

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

In re:

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

Debtors.¹

Chapter 11

Case No. 24-12008 (TMH)

(Jointly Administered)

NOTICE OF SALE, BIDDING PROCEDURES, AUCTION AND SALE HEARING

PLEASE TAKE NOTICE that, on September 11, 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. 12] (the “Bidding Procedures Motion”)², with the United States Bankruptcy Court for the District of*

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 Motion or Bidding Procedures.



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 “SH 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 SH ACQUIRED ASSETS, AND TO THE EXTENT APPLICABLE, THE EXPANDED ASSETS OR ANY SUBSET OF THE SH ACQUIRED ASSETS OR EXPANDED 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/OR OTHER SUCCESSFUL BIDDERS OR BACKUP BIDDERS 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 DATE OF CLOSING.

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 SH Acquired Assets, and to the extent applicable, the Expanded Assets or any subset of the SH Acquired Assets or Expanded Assets, and assumption of the Assumed Liabilities (as defined in the Stalking Horse Agreement) of the Debtors consistent with the bidding procedures (the “Bidding Procedures”) approved by the Court by entry of an order on October 11, 2024 [D.I. 153] (the “Bidding Procedures Order”). The deadline for each Potential Bidder to submit a proposal to purchase the SH Acquired Assets, and to the extent applicable, the Expanded Assets or any subset of the SH Acquired Assets or Expanded Assets, is **November 4, 2024 at 5:00 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 SH Acquired Assets, and to the extent applicable, the Expanded Assets or any subset of the SH Acquired Assets or Expanded Assets, on **November 7, 2024 at 10:00 a.m. (Prevailing Eastern Time)** at the offices of **Morris Nichols Arsh & 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 12, 2024 at 2:00 p.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 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)**; *provided* that an objection to the Sale of the Expanded Assets, including any Expanded Assets consisting of intellectual property, may be filed up to and including the Sale Hearing (the “Sale Objection Deadline”). Objections, other than those that may be properly raised at the Sale Hearing, **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 J. 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); and 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 the Committee: (i) Eversheds Sutherland (US) LLP, The Grace Building, 40th Floor, 1114 Avenue of the Americas, New York, NY 10036, Attn: Jennifer B. Kimble (JenniferKimble@eversheds-sutherland.com) and Eversheds Sutherland (US), LLP, 999 Peachtree St NE, Suite 2300, Atlanta, GA 30309, Attn: Todd C. Meyers (toddmeyers@eversheds-sutherland.com) and (ii) Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, DE 19801, Attn: Jeffrey R. Waxman (jwaxman@morrisjames.com) and Eric J. Monzo (emonzo@morrisjames.com); (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); (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) and 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); and (g) counsel to PCL Administration LLC: Katten Muchin Rosenman LLP, 525 West Monroe Street, Chicago, Illinois 60661, Attn: Steven J. Reisman (sreisman@katten.com); Peter P. Knight (peter.knight@katten.com); and Joshua M. Altman,

(josh.altman@katten.com) and (ii) Klehr Harrison Harvey Branzburg LLP, 919 N. Market Street, Suite 1000, Wilmington, DE 19801, Attn: Domenic Pacitti (DPacitti@klehr.com).

PLEASE TAKE FURTHER NOTICE that copies of the Bidding Procedures 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: October 14, 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