Docket #0011 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' EMERGENCY MOTION FOR INTERIM AND FINAL ORDERS PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, 364, 503 AND 507 (I) AUTHORIZING THE DEBTORS TO OBTAIN SENIOR SECURED SUPERPRIORITY POSTPETITION FINANCING; (II) GRANTING (A) LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS AND (B) ADEQUATE PROTECTION TO CERTAIN PREPETITION BONDHOLDERS; (III) AUTHORIZING USE OF CASH COLLATERAL; (IV) SCHEDULING A FINAL HEARING; AND (V) GRANTING RELATED RELIEF

The above-captioned debtors and debtors in possession (collectively, the "Debtors" and, together with their non-debtor affiliates, "Fulcrum") respectfully state as follows in support of this motion (this "Motion") pursuant to sections 105, 361, 362, 363, 364(c)(1), 364(c)(2) 364(c)(3), 364(d), 364(e), 503 and 507 of Title 11 of the United States Code §§ 101-1532 (the "Bankruptcy Code"), Rules 2002, 4001(b) and (c), 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 4001-2 of the Local Rules of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), for entry of an interim order, substantially in the form attached hereto as **Exhibit 1** (the "Interim Order"), and a final order (the "Final Order," and together with the Interim Order, the "DIP Orders") (i) authorizing the Borrower Debtors (as defined below) to obtain post-petition financing, granting superpriority liens and

[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); 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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administrative expenses status pursuant to §§ 364(c) and 364(d) of the Bankruptcy Code, (2) authorizing the use of cash collateral, (3) granting adequate protection, (4) modifying the automatic stay, and (5) granting related relief:

RELIEF REQUESTED

1. Through this Motion, the Debtors request that the Court enter the Interim Order, substantially in the form annexed hereto as **Exhibit 1**, seeking the following relief:

a. authorization for the Borrower, Fulcrum Sierra BioFuels, LLC ("Sierra BioFuels," also defined as "Borrower" in the DIP Note (as defined below)) to obtain postpetition financing pursuant to the DIP Facility (as defined below), and for each of the Guarantors, Fulcrum Sierra Holdings, LLC ("Sierra Holdings") and Fulcrum Sierra Finance Company, LLC ("Sierra Finance," and collectively with Sierra Holdings and as defined in the DIP Note, the "Guarantors," and collectively with Sierra BioFuels, the "Borrower Debtors") to guarantee unconditionally on a joint and several basis, and subject to the terms and limitations set forth in the DIP Note in all respects, the Borrower's obligations under the DIP Facility, consisting of a senior secured super-priority term loan facility (the "DIP Facility"), on the terms and conditions substantially in the form annexed hereto as **Exhibit A** (as the same may be amended, restated, amended and restated, supplemented, waived, extended, or otherwise modified from time to time, the "DIP Note" and, together with any other related agreements, documents, security agreements, or pledge agreements, including this Interim Order and (when entered) the Final Order, collectively, the "DIP Loan Documents"), by and among the Borrower, the Guarantors, Switch, Ltd. ("Switch"), as lender (in such capacity together with its permitted successor and assigns, the "DIP Lender"), in an aggregate principal amount of up to $5.0 million in term loan commitments, which shall be available as term loans (the "DIP Loans") to the Borrowers upon entry of this Interim Order and satisfaction of the other conditions set forth therein in an interim amount not to exceed $ 3,204,103 million (the "Interim DIP Loan") prior to entry of the Final Order, and the remainder of the DIP Facility available upon entry of the Final Order to the extent set forth therein;

b. authorization for the Borrower Debtors to execute, deliver, and enter into the DIP Loan Documents and to perform all of the Borrower Debtors' respective obligations thereunder, and such other and further acts as may be required in connection with the DIP Loan Documents;

c. authorization for the Borrower Debtors to pay the principal, interest, fees, expenses and other amounts payable to the DIP Lender pursuant to the DIP Loan Documents, including, without limitation, all loans, advances, debts, liabilities and obligations for the performance of covenants, tasks or duties or

for payment of monetary amounts (whether or not such performance is then required or contingent, or such amounts are liquidated or determinable) owing by Borrower to the DIP Lender arising under the DIP Loan Documents, and all covenants and duties regarding such amounts, of any kind or nature, present or future, arising under the DIP Loan Documents, including all principal, interest, fees, charges, expenses, reasonable and documented attorneys' fees and any other sum chargeable to Borrower under the DIP Loan Documents (such obligations, the "DIP Obligations");

