Seller all of the items set forth in Section 2.5.

7.4 Waiver of Conditions. Upon the occurrence of the Closing, any condition set forth in this Article VII that was not satisfied as of the Closing will be deemed to have been waived for all purposes by the Party having the benefit of such condition as of and after the Closing. Neither Purchaser nor Seller may rely on the failure of any condition set forth in this Article VII, as applicable, to be satisfied if such failure was caused by such Party's failure to comply with any provision of this Agreement.

ARTICLE VIII

TERMINATION

8.1 Termination of Agreement. This Agreement may be validly terminated only in accordance with this Section 8.1. This Agreement may be terminated at any time prior to the Closing:

(a) by the mutual written consent of Seller and Purchaser;

(b) by written notice of Purchaser or Seller, upon the issuance by any Governmental Body of an Order restraining, enjoining, or otherwise prohibiting the consummation of the transactions contemplated by this Agreement or declaring unlawful the transactions contemplated by this Agreement, and such Order having become final, binding and non-appealable; provided that no termination may be made by a Party under this Section 8.1(b) if the issuance of such Order was caused by the breach or action or inaction of such Party;

(c) by written notice of either Purchaser or Seller, if the Closing shall not have occurred on or before November 28, 2024 (the "Outside Date"); provided that a Party shall not be permitted to terminate this Agreement pursuant to this Section 8.1(c) if the failure of the Closing to have occurred by the Outside Date was principally caused by the breach or action or inaction of such Party;

(d) by written notice from Seller to Purchaser, if Seller is not then in material breach of any provision of this Agreement, upon a breach of any covenant or agreement on the part of Purchaser, or if any representation or warranty of Purchaser will have become untrue, in each case, such that the conditions set forth in Section 7.3(a) or 7.3(b) would not be satisfied, including a breach of Purchaser's obligation to consummate the Closing; provided that if such breach is curable by Purchaser then Seller may not terminate this Agreement under this Section 8.1(d) unless such breach has not been cured by the date which is the earlier of (i) two (2) Business Days prior to the Outside Date and (ii) thirty (30) days after Seller notifies Purchaser of such breach;

(e) by written notice from Purchaser to Seller, if Purchaser is not then in material breach of any provision of this Agreement, upon a breach of any covenant or agreement on the part of Seller, or if any representation or warranty of Seller will have become untrue, in each case, such that the conditions set forth in Section 7.2(a) or 7.2(b) would not be satisfied; provided that (i) if such breach is curable by Seller then Purchaser may not terminate this Agreement under this Section 8.1(e) unless such breach has not been cured by the date which is the earlier of (i) two (2) Business Days prior to the Outside Date and (ii) thirty (30) days after Purchaser notifies Seller of such breach;

(f) by written notice from Seller to Purchaser, if all of the conditions set forth in Sections 7.1 and 7.2 have been satisfied (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions at the Closing) or waived and Purchaser fails to complete the Closing at the time required by Section 2.3;

(g) by written notice from Seller to Purchaser, if Seller or the member of Seller determines that proceeding with the transactions contemplated by this Agreement or failing to terminate this Agreement would be inconsistent with its or its member's fiduciary duties;

(h) by written notice of Purchaser or Seller, if Seller enters into a definitive agreement with respect to an Alternative Transaction, the Bankruptcy Court approves an Alternative Transaction, or automatically if an Alternative Transaction is consummated, or if

Purchaser is not declared the winning bidder at the Auction (as defined in the Bidding Procedures Order);

(i) by written notice from Purchaser to Seller, in the event the Bankruptcy Court enters an Order dismissing, or converting under Chapter 7 of the Bankruptcy Code, the Bankruptcy Case, and such Order has become final, binding and non-appealable, or the Bankruptcy Case is so dismissed or converted;

(j) by written notice of Purchaser or Seller in the event the Bankruptcy Court enters an Order that otherwise precludes the consummation of the transactions set forth herein on the terms and conditions set forth in this Agreement;

(k) by written notice from Purchaser to Seller in the event that Seller withdraws or seeks authority to withdraw the Bidding Procedures Order or the Sale Order at any time after the filing thereof (it being agreed and understood by Purchaser and Seller that a revised or amended form of Sale Order shall not constitute a withdrawal of the Sale Order);

(l) by written notice from Purchaser to Seller in the event that any creditor of Seller obtains a final Order of the Bankruptcy Court granting relief from the automatic stay under Section 362 of the Bankruptcy Code to foreclose on any material portion of the Acquired Assets;

(m) by written notice of Purchaser to Seller, in the event that Seller has not filed a motion to approve the DIP Loan Documents in form and substance acceptable to Purchaser within two (2) days after the Petition Date;

(n) by written notice of Purchaser to Seller, in the event that Seller has not filed a motion seeking approval of the Bidding Procedures Order in form and substance acceptable to Purchaser within two (2) days after the Petition Date;

(o) by written notice of Purchaser to Seller, in the event that the Bankruptcy Court has not entered an Order approving, on an interim basis, the DIP Loan Documents, in form and substance acceptable to Purchaser, within three (3) days after the Petition Date;

(p) by written notice of Purchaser to Seller, in the event that the Bankruptcy Court has not (i) entered an Order approving Purchaser as a stalking horse bidder, including approval of the Bidding Procedures Order and the Break-Up Fee or (ii) approved, on a final basis, the DIP Loan Documents, in each case of clauses (i) and (ii), within thirty (30) days after the Petition Date;

(q) by written notice of Purchaser to Seller, in the event that Seller has not held the Auction or cancelled the Auction and named Purchaser the winning bidder for the Acquired Assets within sixty (60) days after the Petition Date;

(r) by written notice of Purchaser to Seller, in the event that the Bankruptcy Court has not entered the Sale Order within sixty-five (65) days after the Petition Date;

(s) by written notice of Purchaser to Seller following any Event of Default (as defined in the DIP Loan Documents) under the DIP Loan Documents; or

(t) by written notice of Purchaser to Seller in the event that Purchaser shall have received a Phase II environmental site assessment of the Real Property (as defined in this Agreement), conducted by a firm selected by Purchaser, which contains evidence of contamination at the applicable site(s) above applicable thresholds such that any further investigation or any Material Remediation is required to achieve a level of completion of either Historical Recognized Environmental Condition (HREC) or Controlled Recognized Environmental Condition (CREC) as defined in the ASTM 1527 standard for Phase I Environmental Site Assessments; provided that a copy of the Phase II environmental site assessment was provided to Seller within a reasonable time upon receipt by Purchaser; provided, further, that Purchaser may not terminate this Agreement under this Section 8.1(t) if Seller agrees to reduce the Purchase Price by the amount of the estimated costs of the Material Remediation.

