

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

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 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*

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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>.



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Relief [D.I. 12] (the “Bidding Procedures 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 the SH Acquired Assets, and to the extent applicable, the Expanded Assets (each as defined in the Bidding Procedures Motion) 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 October 11, 2024, the Court entered an order [D.I. 153] (the “Bidding Procedures Order”), granting certain of the relief sought in the Bidding Procedures Motion, including, among other things, approving: (a) the bidding procedures (the “Bidding Procedures”) for the Sale 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 (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 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

² Capitalized terms not defined are defined in the Bidding Procedures Motion, Bidding Procedures Order, or Bidding Procedures.

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, 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 date of Closing 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 October 29, 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@morrisonichols.com); Curtis S. Miller (cmiller@morrisonichols.com); Daniel B. Butz (dbutz@morrisonichols.com); Clint M. Carlisle (ccarlisle@morrisonichols.com); and Avery Jue Meng (ameng@morrisonichols.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 Street 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@morrisonichols.com) and Eric J. Monzo (emonzo@morrisonichols.com); (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.: (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). 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, 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 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>.

Dated: October 14, 2024
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Clint M. Carlisle

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*Proposed Counsel to the Debtors and Debtors in
Possession*

EXHIBIT A
Contract and Lease Schedule

Counterparty	Contract, Lease, or Agreement	Cure Cost
Franke Management LLC	Standard Industrial/Commercial Multi-Tenant Lease Agreement	\$16,807.97
Johnson Matthey Davy Technologies Limited	Project Engineering Agreement	\$862,741.40
Linde Inc. (f/k/a Praxair, Inc.)	On-Site Oxygen and Supply Agreement	\$2,378,809.05
Marathon Petroleum Company LP	First Amendment to Second Amended & Restated Product Offtake Agreement	\$858,925.00
Tesoro Refining & Marketing Company LLC (assigned interest to Marathon Petroleum Company LP effective February 1, 2022)	Fuel Offtake Agreement / Seller Second Amended & Restated Product Offtake Agreement	\$0
Tahoe-Reno Industrial Center and TRI General Improvement District	Water Supply Agreement	\$0
TRI General Improvement District	General Utility Agreement (actual water and discharge invoiced charges)	\$265,531.62
ThermoChem Recovery International, Inc.	Supply and Installation Contract Fulcrum Sierra MSW to Biofuels Project (McCarran, Nevada)	\$2,906,491.00
Refuse, Inc.	Grant of Easement for Access and Drainage, as Amended	\$240,000.00
Patrick Square - Town Center A, LLC	Patrick Square Lease	\$51,024.12
USPP The Signature Center, LLC	Tenth Amendment to Original Lease dated as of October 5, 2007	\$82,893.48
Fulcrum BioEnergy, Inc.	Intercompany License Agreement	\$0
Johnson Matthey Davy Technologies Limited	Project License Agreement for a Municipal Waste to Hydrocarbon Liquids Plant	\$0
NV Governor's Office of Economic Development	Agreement for Tax Abatements & Incentives Dated January 5, 2015; Dated October 1, 2015; Dated September 30, 2017; Dated August 1, 2018	\$0
Linde Inc. (formerly Praxair, Inc.)	License Agreement	\$0
Sierra Pacific Power Company D/B/A NV Energy	Rule 9, Section B2 High Voltage Distribution Agreement Agreement 18-00017	\$0
Waste Connections of California, Inc.	Resource Recovery Supply Agreement	\$0
Blue Arrow Biojet Holdings, LLC	Amended Development License and Technical and Development Services Agreement	\$0
Fulcrum BioEnergy, Ltd.	Intercompany License Agreement	\$0
Fulcrum Sierra BioFuels, LLC	Intercompany License Agreement	\$0