d. authorization for the Borrower Debtors, immediately upon entry of this Interim Order, to use proceeds of the DIP Facility solely for the purposes permitted under the DIP Loan Documents and solely in accordance with this Interim Order and the applicable Approved Budget (as defined below), subject to permitted variances and other exclusions set forth in the DIP Loan Documents;

e. the grant and approval of superpriority administrative expense claim status, pursuant to sections 364(c)(1), 503(b)(1) and 507(b) of the Bankruptcy Code, to the DIP Lender, in respect of all DIP Obligations, subject and subordinate only to the Carve-Out (as defined below);

f. granting the DIP Lender valid, enforceable, non avoidable, automatically and fully perfected DIP Liens (as defined below) in all DIP Collateral (as defined below) to secure the DIP Obligations, which DIP Liens shall be subject and subordinate to the Carve-Out and Permitted Liens (as defined below);

g. authorization for the Debtors to use, solely in accordance with the Approved Budget (subject to permitted variances and other exclusions set forth in the DIP Loan Documents) and the limitations provided herein and in the DIP Loan Documents, any Cash Collateral in which any of the Prepetition Bonds Secured Parties (as defined below) may have an interest, and the granting of adequate protection solely to the extent of any diminution in the value of their respective interests in the Prepetition Bonds Collateral, including, without limitation, the Cash Collateral, as a result of (i) the incurrence of the DIP Obligations, (ii) the Debtors' use of Cash Collateral, (iii) the subordination of the Prepetition Bond Obligations to the DIP Obligations and the Carve-Out, (iv) any other diminution in value of the Prepetition Bonds Collateral arising from the Debtors' use, sale, or disposition of such Prepetition Bonds Collateral or the proceeds thereof, (v) the priming of the Prepetition Bonds Liens by the DIP Liens, and (vi) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code (collectively, "Diminution in Value");

h. the modification of the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of this Interim Order and the other DIP Loan Documents to the extent hereinafter set forth;

i. subject to entry of the Final Order, a waiver of the Borrower Debtors' ability to surcharge pursuant to section 506(c) of the Bankruptcy Code against any DIP Collateral and the Prepetition Bonds Collateral, and any right of the Borrower Debtors under the "equities of the case" exception in section 552(b) of the Bankruptcy Code;

j. this Court's waiver of any applicable stay (including under Bankruptcy Rule 6004) and providing for immediate effectiveness of this Interim Order;

k. the scheduling of a final hearing on the Motion (the "Final Hearing") to consider entry of the Final Order granting the relief requested in the Motion on a final basis, and approving the form of notice with respect to the Final Hearing; and

l. granting the Debtors such other and further relief as is just and proper.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* of the United States District Court for the District of Delaware, dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Debtors consent, pursuant to rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), to the entry of a final order by this Court in connection with this Motion to the extent that it is later determined that this Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue is proper pursuant to 28 U.S.C. §§ 408 and 1409.

3. The statutory predicates for the relief sought herein are sections 105(a), 361, 362, 363 and 364 of title 11 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001 and 9014, and Local Rule 4001-2.

CONCISE STATEMENT PURSUANT TO
BANKRUPTCY RULE 4001(c)(1)(B) AND LOCAL RULE 4001-2:

4. In accordance with Bankruptcy Rule 4001(c)(1)(B) and Local Rule 4001-2, below is a summary of the terms of the proposed DIP Facility[2]:

Borrower:	Fulcrum Sierra BioFuels, LLC, as borrower
Guarantors:	Fulcrum Sierra Finance Company, LLC, and Fulcrum Sierra Holdings, LLC, as guarantors
Loan Parties:	Borrower and Guarantors
DIP Lender:	Switch, Ltd.
DIP Credit Facility:	Secured debtor-in-possession term credit facility in the maximum amount of $5,000,000.
Closing Date:	The Business Day when each of the conditions applicable to the funding of the Term Loans (other than any Final Order Term Loans) and listed in Section 2(a) of the DIP Note shall have been satisfied or waived in a manner satisfactory to the DIP Lender
Maturity:	The earliest to occur of (i) eighty days after the Petition Date, or if such date is not a Business Day the immediately following Business Day, (ii) thirty days after the Petition Date, if the Final Order has not been entered by the Bankruptcy Court on or prior to such date, or if such date is not a Business Day the immediately following Business Day, (iii) the consummation of a sale of all or substantially of the Debtors' assets or the sale of the Acquired Assets pursuant to the Bidding Procedures Order or otherwise; (iv) the substantial consummation of a plan of reorganization filed in the Chapter 11 Cases that is confirmed pursuant to an order of the Bankruptcy Court, or (v) the date on which the Term Loans are accelerated pursuant to Section 16 of the DIP Note
Availability:	Amounts under the DIP Facility may be borrowed and repaid, but may not be reborrowed. The initial borrowing shall be limited to $ 3,204,103 million, subject to the limitations set forth in the Approved Budget, which amount shall be necessary to avoid immediate and irreparable harm.