8.2 Effect of Termination.

(a) In the event of termination of this Agreement pursuant to Section 8.1, this Agreement shall forthwith become void and there shall be no Liability on the part of any Party or any of its partners, members, officers, directors or stockholders; provided that this Article VIII and Article X and the definitions referenced in such Sections and Articles, even if not included in such Sections and Articles, shall survive any such termination; provided, further, that no termination will relieve the Parties from any Liability for damages (including damages based on the loss of the economic benefits of the transactions contemplated by this Agreement, including the Purchase Price, to Seller), losses, costs, or expenses (including reasonable legal fees and expenses) resulting from any willful breach of this Agreement by Seller prior to any such termination or fraud by any Party. Seller, on behalf of itself and Seller Parties, acknowledges and agrees that any disbursement of the Deposit to Seller pursuant to Section 2.2 shall be deemed liquidated damages and shall be the sole and exclusive recourse of Seller and the Seller Parties against Purchaser and Purchaser Group for any loss or damage suffered as a result of any breach of this Agreement or any representation, warranty, covenant or agreement contained herein by Purchaser or the failure of the transactions contemplated by this Agreement to be consummated. Upon payment of the Deposit in accordance with Section 2.2, (i) Purchaser and Purchaser Group shall not have any further liability or obligation relating to or arising out of this Agreement or the transactions contemplated hereby and (ii) neither Seller nor any of Seller Parties will have any right of recovery, whether arising under contract Law, tort Law or any other theory of Law, against, and no personal liability shall attach to any Purchaser and Purchaser Group, whether by or through attempted piercing of the corporate, limited partnership or limited liability company veil, by the enforcement of any assessment or by any legal or equitable Action, by virtue of any statute, regulation or applicable Law, or otherwise. For the avoidance of doubt, the maximum aggregate liability of Purchaser and Purchaser Group for losses in connection with this Agreement shall be limited to the Deposit, and under no circumstances will Seller or any of Seller Parties be entitled to, nor will Seller or any of Seller Parties seek, obtain or accept, monetary damages or losses of any kind (including damages for the loss of the benefit of the bargain, opportunity cost, loss of premium, time value of money or otherwise, or any consequential, special, expectancy, indirect or punitive damages) in connection with the termination of this Agreement in excess of the amount of the Deposit.

(b) Subject in all cases to Section 8.3 and Section 10.12, prior to the applicable Closing, in the event of any breach by Seller of this Agreement, the sole and exclusive remedy of

Purchaser shall be to terminate this Agreement in accordance with Section 8.1. If Purchaser elects to terminate this Agreement pursuant to Section 8.1, Purchaser may terminate the Agreement without the need to seek or obtain relief from the Bankruptcy Court from the stay under section 362 of the Bankruptcy Code or otherwise.

8.3 Break-Up Fee. In consideration of Purchaser having expended considerable time and expense in connection with this Agreement and negotiation thereof and Purchaser's willingness to act as the "stalking horse" bidder with respect to the Auction (as defined in the Bidding Procedures Order), Seller believes that Purchaser is entitled to certain bid protections.

(a) If this Agreement is terminated pursuant to Section 8.1(e), Section 8.1(g), Section 8.1(h), Section 8.1(i), Section 8.1(k), Section 8.1(l), Section 8.1(m), Section 8.1(n), Section 8.1(o), Section 8.1(p), Section 8.1(q), Section 8.1(r) or Section 8.1(s) (or by Seller pursuant to Section 8.1(c), in circumstances where Purchaser would be entitled to terminate this Agreement pursuant to Section 8.1(e)), then Seller shall pay the Break-Up Fee to Purchaser in immediately available funds, without need for further Order of or from the Bankruptcy Court, and such Break-Up Fee shall be due and payable simultaneously with any such termination of this Agreement.

(b) To the extent that Seller consummates an Alternative Transaction and the Break-Up Fee is due and owing to Purchaser pursuant to this Section 8.3, the Break-Up Fee shall be paid from the first dollars of sale proceeds from such Alternative Transaction. To the extent that Seller does not consummate an Alternative Transaction and the Break-Up Fee is due and owing to Purchaser pursuant to this Section 8.3, the Break-Up Fee shall be deemed an allowed administrative expense claim in accordance with Sections 503(b) and 507(b) of the Bankruptcy Code.

(c) If Seller fails to take any action reasonably necessary to cause the delivery of the Break-Up Fee under circumstances where Purchaser is entitled to the Break-Up Fee and, in order to obtain such Break-Up Fee, Purchaser commences an Action which results in a judgment in favor of Purchaser, Seller shall pay to Purchaser, in addition to the Break-Up Fee, an amount of cash equal to the costs and expenses (including attorneys' fees) incurred by Purchaser in connection with such Action.

(d) Seller hereby acknowledges and agrees that the obligation to pay the Break-Up Fee (to the extent due hereunder) shall survive the termination of this Agreement and shall have administrative priority status against Seller and its estate. Each Party acknowledges that the agreements contained in this Section 8.3 are an integral part of this Agreement and that, without these agreements, other Parties would not enter into this Agreement. Seller acknowledges and agrees that this Section 8.3 is a condition precedent to Purchaser's execution of this Agreement and Purchaser would not have entered into this Agreement without the provisions of this Section 8.3, and this Section 8.3 is necessary to ensure that Purchaser will continue to pursue the proposed acquisition of the Acquired Assets, and Seller acknowledges that the Break-Up Fee, if payable hereunder, (i) constitute actual and necessary costs and expenses of preserving Seller's estate, within the meaning of Section 503(b) of the Bankruptcy Code, (ii) are of substantial benefit to Seller's estate by, among other things, establishing a bid standard or minimum for other bidders and placing estate property in a sales configuration mode attracting other bidders to a potential auction, (iii) are reasonable and appropriate, including in light of the size and nature of the sale of

the Acquired Assets by Seller to Purchaser contemplated hereby and the efforts that have been or will be expended by Purchaser, notwithstanding that such sale is subject to higher and better offers, and (iv) were negotiated by the Parties at arm's-length and in good faith.

(e) Seller may hold an Auction (as defined in the Bidding Procedures Order) for the Acquired Assets if it receives one or more Qualified Bids (as defined in the Bidding Procedures Order) for the Acquired Assets; provided that in addition to the requirements for Qualified Bids, as set forth in the Bidding Procedures Order, a Qualified Bid must be in a cash amount equal to the Purchase Price plus the Break-Up Fee plus $250,000.

ARTICLE IX

TAXES

9.1 Transfer Taxes. Any sales, use, purchase, transfer, franchise, deed, fixed asset, stamp, documentary stamp, use, or other Taxes and recording charges payable by reason of the sale of the Acquired Assets or the assumption of the Assumed Liabilities under this Agreement or the transactions contemplated hereby (the "Transfer Taxes") shall be borne and timely paid by Seller only to the extent not exempt under the Bankruptcy Code, as applicable to the transfer of the Acquired Assets pursuant to this Agreement, and Purchaser shall timely file all Tax Returns related to any Transfer Taxes. Seller and Purchaser shall use commercially reasonable efforts and cooperate in good faith to exempt all such transactions from any Transfer Taxes, including pursuant to section 1146(a) of the Bankruptcy Code.

9.2 Allocation of Purchase Price. For U.S. federal and applicable state and local income Tax purposes, Purchaser, Seller, and their respective Affiliates shall allocate the purchase price (and any Assumed Liabilities treated as part of the purchase price for applicable income Tax purposes) among the Acquired Assets in accordance with Section 1060 of the Code and the Treasury Regulations. Within ninety (90) days following Closing, Purchaser shall provide the allocation to Seller setting forth the allocation of the Purchase Price (and other amounts treated as purchase price for U.S. federal income Tax purposes) among the Acquired Assets (the "Allocation") for Seller's review and comment. Purchaser shall consider in good faith any reasonable comments to the Allocation submitted to it by Seller. The Parties and their respective Affiliates shall file all Tax Returns (including IRS Form 8594 and any similar state, local or non-U.S. Tax form) in accordance with such Allocation and neither Purchaser nor Seller shall take any Tax position inconsistent with such Allocation and neither Purchaser nor Seller shall agree to any proposed adjustment to the Allocation by any Tax Authority, in each case, unless otherwise required by a "determination" within the meaning of Section 1313(a) of the Code; provided, however, that nothing contained herein shall prevent Purchaser, Seller, and their respective Affiliates from settling any proposed deficiency or adjustment by any Tax Authority based upon or arising out of the Allocation, and none of Purchaser, Seller, or their respective Affiliates shall be required to litigate before any court any proposed deficiency or adjustment by any Tax Authority challenging the Allocation.

9.3 Cooperation. After the Closing, Purchaser and Seller agree to furnish or cause to be furnished to the other, upon reasonable request, as promptly as reasonably practicable, such Tax information and assistance relating to the Acquired Assets, including access to books and records,

as is reasonably necessary for the filing of all Tax Returns by Purchaser or Seller, the making of any election relating to Taxes, the preparation for any audit by any Tax Authority and the prosecution or defense of any claim, suit or proceeding relating to any Tax, in each case with respect to the Acquired Assets or the Assumed Liabilities. Each of Purchaser and Seller shall retain all books and records with respect to Taxes pertaining to the Acquired Assets for the period expiring at the earlier of seven (7) years following the Closing Date or the final wind-down and liquidation of Seller, whichever occurs first. Purchaser and Seller shall reasonably cooperate with each other in the conduct of any audit, Action or other proceeding relating to Taxes involving the Acquired Assets or the Allocation. Each Party shall promptly notify the other Parties in writing upon receipt by such first Party of notice of any pending or threatened Tax audits or assessments relating to the income, properties or operations of the first Party that reasonably may be expected to relate to or give rise to any Encumbrance for Taxes on the Acquired Assets.

9.4 Allocation of Tax Liability. For all purposes under this Agreement, in the case of any Straddle Period, the portion of Taxes (or any Tax refund and amount credited against any Tax) that are allocable to the portion of the Straddle Period ending on the Closing Date will be (i) in the case of all Property Taxes and other Taxes imposed on a periodic basis without regard to income, gross receipts or sales, deemed to be the amount of such Taxes (or Tax refund or amount credited against Tax) for such entire Straddle Period multiplied by a fraction, the numerator of which is the number of calendar days in the portion of such Straddle Period ending on the end of the Closing Date and the denominator of which is the number of calendar days in such entire Straddle Period, and (ii) in the case of all other Taxes, determined as though the taxable year of Seller terminated at the end of the Closing Date.

9.5 Property Taxes. To the extent not otherwise provided in this Agreement, Seller shall be responsible for and shall promptly pay when due all Property Taxes levied with respect to the Acquired Assets attributable to the Pre-Closing Tax Period. Upon receipt of any bill for such Property Taxes, Purchaser or Seller, as applicable, shall present a statement to the other setting forth the amount of reimbursement to which each is entitled under this Section 9.5 together with such supporting evidence as is reasonably necessary to calculate the proration amount. The proration amount shall be paid by the party owing it to the other within ten (10) days after delivery of such statement. In the event that Purchaser or Seller makes any payment for which it is entitled to reimbursement under this Section 9.5, the applicable party shall make such reimbursement promptly but in no event later than ten (10) days after the presentation of a statement setting forth the amount of reimbursement to which the presenting party is entitled along with such supporting evidence as is reasonably necessary to calculate the amount of reimbursement.

ARTICLE X

MISCELLANEOUS

10.1 Non-Survival of Representations and Warranties and Certain Covenants; Certain Waivers. Each of the representations and warranties and the covenants and agreements (to the extent such covenant or agreement contemplates or requires performance by such Party prior to the Closing) of the Parties set forth in this Agreement or in any other document contemplated hereby, or in any certificate delivered hereunder or thereunder, will terminate effective immediately as of the Closing such that no Claim for breach of any such representation, warranty,

covenant or agreement, detrimental reliance or other right or remedy (whether in contract, in tort or at law or in equity) may be brought with respect thereto after the Closing. Each covenant and agreement that explicitly contemplates performance after the Closing, will, in each case and to such extent, expressly survive the Closing until fully performed in accordance with its terms, and nothing in this Section 10.1 will be deemed to limit any rights or remedies of any Person for breach of any such surviving covenant or agreement.

10.2 Expenses. Whether or not the Closing takes place, except as otherwise provided herein (including, for the avoidance of doubt, Section 8.2 and Section 8.3), all fees, costs and expenses (including fees, costs and expenses of Advisors) incurred in connection with the negotiation of this Agreement, the Ancillary Documents and the other agreements contemplated hereby, the performance of this Agreement, the Ancillary Documents and the other agreements contemplated hereby and the consummation of the transactions contemplated hereby and thereby will be paid by the Party incurring such fees, costs and expenses; it being acknowledged and agreed that all Transfer Taxes will be allocated pursuant to Section 9.1.

10.3 Notices. Except as otherwise expressly provided herein, all notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given (a) when personally delivered, (b) when transmitted by electronic mail, if transmitted prior to 5:00PM local time of the recipient on a Business Day, otherwise on the next succeeding Business Day, (c) the day following the day on which the notice has been delivered prepaid to a reputable national overnight air courier service or (d) the third (3rd) Business Day following the day on which the notice is sent by certified or registered mail, postage prepaid, in each case, to the respective Party at the number, electronic mail address or street address, as applicable, set forth below, or at such other number, electronic mail address or street address as such Party may specify by written notice to the other Party.

Notices to Purchaser:

Switch, Ltd.
7135 S. Decatur Blvd
Las Vegas, NV 89118

Attention: Lynnel Reyes, Associate General Counsel
Email: Policy@switch.com

with a copy to (which shall not constitute notice):

Latham & Watkins LLP
650 Town Center Drive, Floor 20
Costa Mesa, CA 92626
Attention: Daniel E. Rees
Email: daniel.rees@lw.com

-and-

Latham & Watkins LLP
1271 Avenue of the Americas
New York, NY 10020
Attention: Adam J. Goldberg
Brian S. Rosen
Email: adam.goldberg@lw.com
brian.rosen@lw.com

Notices to Seller:

Fulcrum Sierra BioFuels, LLC
P.O. Box 220
Pleasanton, CA 94566

Attention: Mark Smith
Rick Barraza
Email: MSmith@fulcrum-bioenergy.com
rbarraza@fulcrum-bioenergy.com

with a copy to (which shall not constitute notice):

Morris, Nichols, Arsht & Tunnell LLP
1201 North Market Street
P.O. Box 1347
Wilmington, DE 19899-1347
Attention: Robert J. Dehney
Curtis S. Miller
Clint M. Carlisle
Avery Jue Meng
Email: rdehney@morrisnichols.com
cmiller@morrisnichols.com
ccarlisle@morrisnichols.com
ameng@morrisnichols.com