[2] This section serves as a summary of the DIP Facility only and is qualified in its entirety by the terms of the DIP Note, Interim Order and Final Order.

Interest Rate:	A rate per annum equal to 10.0% per annum, which shall be payable in kind.
Use of Proceeds:	The proceeds of the DIP Facility will be used exclusively in accordance with the Approved Budget.
Scheduled Interest and Principal Repayments:	Interest on the Term Loans shall be payable monthly, in arrears, on the last Business Day of each month (each an "Interest Payment Date"), commencing on the last Business Day of the month in which the applicable Term Loan is made. If any payment of any of the Obligations becomes due and payable on a day other than a Business Day, the maturity thereof will be extended to the next succeeding Business Day and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension. On each Interest Payment Date, the Issuer shall pay interest by increasing the principal amount of the DIP Note (such amounts the "PIK Amounts"). Following an increase in the principal amount of the DIP Note as a result of a payment of a PIK Amount, the DIP Note will accrue interest on such increased principal amount from and after the applicable Interest Payment Date. References herein to the "principal amount" of the Note include all increases in the principal amount of the Note as a result of a payment of PIK Amounts. Principal is due on maturity.
Mandatory Prepayments:	i. No later than three (3) Business Days following receipt by any Loan Party of cash proceeds of (x) any asset Disposition (other than Dispositions permitted by Section 15(f)) or (y) any Disposition of all or a portion of the Acquired Assets, unless the DIP Lender agrees otherwise, the Borrower shall prepay the Term Loans in an amount equal to all such proceeds, net of (x) commissions and other reasonable and customary transaction costs, fees and expenses properly attributable to such transaction and payable by the Borrower or any Loan Party in connection therewith (in each case, paid to non-affiliates), and (y) with respect to proceeds from the Disposition of assets securing obligations owed to a third party, which Lien is senior to the Liens securing the Obligations under the DIP Note, the amount of such proceeds required by an order of the Bankruptcy Court to repay such third party obligations. ii. No later than one (1) Business Day following receipt by any Loan Party of cash proceeds of any debt securities or other indebtedness not permitted under the DIP Note, the Borrower shall prepay the Term Loans in an amount equal to all such proceeds, net of underwriting discounts and commissions and other reasonable costs or fees paid to non-affiliates in connection therewith. iii. No later than five Business Days following receipt by any Loan

Party of any Extraordinary Receipts, the Borrower shall prepay the outstanding principal of the Term Loans in an amount equal to all such Extraordinary Receipts, net of (x) any expenses (including reasonable broker's fees or commissions and legal fees) incurred in connection with such Extraordinary Receipts, and (y) with respect to Extraordinary Receipts from assets securing obligations owed to a third party, which Lien is senior to the Liens securing the Obligations under the DIP Note, the amount of such Extraordinary Receipts required by an order of the Bankruptcy Court to repay such third party obligations.

Collateral: The assets and property covered by the DIP Orders and the other Collateral Documents (as defined in the DIP Note) and any other assets and property, real or personal, tangible or intangible, now existing or hereafter acquired, that may at any time be or become subject to a security interest or Lien in favor of the DIP Lender, to secure the Obligations and the Guaranteed Obligations (as defined in the DIP Note). Without limiting the foregoing, the Collateral shall include all present and future property of each Loan Party under Section 541(a) of the Bankruptcy Code (including, without limitation, the proceeds of avoidance actions upon entry of the Final Order) and all proceeds thereof; provided, however, that the FT Catalyst and FT CANS shall not constitute Collateral. Additionally, the assets of Debtor Fulcrum BioEnergy, Inc. ("Fulcrum Parent" or "Parent") are not Collateral, and Fulcrum Parent is not one of the Borrower Debtors.