10.4 Binding Effect; Assignment. This Agreement shall be binding upon Purchaser and, upon the entry and terms of the Sale Order, Seller, and shall inure to the benefit of and be so binding on the Parties and their respective successors and permitted assigns, including any trustee or estate representative appointed in the Bankruptcy Case or any successor Chapter 7 case. Without the consent of Seller or any other Person, Purchaser may (a) assign this Agreement or any of Purchaser's rights, interests or obligations, in whole or in part (including the right or obligation to acquire any of the Acquired Assets or the right or obligation to assume any Assumed Liabilities), under this Agreement to one or more Persons who are Affiliates of Purchaser, (b) may assign this Agreement or any of Purchaser's rights, interests or benefits, in whole or in part, under this Agreement as collateral to any lender of Purchaser, and (c) designate any Person who is an Affiliate of Purchaser to perform any of Purchaser's obligations, in whole or in part (including the obligation to acquire any of the Acquired Assets or the obligation to assume any Assumed Liabilities), under

this Agreement. In the event of any assignment or designation pursuant to this Section 10.4, Purchaser shall not be relieved of any Liability or obligation to Seller hereunder. Any attempted assignment of this Agreement in violation of the express terms hereof shall be null and void *ab initio*.

10.5 Amendment and Waiver. Any provision of this Agreement or the Schedules or exhibits hereto may be (a) amended only in a writing signed by Purchaser and Seller or (b) waived only in a writing executed by the Person against which enforcement of such waiver is sought. No waiver of any provision hereunder or any breach or default thereof will extend to or affect in any way any other provision or prior or subsequent breach or default.

10.6 Third Party Beneficiaries. Except as otherwise expressly provided herein, nothing expressed or referred to in this Agreement will be construed to give any Person other than the Parties any legal or equitable right, remedy, or Claim under or with respect to this Agreement or any provision of this Agreement.

10.7 Non-Recourse. This Agreement may only be enforced against, and any Action based upon, arising out of or related to this Agreement may only be brought against, the Persons that are expressly named as parties to this Agreement. Except to the extent named as a party to this Agreement, and then only to the extent of the specific obligations of such parties set forth in this Agreement, no past, present or future stockholder, member, partner, manager, director, officer, employee, Affiliate, agent or Advisor of any Party or any Subsidiary of Seller will have any Liability (whether in contract, tort, equity or otherwise) for any of the representations, warranties, covenants, agreements or other obligations or Liabilities of any of the parties to this Agreement or for any Action based upon, arising out of or related to this Agreement.

10.8 Severability. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable Law in any jurisdiction, such provision will be ineffective only to the extent of such prohibition or invalidity in such jurisdiction, without invalidating the remainder of such provision or the remaining provisions of this Agreement or in any other jurisdiction.

10.9 Construction. The language used in this Agreement will be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction will be applied against any Person. The headings of the sections and paragraphs of this Agreement have been inserted for convenience of reference only and will in no way restrict or otherwise modify any of the terms or provisions hereof.

10.10 Schedules. The Schedules have been arranged for purposes of convenience in separately numbered sections corresponding to the sections of this Agreement that are qualified or modified by such disclosure; however, each section of the Schedules will be deemed to incorporate by reference all information disclosed in any other section of the Schedules (and any disclosure in such Schedule will be deemed a disclosure against any representation or warranty set forth in this Agreement) only if, and to the extent that, it is reasonably apparent on its face that such disclosure or information is applicable to such other representations and warranties. Capitalized terms used in the Schedules and not otherwise defined therein have the meanings given to them in this

Agreement. The specification of any dollar amount or the inclusion of any item in the representations and warranties contained in this Agreement, the Schedules or the attached exhibits is not intended to imply that the amounts, or higher or lower amounts, or the items so included, or other items, are or are not required to be disclosed (including whether such amounts or items are required to be disclosed as material or threatened) or are within or outside of the Ordinary Course or consistent with past practice. No information set forth in the Schedules will be deemed to broaden in any way the scope of the Parties' representations and warranties. Any description of any agreement, document, instrument, plan, arrangement or other item set forth on any Schedule is a summary only and is qualified in its entirety by the terms of such agreement, document, instrument, plan, arrangement, or item. The information contained in this Agreement, in the Schedules and exhibits hereto is disclosed solely for purposes of this Agreement, and no information contained herein or therein will be deemed to be an admission by any Party to any third party of any matter whatsoever, including any violation of Law or breach of contract.

10.11 Complete Agreement. This Agreement, together with the Confidentiality Agreement, the Ancillary Documents and any other agreements expressly referred to herein or therein, contains the entire agreement of the Parties respecting the sale and purchase of the Acquired Assets and the Assumed Liabilities and the transactions contemplated by this Agreement and supersedes all prior agreements among the Parties respecting the sale and purchase of the Acquired Assets and the Assumed Liabilities and the transactions contemplated by this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, the terms and provisions of the execution version of this Agreement will control.

10.12 Specific Performance. The Parties agree that irreparable damage, for which monetary relief, even if available, would not be an adequate remedy, would occur in the event that any provision of this Agreement is not performed in accordance with its specific terms or is otherwise breached, including if any of the Parties fail to take any action required of such Party hereunder to consummate the transactions contemplated by this Agreement. It is accordingly agreed that (a) the Parties will be entitled to an injunction or injunctions, specific performance or other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in the courts described in Section 10.13 without proof of damages or otherwise, this being in addition to any other remedy to which they are entitled under this Agreement, and (b) the right of specific performance and other equitable relief is an integral part of the transactions contemplated by this Agreement and without that right, neither Seller nor Purchaser would have entered into this Agreement. The Parties acknowledge and agree that any Party pursuing an injunction or injunctions or other Order to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in accordance with this Section 10.12 will not be required to provide any bond or other security in connection with any such Order. The remedies available to Purchaser pursuant to this Section 10.12 will be in addition to any other remedy to which it was entitled at law or in equity, and the election to pursue an injunction or specific performance will not restrict, impair or otherwise limit Purchaser from seeking to collect or collecting damages. If, prior to the Outside Date, Purchaser brings any Action, in each case in accordance with this Section 10.12, to enforce specifically the performance of the terms and provisions hereof by any other Party, the Outside Date will automatically be extended (y) for the period during which such Action is pending, plus ten (10) Business Days or (z) by such other time period established by the court presiding over such Action, as the case may be. Notwithstanding anything contained herein to the contrary, it is acknowledged and agreed that

Seller shall be entitled to specific performance of Purchaser's obligations to consummate the transaction contemplated herein only in the event that (i) all of the conditions set forth in Section 7.1 and Section 7.2 (other than those conditions that by their terms are to be satisfied at the Closing, each of which shall be capable of being satisfied if the Closing were to occur) have been and remain satisfied as of the time when Closing is required to have occurred pursuant to Section 2.3, (ii) Purchaser has failed to consummate the Closing on the date that the Closing is required to occur pursuant to Section 2.3, and (iii) Seller has delivered to Purchaser an irrevocable notice on or after the date that the Closing is required to occur pursuant to Section 2.3 that all conditions set forth in Section 7.1 and Section 7.2 have been satisfied or waived (other than those conditions that by their terms are to be satisfied at the Closing, each of which shall be capable of being satisfied if the Closing were to occur) and the Closing shall occur in accordance with Section 2.3 if specific performance is granted.