Conditions Precedent: The conditions include (unless otherwise waived by DIP Lender):

- the Borrower shall have paid any payment obligations based on delivered invoices then payable hereunder (including the reasonable and documented out-of-pocket fees and expenses of the DIP Lender, including, without limitation, those of counsel for the DIP Lender) or under any other DIP Document;

- the Loan Parties shall have delivered corporate resolutions, incumbency certificates and similar documents, in form and substance reasonably satisfactory to the DIP Lender with respect to the DIP Note and the other DIP Documents and the transactions contemplated hereby and thereby;

- the Loan Parties shall have delivered guarantees of each of the Guarantors, each in form and substance reasonably satisfactory to the DIP Lender with respect to the DIP Note and the other DIP Documents and the transactions contemplated hereby and thereby;

- any representation or warranty by any Loan Party contained herein or in any other DIP Document shall be true and correct in all

material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of such date, except to the extent that such representation or warranty expressly relates to an earlier date;

- The Loan Parties shall have commenced the Chapter 11 Case and all of the "first day motions," "first day orders" and all related pleadings entered or to be entered at the time of the Petition Date or shortly thereafter shall have been made available to the DIP Lender in advance, and shall be satisfactory in form and substance to the DIP Lender;

- (i) with respect to the Term Loan made on the Closing Date, (A) the Bankruptcy Court shall have entered the Interim Order and (B) the Interim Order shall not have been stayed, vacated, reversed, modified or amended without the DIP Lender's consent, or (ii) with respect to the Final Order Term Loan, (A) the Bankruptcy Court shall have entered the Final Order and (B) the Final Order shall have not been stayed, vacated, reversed, modified or amended without the DIP Lender's consent;

- no Default or Event of Default shall have occurred and be continuing or would result after giving effect to the Term Loans and the transactions contemplated herein;

- after giving effect to the making of the Term Loans, the outstanding principal amount of all Term Loans would not exceed the Maximum Amount;

- the DIP Lender shall have received and approved the Approved Budget in accordance with the DIP Note and the DIP Orders;

- the Chapter 11 Case shall not have been dismissed or converted to a case under chapter 7 of the Bankruptcy Code;

- the Bankruptcy Court shall have entered an order, in form and substance reasonably acceptable to the DIP Lender, authorizing the Loan Parties to use Cash Collateral in a manner consistent with the Approved Budget;

- the DIP Lender and the Borrower shall have entered into the Stalking Horse Purchase Agreement in form and substance acceptable to the DIP Lender; and

- with respect to the Term Loan made on the Closing Date that follows entry of the Interim Order, the Borrower shall have paid, or

cause to be paid, at least $400,000 in legal expenses to Latham & Watkins LLP (subject to any requirements in the Interim Order),

Certain Affirmative Covenants: The affirmative covenants include, without limitation, the following:

- Upon reasonable request of the DIP Lender, the Loan Parties will permit any officer, employee, attorney or accountant or agent of the DIP Lender to audit, review, make extracts from or copy, at the Borrower's expense, any and all corporate and financial and other books and records of the Loan Parties at all times during ordinary business hours and upon reasonable advance notice, to discuss the Loan Parties' affairs with any of their directors, officers, employees or accountants, so long as a Responsible Officer of a Loan Party is invited to attend such discussions. The Borrower will permit the DIP Lender, or any of its officers, employees, accountants, attorneys or agent, upon reasonable prior notice, to examine and inspect any Collateral or any other property of the Loan Parties at any time during ordinary business hours; provided, that, unless an Event of Default hereunder is continuing, the Loan Parties shall not be required to reimburse the DIP Lender for more than one such visit, audit, review or inspection. Notwithstanding the foregoing, none of the Loan Parties will be required to disclose information to the DIP Lender (or any agent or representative thereof) that is prohibited by applicable law or is subject to attorney-client or similar privilege or constitutes attorney work product.

- The Loan Parties and their Subsidiaries will comply with all requirements of applicable law, the non-compliance with which could reasonably be expected to have a Material Adverse Effect and (ii) the Loan Parties and their Subsidiaries will obtain, maintain in effect and comply with all permits, licenses and similar approvals necessary for the operation of its business as now or hereafter conducted to the extent contemplated by the Approved Budget or the DIP Orders, the failure of which to do so could reasonably be expected to have a Materially Adverse Effect.