10.13 Jurisdiction and Exclusive Venue. Each of the Parties irrevocably agrees that any Action that may be based upon, arising out of, or related to this Agreement or the negotiation, execution or performance of this Agreement and the transactions contemplated hereby brought by any other Party or its successors or assigns will be brought and determined only in (a) the Bankruptcy Court and any federal court to which an appeal from the Bankruptcy Court may be validly taken or (b) in the event the Bankruptcy Case is closed, or if the Bankruptcy Court is unwilling or unable to hear such Action, in the Delaware Court of Chancery (or, if the Delaware Court of Chancery does not have subject matter jurisdiction, any state or federal court within the State of Delaware) ((a) and (b), the "Chosen Courts"), and each of the Parties hereby irrevocably submits to the exclusive jurisdiction of the Chosen Courts for itself and with respect to its property, generally and unconditionally, with regard to any such Action arising out of or relating to this Agreement and the transactions contemplated hereby. Each of the Parties agrees not to commence any Action relating thereto except in the Chosen Courts, other than Actions in any court of competent jurisdiction to enforce any judgment, decree or award rendered by any Chosen Court, and no Party will file a motion to dismiss any Action filed in a Chosen Court on any jurisdictional or venue-related grounds, including the doctrine of *forum non-conveniens*. The Parties irrevocably agree that venue would be proper in any of the Chosen Courts, and hereby irrevocably waive any objection that any such court is an improper or inconvenient forum for the resolution of such Action. Each of the Parties further irrevocably and unconditionally consents to service of process in the manner provided for notices in Section 10.3. Nothing in this Agreement will affect the right of any Party to this Agreement to serve process in any other manner permitted by Law.

10.14 Governing Law; Waiver of Jury Trial.

(a) Except to the extent the mandatory provisions of the Bankruptcy Code apply, this Agreement, and any Action that may be based upon, arising out of or related to this Agreement or the negotiation, execution or performance of this Agreement or the transactions contemplated hereby will be governed by and construed in accordance with the internal Laws of the State of Delaware applicable to agreements executed and performed entirely within such State without regards to conflicts of law principles of the State of Delaware or any other jurisdiction that would cause the Laws of any jurisdiction other than the State of Delaware to apply.

(b) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT AND AGREEMENTS

CONTEMPLATED HEREBY AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND THEREFORE HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY ACTION BASED ON, ARISING OUT OF OR RELATED TO THIS AGREEMENT, ANY DOCUMENT OR AGREEMENT CONTEMPLATED HEREBY OR THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY. EACH OF THE PARTIES AGREES AND CONSENTS THAT ANY SUCH ACTION WILL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT THE PARTIES TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES TO THE IRREVOCABLE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. EACH PARTY (I) CERTIFIES THAT NO ADVISOR OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

10.15 Counterparts and PDF. This Agreement, the Ancillary Documents and any other agreements referred to herein or therein, and any amendments hereto or thereto, may be executed in multiple counterparts, any one of which need not contain the signature of more than one Party hereto or thereto, but all such counterparts taken together will constitute one and the same instrument. Any counterpart, to the extent signed and delivered by means of a facsimile machine, .PDF or other electronic transmission, will be treated in all manner and respects as an original contract and will be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person. Minor variations in the form of the signature page to this Agreement or any agreement or instrument contemplated hereby, including footers from earlier versions of this Agreement or any such other document, will be disregarded in determining the effectiveness of such signature. No party hereto or to any such contract will raise the use of a facsimile machine, .PDF or other electronic transmission to deliver a signature or the fact that any signature or contract was transmitted or communicated through the use of facsimile machine, .PDF or other electronic transmission as a defense to the formation of a contract and each such party forever waives any such defense.

10.16 Publicity. From the date hereof until the earlier termination of this Agreement and the Closing, neither Seller, nor Seller Parties nor Purchaser shall issue any press release or public announcement (directly or indirectly) concerning this Agreement or the transactions contemplated hereby without obtaining the prior written approval of the other Party, which approval will not be unreasonably withheld or delayed, unless, in the reasonable judgment of Purchaser or Seller, disclosure is otherwise required by applicable Law or by the Bankruptcy Court with respect to filings to be made with the Bankruptcy Court in connection with this Agreement, provided that the Party intending to make such release shall use its best efforts consistent with such applicable Law or Bankruptcy Court requirement to consult with the other Party with respect to the text thereof. Notwithstanding anything to the contrary in this Agreement, after the Closing, Purchaser Group and Seller shall have the right to issue any press releases and make any public announcements concerning the Acquired Assets and the Assumed Liabilities in its and their respective sole and

absolute discretion; provided that any such Person shall allow Purchaser Group or Seller, as applicable, reasonable opportunity to review and provide input to such press release or public announcement prior to dissemination.

10.17 Bulk Sales Laws. The Parties intend that pursuant to section 363(f) of the Bankruptcy Code, the transfer of the Acquired Assets shall be free and clear of any security interests in the Acquired Assets, including any liens or Claims arising out of the bulk transfer laws, and the Parties shall take such steps as may be necessary or appropriate to so provide in the Sale Order. In furtherance of the foregoing, each Party hereby waives compliance by the Parties with the "bulk sales," "bulk transfers" or similar Laws and all other similar Laws in all applicable jurisdictions in respect of the transactions contemplated by this Agreement.

10.18 Release.

(a) Effective as of the Closing, Seller, on behalf of itself, its Affiliates and each of its past, present and/or future officers, directors (and Persons in similar positions), employees, agents, general or limited partners, managers, management companies, members, Advisors, stockholders, equity holders, controlling Persons, other representatives, or any heir, executor, administrator, successor or assign of any of the foregoing (each of the foregoing, a "Seller Releasing Party"), hereby fully, irrevocably and unconditionally releases and forever discharges Purchaser, any Subsidiary of Purchaser, and their respective Affiliates and each of the foregoing's respective past, present and/or future directors (and Persons in similar positions), managers, officers, employees, agents, general or limited partners, management companies, stockholders, members, equity holders, controlling Persons, other representatives and Affiliates, or any heir, executor, administrator, successor or assign of any of the foregoing, from and against, and covenants that it will not (directly or indirectly) assert any claim or proceeding of any kind before any Governmental Body based upon, any and all claims, Actions, causes of action, suits, rights, debts, agreements, losses and demands whatsoever and all consequences thereof, known or unknown, actual or potential, suspected or unsuspected, fixed or contingent, both in law and in equity with respect to the Acquired Assets and the Assumed Liabilities, whether existing as of the Closing or arising thereafter, that a Seller Releasing Party has or may have, now or in the future, arising out of, relating to, or resulting from any act or omission, error, negligence, breach of contract, tort, violation of Law, matter or cause whatsoever from the beginning of time to the Closing, except to the extent such Actions or omissions constitute fraud or willful misconduct. The foregoing sentence shall not be deemed to be a release or waiver by a Seller Releasing Party of any Action or remedy it may have under this Agreement or any other Ancillary Document.

(b) Effective as of the Closing, Purchaser, on behalf of itself, its Affiliates and each of their respective past, present and/or future officers, directors (and Persons in similar positions), employees, agents, general or limited partners, managers, management companies, members, Advisors, stockholders, equity holders, controlling Persons, other representatives, or any heir, executor, administrator, successor or assign of any of the foregoing (each of the foregoing, a "Purchaser Releasing Party"), hereby fully, irrevocably and unconditionally releases and forever discharges Seller, any Subsidiary of Seller, and their respective Affiliates and each of the foregoing's respective past, present and/or future directors (and Persons in similar positions), managers, officers, employees, agents, general or limited partners, management companies, stockholders, members, equity holders, controlling Persons, other representatives and Affiliates,

or any heir, executor, administrator, successor or assign of any of the foregoing, from and against, and covenants that it will not (directly or indirectly) assert any claim or proceeding of any kind before any Governmental Body based upon, all claims, Actions, causes of action, suits, rights, debts, agreements, losses and demands whatsoever and all consequences thereof, known or unknown, actual or potential, suspected or unsuspected, fixed or contingent, both in law and in equity with respect to the Excluded Assets and Excluded Liabilities, whether existing as of the Closing or arising thereafter, that a Purchaser Releasing Party has or may have, now or in the future, arising out of, relating to, or resulting from any act or omission, error, negligence, breach of contract, tort, violation of Law, matter or cause whatsoever from the beginning of time to the Closing, except to the extent such Actions or omissions constitute fraud or willful misconduct. The foregoing sentence shall not be deemed to be a release or waiver by a Purchaser Releasing Party of any Action or remedy it may have under this Agreement or any other Ancillary Documents.

ARTICLE XI

ADDITIONAL DEFINITIONS AND INTERPRETIVE MATTERS

11.1 Certain Definitions.

(a) "Action" means any action, claim (including a counterclaim, cross-claim, or defense), complaint, summons, suit, litigation, arbitration, mediation, audit, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), prosecution, contest, hearing, inquiry, inquest, examination, assessment, notice of violation, citation or investigation, of any kind whatsoever (civil, criminal, administrative, regulatory, investigative, appellate or otherwise), regardless of the legal theory under which such liability or obligation may be sought to be imposed, whether sounding in contract or tort, or whether at law or in equity, or otherwise under any legal or equitable theory.

(b) "Advisors" means, with respect to any Person, the accountants, attorneys, consultants, advisors, investment bankers, or other representatives of such Person.

(c) "Affiliate" means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person, and the term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person.

(d) "Alternative Transaction" means any transaction (or series of transactions), whether direct or indirect, concerning a sale, merger, acquisition, issuance, financing, recapitalization, reorganization, liquidation, transfer, or other disposition, in each case, pursuant to which all or a portion of the Acquired Assets are to be transferred to any Person other than Purchaser or any of its Affiliates or any plan of reorganization that does not contemplate or that does not permit the sale of the Acquired Assets to Purchaser pursuant to this Agreement.

(e) "Ancillary Documents" means the Bill of Sale, and the other agreements, instruments and documents required to be delivered pursuant to this Agreement or in connection with the transactions contemplated hereunder or at the Closing.

(f) "Auction" means the auction for the sale of the Acquired Assets, if any, to be conducted in accordance with the Bidding Procedures and Bidding Procedures Order.

(g) "Bidding Procedures" means the bidding procedures attached to the Bidding Procedures Order as Exhibit 1, which shall be in form and substance acceptable to Purchaser.

(h) "Bidding Procedures Order" means the Order to be entered by the Bankruptcy Court approving, among other things, the Bidding Procedures and the Break-Up Fee in the form attached hereto as Exhibit A and otherwise in form and substance acceptable to Purchaser.

(i) "Break-Up Fee" means an amount equal to $600,000.

(j) "Business Day" means any day other than a Saturday, Sunday or other day on which banks in New York City, New York are authorized or required by Law to be closed.

(k) "Claim" has the meaning ascribed by Section 101(5) of the Bankruptcy Code and shall include all rights, claims, causes of action, defenses, debts, demands, damages, offset rights, setoff rights, recoupment rights, obligations, and Liabilities of any kind or nature under contract, at law or in equity, known or unknown, contingent or matured, liquidated or unliquidated, and all rights and remedies with respect thereto.

(l) "Code" means the United States Internal Revenue Code of 1986, as amended.

(m) "Confidentiality Agreement" means that certain Mutual Non-Disclosure Agreement, dated as of June 5, 2024, by and among Fulcrum BioEnergy, Inc., Switch, Ltd., and RPA Advisors, LLC.

(n) "Consent" means any approval, consent, ratification, permission, waiver or authorization, or an Order of the Bankruptcy Court that deems or renders unnecessary the same.

(o) "Contract" means any contract, subcontract, purchase order, service order, sales order, indenture, note, bond, lease, sublease, license or other agreement that is binding upon a Person or its property.

(p) "Cure Costs" means cure costs required to be paid pursuant to section 365 of the Bankruptcy Code in connection with the assumption and assignment of Assigned Contracts.

(q) "DIP Loan Documents" means the definitive documents evidencing the senior secured superpriority debtor-in-possession financing to be provided by Purchaser to Seller and its Affiliates that are debtors in the Bankruptcy Case.

(r) "Encumbrance" means any lien (as defined in section 101(37) of the Bankruptcy Code), encumbrance, claim (as defined in section 101(5) of the Bankruptcy Code), including claims or Liability based on successor liability theories or otherwise under any theory of Law or equity, right, demand, charge, mortgage, deed of trust, option, pledge, security interest or

similar interests, community property interest, equitable interest, title defects, hypothecations, easements, rights of way, restrictive covenants, rights of first refusal, conditions, encroachments, preemptive rights, judgments, conditional sale or other title retention agreements and other similar impositions, imperfections or defects of title or restrictions on transfer, voting or use or receipt of income or exercise of any attribute of ownership, whether secured or unsecured, perfected or unperfected, choate or inchoate, filed or unfiled, scheduled or unscheduled, recorded or unrecorded, contingent or non-contingent, material or non-material, known or unknown.

(s) "Environment" or "Environmental" means or concerns any of the following media: (a) land, including surface land, sub-surface strata, sea bed and river bed under water (as defined in clause (b) hereof), and any natural or man-made structures; (b) water, including coastal and inland waters, surface waters, ground waters, drinking water supplies and waters in drains and sewers, surface and sub-surface strata; and (c) air, including indoor and outdoor air and air within buildings and other man-made or natural structures above or below ground, in each case, including any living organism or system supported by such media.

(t) "Environmental Laws" means the common law and any applicable federal, state, local and foreign Law relating in any manner to pollution, Hazardous Materials, the protection of human health and safety, or the Environment including, without limitation: the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq.; the Clean Water Act, as amended, 33 U.S.C. §§ 1251 et seq.; CERCLA; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §§ 11001 et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. §§ 136 et seq.; the Occupational Safety and Health Act of 1970, as amended; and any applicable state and local Law, in each case as in effect as of the Closing Date.

(u) "Environmental Permits" means all permits, licenses, franchises, certificates, approvals, waivers, variances, consents and other authorizations required under applicable Environmental Laws for the operation of the Acquired Assets.

(v) "Escrow Agent" means Kurtzman Carson Consultants, LLC dba Verita Global.

(w) "Excluded Assets" means all assets, liabilities, rights, obligations and other items of Seller (or any Affiliate thereof) that are not included in the definition of Acquired Assets.