- The Loan Parties and their Subsidiaries will pay or discharge, before delinquency, (i) all material taxes, assessments and governmental charges levied or imposed upon it or upon its income or profits, upon any properties of the Loan Parties and their Subsidiaries (including, without limitation, the Collateral) or upon or against the creation, perfection or continuance of the security interest, prior to the date on which penalties attach thereto, except in each case (1) where the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by such Loan Party or such Subsidiary, (2) taxes

the nonpayment of which is permitted or required by the Bankruptcy Code or the DIP Note or (3) taxes as set forth on Schedule II to the DIP Note, (ii) all federal, state and local taxes required to be withheld by it, and (iii) all lawful claims for labor, materials and supplies which, if unpaid, might by law become a lien or charge upon any properties of the Loan Parties and their Subsidiaries.

- The Loan Parties and each of their Subsidiaries will keep and maintain the Collateral and all of its other properties necessary or useful in its business in good condition, repair and working order (normal wear and tear excepted) other than to the extent contemplated by the Approved Budget or the DIP Orders or as otherwise permitted hereunder, (ii) the Loan Parties and each of their Subsidiaries will defend the Collateral against all claims or demands of all Persons (other than Permitted Encumbrances) claiming the Collateral or any interest therein, and (iii) the Loan Parties and each of their Subsidiaries will keep all Collateral free and clear of all security interests, liens and encumbrances, except Permitted Encumbrances and liens otherwise permitted by the DIP Orders, in each case, except to the extent the failure to do so could not reasonably be expected to have a Material Adverse Effect.

- The Loan Parties and their Subsidiaries will maintain insurance with responsible and reputable insurance companies or associations (including, without limitation, commercial general liability, worker's compensation and business interruption insurance) with respect to the Collateral and its other properties (including all real property leased or owned by it) and business, in such amounts and covering such risks as is (i) carried generally in accordance with sound business practice by companies in similar businesses similarly situated, (ii) required by any law or regulation, and (iii) required by any material contract. All property and commercial general liability/hazard policies covering the Collateral are to be made payable to the DIP Lender as a lender loss payee/mortgagee, other than proceeds required by an order of the Bankruptcy Court to be applied to the repayment of debt secured by a Lien on the related assets that is senior to the Liens securing the Obligations under the DIP Note, and are to contain such other provisions as the DIP Lender may reasonably require to fully protect its interest in the Collateral and to any payments to be made under such policies. All certificates of insurance are to be delivered to the DIP Lender and the policies are to be premium prepaid with the lenders' loss payee and additional insured endorsement in favor of the DIP Lender, and shall provide for not less than 30 days' (10 days' in the case of non-payment) prior written notice to the DIP Lender of the exercise of any right of cancellation. If any Loan Party or any of its Subsidiaries fails to maintain such insurance, the DIP Lender may

arrange for such insurance, but at the Borrowers' expense and without any responsibility on the DIP Lender's part for obtaining the insurance, the solvency of the insurance companies, the adequacy of the coverage, or the collection of claims. Upon the occurrence and during the continuance of an Event of Default, the DIP Lender shall have the sole right, in the name of the DIP Lender, any Loan Party and its Subsidiaries, to file claims under any insurance policies, to receive, receipt and give acquittance for any payments that may be payable thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents that may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies. The Loan Parties may settle, adjust or compromise any insurance claim on terms reasonably acceptable to the DIP Lender, as long as the proceeds are delivered to the DIP Lender pursuant to The DIP Note and the DIP Orders.

- The Loan Parties and their Subsidiaries will preserve and maintain their existence and all of their rights, privileges and franchises necessary or desirable in the normal conduct of its business, except to the extent contemplated by the Approved Budget or the DIP Orders or as permitted hereunder, or to the extent the failure to do so could not reasonably be expected to have a Material Adverse Effect.

- The Loan Parties and their Subsidiaries each agree that they shall take all actions necessary to cause each of the following to occur (each a "Milestone"):

  - no later than 2 days after the Petition Date, the Loan Parties shall file a motion seeking approval of an order approving, among other things, the DIP Lender as a stalking horse bidder, the Bidding Procedures, the Break-Up Fee, and the Expense Reimbursement (each as defined in the Stalking Horse Purchase Agreement) in the form attached as Exhibit A to the Stalking Horse Purchase Agreement and otherwise in form and substance acceptable to DIP Lender (the "Bidding Procedures Order");

  - no later than 3 days after the Petition Date, the Interim Order approving the Note shall be entered by the Bankruptcy Court in form and substance acceptable to the DIP Lender;

  - no later than 30 days after the Petition Date, the Bankruptcy Court shall have entered the Bidding Procedures Order, in form and substance acceptable to the DIP Lender;

  - no later than 30 days after the Petition Date, the Final Order approving the DIP Note shall be entered by the Bankruptcy Court

in form and substance acceptable to the DIP Lender;