(x) "FT CAN" means a catalyst carrier device substantially as described in any of the JM Davy (as defined in the Master Catalyst Supply Agreement ("Catalyst Agreement"), dated July 19, 2018, by and between Johnson Matthey Davy Technologies Limited and Fulcrum Sierra BioFuels, LLC) patents together with future variants thereof and improvements and developments thereto designed to be inserted into a single or multi-tubular reactor and designed to hold FT Catalyst.

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

(z) "GAAP" means United States generally accepted accounting principles as in effect from time to time.

(aa) "Governmental Body" means any government or other governmental or regulatory body, agency or political subdivision thereof of any nature, whether foreign, federal, state or local, or any agency, branch, department, official, entity, instrumentality or authority thereof, or any court, judicial body, tribunal, arbitrator or arbitration panel (public or private) of applicable jurisdiction.

(bb) "Hazardous Material" means any pollutant, contaminant, chemical, material, substance, waste or constituent (including, without limitation, crude oil or any other petroleum product, per- and polyfluoroalkyl substances, and asbestos) addressed by, subject to regulation under, or which can give rise to Liability or an obligation under, any Environmental Law.

(cc) "Intellectual Property" means any and all rights in, arising out of, or associated with any of the following in any jurisdiction throughout the world: (a) issued patents and patent applications (whether provisional or non-provisional), including divisionals, continuations, continuations-in-part, substitutions, reissues, reexaminations, extensions, or restorations of any of the foregoing, and other Governmental Body-issued indicia of invention ownership (including certificates of invention, petty patents, and patent utility models) ("Patents"); (b) trademarks (registered, unregistered and at common law), service marks (registered and at common law), brands, certification marks, logos, slogans, all trade dress rights, corporate names, identifying symbols, emblems, trade names, service names, and other similar indicia of source or origin, together with the goodwill connected with the use of and symbolized by any of the foregoing, and all registrations, applications for registration, and renewals of any of the foregoing; (c) copyrights, works of authorship, moral rights and other copyrightable subject matter, whether or not copyrightable, whether or not registered under national copyright laws, and all registrations, applications for registration, and renewals of any of the foregoing ("Copyrights"); (d) Internet domain names, and Social Media Accounts and user names (including "handles"), whether or not trademarked, all associated web addresses, URLs, websites and web pages, social media sites and pages (including Meta (formerly Facebook), Instagram, X (formerly Twitter), TikTok and YouTube), film libraries, and all content and data thereon or relating thereto, whether or not constituting Copyrights; (e) mask works, and all registrations, applications for registration, and renewals thereof; (f) industrial designs, and all Patents, registrations, applications for registration, and renewals thereof; (g) trade secrets, know-how, inventions (whether or not patentable), discoveries, improvements, technology, business and technical information (including customer and supplier lists, pricing and cost information, business and marketing plans and proposals), databases, data compilations and collections, tools, methods, processes, techniques, and all rights therein; (h) computer programs, operating systems, applications, firmware, and other code, including all source code, object code, application programming interfaces, data files, databases, protocols, specifications, and other documentation thereof; (i) all advertising and promotional materials; (j) all documentation and media constituting, describing or relating to the above, including manuals, memoranda and records; and (k) all other intellectual or industrial property and proprietary rights.

(dd) "Intellectual Property Agreements" means all licenses, sublicenses, consent to use agreements, settlements, coexistence agreements, covenants not to sue, waivers, releases, permissions and other Contracts, whether written or oral, relating to any Licensed Intellectual Property.

(ee) "knowledge" or "knowledge of Seller" means the actual knowledge of Mark J. Smith or Richard D. Barraza.

(ff) "Law" means any federal, state, provincial, local, municipal, foreign or international, multinational or other law, statute, legislation, constitution, principle of common law, resolution, ordinance, code, edict, decree, proclamation, treaty, convention, rule, regulation, ruling, directive, pronouncement, determination, decision, opinion or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Body.

(gg) "Liability" means, as to any Person, any debt, adverse claim, liability (including any liability that results from, relates to or arises out of tort or any other product liability claim), duty, responsibility, obligation, commitment, assessment, cost, expense, loss, expenditure, charge, fee, penalty, fine, contribution, lien, or premium of any kind or nature whatsoever, whether known or unknown, perfected or unperfected, determined or determinable, disputed or undisputed, asserted or unasserted, absolute or contingent, direct or indirect, accrued or unaccrued, liquidated or unliquidated, or due or to become due, and regardless of when sustained, incurred or asserted or when the relevant events occurred or circumstances existed, at law or in equity or otherwise, including any claims or liability based on successor liability theories or otherwise under any theory of Law or equity, and including all costs and expenses related thereto.

(hh) "Licensed Intellectual Property" means all Intellectual Property in which Seller holds any rights or interests granted by other Persons, including third party Intellectual Property made available to Seller under an open source license.

(ii) "Material Adverse Effect" means any event, change, condition, fact, circumstance, occurrence, or effect (each, an "Effect") that, individually or in the aggregate with all other Effects, has had, or would reasonably be expected to have, a material adverse effect on (x) the Acquired Assets and the Assumed Liabilities (taken as a whole) or (y) the validity of enforceability of this Agreement and the Ancillary Documents or the rights and remedies of Seller under this Agreement and the Ancillary Documents; provided that, in the case of clause (x) immediately above, none of the following shall constitute, or be taken into account in determining whether or not there has been, a Material Adverse Effect: any Effect arising from or relating to (i) general business or economic conditions affecting the industry in which Seller and its Subsidiaries operate, (ii) national or international political or social conditions, (iii) financial, banking, or securities markets (including (A) any disruption of any of the foregoing markets, (B) any change in currency exchange rates and (C) any decline in the price of any security, commodity, contract or index), (iv) changes in GAAP, (v) changes in Laws, (vi) (A) the taking of any action contemplated by this Agreement or at the written request of Purchaser or its Affiliates, (B) the failure to take any action if such action is prohibited by this Agreement, or (C) the negotiation, announcement or pendency of this Agreement or the transactions contemplated hereby or the identity, nature or ownership of Purchaser, (vii) any failure, in and of itself, to achieve any budgets,

projections or forecasts (but, for the avoidance of doubt, not the underlying causes of any such failure to the extent such underlying cause is not otherwise excluded from the definition of Material Adverse Effect), (viii) any action taken by Purchaser or its Affiliates with respect to the transactions completed by this Agreement or any breach by Purchaser of this Agreement, or (ix) the commencement or pendency of the Bankruptcy Case; except in the case of the clauses (i), (ii), (iii), (iv) and (v) to the extent such Effects have a materially disproportionate impact on the Acquired Assets or the Assumed Liabilities as compared to other participants engaged in the industries and geographies in which Seller operates.

(jj) "Material Remediation" means remediation requiring, or estimated to require, expenditures in excess of $300,000.

(kk) "Order" means any order, injunction, judgment, decree, ruling, writ, assessment or arbitration award of a Governmental Body, including any Order entered by the Bankruptcy Court in the Bankruptcy Case.

(ll) "Ordinary Course" means the ordinary and usual course of operations of the Acquired Assets taken as a whole taking into account the commencement of the Bankruptcy Case.