- no later than 60 days after the Petition Date the Borrower shall have held the auction for the Acquired Assets or cancelled the auction and named Lender the winning bidder for the Acquired Assets;

- no later than 65 days after the Petition Date the Bankruptcy Court shall have entered an order approving the sale of the Acquired Assets to the DIP Lender and authorizing the assignment of the Assigned Contracts to the DIP Lender, in form and substance acceptable to the DIP Lenders, or an order approving for an alternative sale of all or substantially all of the Loan Parties' assets that results in payment of the Obligations in full in cash prior to the Maturity Date; and

- no later than 80 days after the Petition Date the sale of the Acquired Assets to the DIP Lender or other winning bidder approved by the Bankruptcy Court shall have been consummated in full.

- The Borrower will deliver (which delivery may be made by electronic communication (including email)) to the DIP Lender and Bond Trustee each of the reports and other items set forth on Schedule I attached to the DIP Note no later than the times specified therein (or such later time as the DIP Lender may agree). No less than once per week, the Borrower shall make its senior management and its advisors available at reasonable times and upon reasonable notice to the DIP Lender to discuss the financial position, cash flows, variances, operations, sale process and general case status of the Loan Parties.

Certain Negative Covenants: The negative covenants include:

- Neither the Loan Parties nor any of their Subsidiaries shall directly or indirectly, by operation of law or otherwise, (i) form or acquire any Subsidiary, or (ii) merge with, consolidate with, acquire all or substantially all of the assets or Equity Interests of, or otherwise combine with or acquire, any Person, except in the case of this clause (ii), with respect to existing Subsidiaries to the extent consented to by the DIP Lender (which consent shall not be unreasonably withheld), other than, in each case, any such action approved by an order of the Bankruptcy Court.

- Neither the Loan Parties nor any of their Subsidiaries shall create, incur, assume or permit to exist any Indebtedness, except (without duplication), to the extent not prohibited by the DIP Orders,

Permitted Indebtedness.

- Neither the Loan Parties nor any of their Subsidiaries shall create, incur, assume or permit to exist any Lien on or with respect to any of its properties or assets (whether now owned or hereafter acquired) except for Permitted Encumbrances.

- Neither the Loan Parties nor any of their Subsidiaries shall make any Restricted Payment, except dividends and distributions by Subsidiaries of the Loan Parties paid to the Borrower. Except for claims of employees for unpaid wages, bonuses, accrued vacation and sick leave time, business expenses and contributions to employee benefit plans for the period immediately preceding the Petition Date and prepetition severance obligations, in each case to the extent permitted to be paid by order of the Bankruptcy Court, neither the Loan Parties nor any of their Subsidiaries shall make any payment in respect of, or repurchase, redeem, retire or defease any, prepetition Indebtedness, except for other payments consented to by the DIP Lender in writing; *provided*, that, nothing in this subsection (d) shall prohibit the Borrower from paying prepetition ordinary course obligations that are the subject of typical first day relief, set forth in the budget, or otherwise approved by the Bankruptcy Court.

- Neither the Loan Parties nor any of their Subsidiaries will assume, guarantee, endorse or otherwise become directly or contingently liable in connection with any obligations of any other Person (other than the Loan Parties or any of their Subsidiaries).

- Neither the Loan Parties nor any of their Subsidiaries will Dispose of any of its property, business or assets, whether now owned or hereinafter acquired other than (i) the sale of Inventory and other assets held for sale in the ordinary course of business, (ii) the Disposition of obsolete, damaged, unusable, immaterial, uneconomical, surplus or worn out property or equipment, (iii) the sale of other property on terms acceptable to the DIP Lender, (iv) leasing or subleasing assets in the ordinary course of business and the termination or cancellation of any lease or sublease in the ordinary course of business, (v) the lapse of Intellectual Property of the Loan Parties to the extent no longer used in or material to the conduct of their business, so long as such lapse is not materially adverse to the interests of the DIP Lender, (vi) any involuntary loss, damage or destruction of property or involuntary condemnation, seizure by taking, exercise of the power of eminent domain or otherwise, or confiscation or requisition of use of property, (vii) so long as such Disposition would not be otherwise prohibited hereunder, the transfer of assets from any Loan Party to another Loan Party, (viii) dispositions of property subject to casualty events, (ix) termination of leases, subleases, licenses, sublicenses or

similar use and occupancy agreements by the applicable Loan Party that do not interfere in any material respect with the business of such Loan Party, and (x) Dispositions that are Permitted Liens.