(mm) "Payoff Amount" means an amount of cash equal to the aggregate amount of all obligations, including any principal, interest (including capitalized interest), fees, penalties, expenses or other amounts in respect thereof, owed by Seller (or its Affiliates) pursuant to the DIP Loan Documents as of immediately prior to the Closing.

(nn) "Permitted Encumbrances" means (i) recorded easements, rights of way, restrictive covenants, encroachments and similar non-monetary encumbrances or non-monetary impediments of record against any of the Acquired Assets which do not, individually or in the aggregate, adversely affect the operation of the Acquired Assets, (ii) applicable zoning Laws, building codes, land use restrictions and other similar restrictions imposed by Law and (iii) such other Encumbrances or title exceptions as Purchaser may approve in writing in its sole discretion.

(oo) "Person" means an individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization, labor union, estate, Governmental Body or other entity or group.

(pp) "Property Taxes" means all real property Taxes, personal property Taxes and similar ad valorem Taxes.

(qq) "Purchaser Group" means Purchaser, each of Purchaser's Subsidiaries and each of their respective former, current or future Affiliates, officers, directors, employees, partners, members, managers, agents, Advisors, successors or permitted assigns.

(rr) "Release" means any release, spill, emission, emptying, leaking, injection, deposit, disposal, discharge, dispersal, leaching, pumping, pouring, or migration into the Environment.

(ss) "Sale Order" means an order, among other things, approving the sale of the Acquired Assets to Purchaser and authorizing the assignment of the Assigned Contracts to Purchaser, in form and substance acceptable to Purchaser.

(tt) "Seller Parties" means Seller and each of its Subsidiaries and each of their respective former, current, or future Affiliates, officers, directors, employees, partners, members, managers, agents, Advisors, successors or permitted assigns.

(uu) "Social Media Accounts" means any and all accounts, profiles, pages, feeds, registrations and other presences on or in connection with any (i) social media or social networking website or online service, (ii) blog or microblog, (iii) mobile application, (iv) photo, video or other content-sharing website, (v) virtual game world or virtual social world, (vi) rating and review website, (vii) wiki or similar collaborative content website or (viii) message board, bulletin board, or similar forum.

(vv) "Straddle Period" means any taxable period that includes (but does not end on) the Closing Date.

(ww) "Subsidiary" or "Subsidiaries" means, with respect to any Person, any other Person of which a majority of the outstanding shares or other equity interests having the power to vote for directors, managers or Persons performing similar functions is owned, directly or indirectly, by the first Person.

(xx) "Survey" means an ALTA/ACSM standard survey of the Real Property, dated no more than thirty (30) days before the Closing Date in accordance with minimum ALTA/ACSM standards then in effect and sufficient in form and substance to permit issuance of the Title Policy, prepared and certified to Title Company and Purchaser by a licensed land surveyor reasonably satisfactory to Purchaser. Such survey shall (a) show the location of the Real Property and all improvements thereon, (b) show the location and dimensions of all Encumbrances pertaining to the Real Property, (c) show no encroachments of any improvements onto any Encumbrances or onto property outside the boundaries of the Real Property, and (d) include such Table A items as reasonably required by Purchaser.

(yy) "Tax" or "Taxes" means any federal, state, local, foreign or other income, gross receipts, branch profits, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, escheat, environmental, customs duties, capital stock, franchise, profits, withholding, social security, unemployment, disability, real property, personal property, sales, use, transfer, registration, ad valorem, value added, alternative or add-on minimum or estimated tax or other tax of any kind whatsoever, including any interest, penalty or addition thereto, whether disputed or not.

(zz) "Tax Authority" shall mean any Governmental Body, having or purporting to exercise jurisdiction with respect to any Tax.

(aaa) "Tax Return" means any return, claim for refund, report, statement or information return relating to Taxes filed or required to be filed with a Governmental Body, including any schedule or attachment thereto, and including any amendments thereof.

(bbb) "Title Company" means First American Title Insurance Company, or such other title insurance company selected by Seller that is reasonably acceptable to Purchaser.

(ccc) "Title Policy" means a title insurance policy issued by Title Company at Purchaser's expense (except as set forth herein) insuring Seller's fee simple interest in the Real Property that (a) is in form, substance, and amount, and containing such endorsements as are, reasonably acceptable to Purchaser, (b) names Purchaser as the insured, (c) is issued on the Closing Date, (d) contains no exceptions to coverage other than Permitted Encumbrances, and (e) does not contain the standard pre-printed exceptions that appear in the related title insurance commitment, which are able to be deleted with the delivery of surveys, affidavits and certifications signed or obtained by Seller and acceptable to the Title Company.

(ddd) "Water Rights" has the meaning specified in the 2009 Water Supply Agreement.

11.2 Rules of Interpretation. Unless otherwise expressly provided in this Agreement, the following will apply to this Agreement, the Schedules and any other certificate, instrument, agreement or other document contemplated hereby or delivered hereunder.

(a) Accounting terms which are not otherwise defined in this Agreement have the meanings given to them under GAAP consistently applied. To the extent that the definition of an accounting term defined in this Agreement is inconsistent with the meaning of such term under GAAP, the definition set forth in this Agreement will control.

(b) The terms "hereof," "herein" and "hereunder" and terms of similar import are references to this Agreement as a whole and not to any particular provision of this Agreement. Section, clause, schedule and exhibit references contained in this Agreement are references to sections, clauses, schedules and exhibits in or to this Agreement, unless otherwise specified. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement.

(c) Whenever the words "include," "includes" or "including" are used in this Agreement, they will be deemed to be followed by the words "without limitation." Where the context permits, the use of the term "or" will be equivalent to the use of the term "and/or."

(d) The words "to the extent" shall mean "the degree by which" and not "if."

(e) When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period will be excluded. If the last day of such period is a day other than a Business Day, the period in question will end on the next succeeding Business Day.

(f) Words denoting any gender will include all genders, including the neutral gender. Where a word is defined herein, references to the singular will include references to the plural and vice versa.

(g) The word "will" will be construed to have the same meaning and effect as the word "shall". The words "shall," or "will," are mandatory, and "may" is permissive.

(h) All references to "$" and dollars will be deemed to refer to United States currency unless otherwise specifically provided.

(i) All references to a day or days will be deemed to refer to a calendar day or calendar days, as applicable, unless otherwise specifically provided.

(j) Any reference to any agreement or contract will be a reference to such agreement or contract, as amended, modified, supplemented or waived.

(k) Any reference to any particular Code section or any Law will be interpreted to include any amendment to, revision of or successor to that section or Law regardless of how it is numbered or classified; provided that, for the purposes of the representations and warranties set forth herein, with respect to any violation of or non-compliance with, or alleged violation of or non-compliance, with any Code section or Law, the reference to such Code section or Law means such Code section or Law as in effect at the time of such violation or non-compliance or alleged violation or non-compliance.

[*Signature page(s) follow*.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

SELLER:

FULCRUM SIERRA BIOFUELS, LLC

By: Signed by: 106E9382FA0C4EC...
Name: Mark J. Smith
Title: Chief Restructuring Officer

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

PURCHASER:

SWITCH, LTD.

DocuSigned by:
By: Thomas Morton
6559BE1745674B5...
Name: Thomas Morton
Title: President

EXHIBIT C

Proposed Sale Order

[To come]