- Neither the Loan Parties nor any of their Subsidiaries shall consent to any amendment, supplement or other modification of any of the terms or provisions contained in, or applicable to, (i) the DIP Orders or (ii) the Prepetition Obligations.

- Neither the Loan Parties nor any of their Subsidiaries shall make any investment in, or make loans or advances of money to, any Person (other than another Loan Party), through the direct or indirect lending of money, holding of securities or otherwise.

- Neither the Loan Parties nor any of their Subsidiaries shall change its fiscal year.

- As of each Variance Testing Date, the Borrower shall not permit: the aggregate amount of Actual Disbursement Amounts to exceed the aggregate amount of Budgeted Disbursement Amounts (each calculated on a cumulative basis as opposed to on a line by line basis), in each case, for such Variance Testing Period, by more than the Permitted Variance.

- Neither the Loan Parties nor any of their Subsidiaries shall, directly or knowingly indirectly, use the Term Loans or the proceeds of the Term Loans, or lend, contribute or otherwise make available the Term Loans or the proceeds of the Term Loans to any Person, to fund any activities of or business with any Person, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of Sanctions, in violation of Sanctions applicable to any party hereto, or in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as DIP Lender or otherwise) of Sanctions.

Approved Budget: A rolling thirteen (13) week forecast of projected receipts, disbursements, net cash flow, liquidity and loans for the immediately following consecutive thirteen (13) weeks after the date of delivery, which shall be in substantially the form of the Initial Approved Budget or otherwise in form and substance acceptable to the DIP Lender and shall be approved by the DIP Lender, in the DIP Lender's sole discretion.

Permitted Variance: With respect to any Variance Testing Period, in respect of the aggregate amount of Actual Disbursement Amounts, 15% for such Variance Testing Period.

Professionals' Carve-Out:

Under the Interim Order and DIP Note, "Carve-Out" shall mean: (i) all fees required to be paid to the Clerk of the Court and to the U.S. Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below) (collectively, the "Statutory Fees"); plus the sum of (ii) all reasonable fees and expenses up to $25,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below) (the "Chapter 7 Trustee Carve-Out"); (iii) to the extent allowed at any time, whether by final order, interim order, procedural order, or otherwise, subject to the Approved Budget, all unpaid fees, costs, disbursements and expenses (the "Allowed Professional Fees") incurred or earned by persons or firms retained by the Debtors pursuant to sections 327, 328, or 363 of the Bankruptcy Code (the "Debtor Professionals") or the Committee pursuant to sections 327, 328 or 1103 of the Bankruptcy Code (the "Committee Professionals" and, together with the Debtor Professionals, the "Professional Persons") at any time before or on the first business day following delivery by the DIP Lender of a Carve-Out Trigger Notice (as defined below), whether allowed by the Court prior to, on or after delivery of a Carve-Out Trigger Notice (the "Pre Trigger Carve-Out Cap"); and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed $250,000 (inclusive of any prepetition retainer held by the applicable Professional Person to the extent not previously applied or returned) incurred after the first business day following delivery by the DIP Lender of the Carve-Out Trigger Notice (such date, the "Trigger Date"), to the extent allowed at any time, whether by final order, interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the "Post Carve-Out Trigger Notice Cap" and such amounts set forth in clauses (i) through (iv), the "Carve-Out Cap"); provided that, nothing herein shall be construed to impair any party's ability to object to court approval of the fees, expenses, reimbursement of expenses or compensation of any Professional Person. For purposes of the foregoing, "Carve-Out Trigger Notice" shall mean a written notice delivered by email by the DIP Lender to the Debtors, their restructuring counsel, counsel to the Prepetition Trustees, the U.S. Trustee, and counsel to the Committee, if any (collectively, the "Carve-Out Trigger Notice Parties"), which notice may be delivered following the occurrence and during the continuation of a DIP Termination Event, and shall describe in reasonable detail such DIP Termination Event that is alleged to have occurred and be continuing and stating that the Post Carve-Out Trigger Notice Cap has been invoked. Neither the DIP Lender nor the Prepetition Bonds Secured Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with the Chapter 11 Cases or any Successor Cases under

any chapter of the Bankruptcy Code, other than payment or reimbursement of any fees or disbursements from proceeds of DIP Collateral to the extent of the Carve-Out. Nothing in this Interim Order or otherwise shall be construed to obligate the DIP Lender or the Prepetition Bonds Secured Parties, in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

Expenses and Indemnification:

The Borrower shall indemnify and hold harmless the DIP Lender and each of its affiliates, and each such Person's respective officers, directors, employees, attorneys, agents and representatives (each, an "Indemnified Person"), from and against any and all suits, actions, proceedings, claims, damages, losses, liabilities and reasonable and documented out-of-pocket expenses (including reasonable and documented out-of-pocket attorneys' fees and expenses limited to the reasonable and documented out-of-pocket fees and expenses of one primary outside counsel to the Indemnified Persons taken as a whole (and, if necessary, one local counsel in each relevant jurisdiction)) that may be instituted or asserted against or incurred by any such Indemnified Person as the result of credit having been extended, suspended or terminated under the DIP Note and the other DIP Documents and the administration of such credit, and in connection with or arising out of the transactions contemplated hereunder and thereunder and any actions or failures to act in connection therewith, and legal costs and expenses arising out of or incurred in connection with disputes between the DIP Lender on the one hand and the Loan Parties on the other hand; provided, that (i) the Borrower shall not be liable for any indemnification to an Indemnified Person (a) to the extent that any such suit, action, proceeding, claim, damage, loss, liability or expense results solely from that Indemnified Person's gross negligence or willful misconduct as determined in a final non-appealable judgment by a court of competent jurisdiction or (b) any dispute that is among Indemnified Persons that a court of competent jurisdiction has determined in a final non-appealable judgment did not involve actions or omissions of any Loan Party or any of their respective Affiliates and (ii) this Section 9 shall not apply with respect to taxes other than any taxes that represent losses, claims, damages, etc. arising from any non-tax claim. NO INDEMNIFIED PERSON SHALL BE RESPONSIBLE OR LIABLE TO ANY OTHER PARTY TO ANY DIP DOCUMENT, ANY SUCCESSOR, ASSIGNEE OR THIRD PARTY BENEFICIARY OF SUCH PERSON OR ANY OTHER PERSON ASSERTING CLAIMS DERIVATIVELY THROUGH SUCH PARTY, FOR INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES THAT MAY BE ALLEGED AS A RESULT OF CREDIT HAVING BEEN EXTENDED, SUSPENDED

OR TERMINATED UNDER ANY DIP DOCUMENT OR AS A RESULT OF ANY OTHER TRANSACTION CONTEMPLATED HEREUNDER OR THEREUNDER

ADDITIONAL DISCLOSURES

5. Pursuant to Bankruptcy Rule 4001 and Local Rule 4001-2, a debtor in possession seeking authority to use cash collateral or obtain financing must disclose the presence and location of certain provisions contained in the documentation evidencing the cash collateral usage or financing. The debtor in possession must also justify the inclusion of such provisions. Set forth below are the disclosures required in accordance with such rules:

a. Local Rule 4001-2(a)(i)(N) requires a debtor to disclose whether it has granted cross-collateralization to a prepetition secured creditor in connection with the debtor's cash collateral usage or additional financing. **The proposed Interim Order does not provide for the granting of cross-collateralization protection to any prepetition secured creditor.**

b. Local Rule 4001-2(a)(i)(O) requires disclosure of provisions that deem prepetition secured debt to be postpetition debt or use postpetition loans from a prepetition secured creditor to pay part or all of that secured creditor's prepetition debt (other than as provided in section 552(b) of the Bankruptcy Code). **The proposed Interim Order does not contain provisions that deem prepetition secured debt to be postpetition debt or use postpetition loans from a prepetition secured creditor to pay part or all of that secured creditor' prepetition debt (other than as provided in section 552(b) of the Bankruptcy Code).**

c. Local Rule 4001-2(a)(i)(P) requires disclosure of provisions that provide for the priming of any secured lien without the consent of that lienholder. **The proposed Interim Order provides for the consensual priming of the Prepetition Bonds Secured Parties. Interim Order, ¶ 2.1(b). The proposed Interim Order also provides for the "priming" of certain filers of mechanics liens on the Sierra Plant (as defined below) that are junior to the Prepetition Biofuels Bond Liens on the Sierra Plant and are thus unsecured pursuant to section 506(a) of the Bankruptcy Code. Interim Order.**

d. Local Rule 4001-2(a)(i)(Q) and Bankruptcy Rule 4001(c)(1)(B)(iii) require the disclosure of provisions or findings of fact that (i) bind the estate or other parties in interest with respect to the validity, perfection

or amount of a secured creditor's prepetition lien or (ii) the waiver of claims against the secured creditor without first giving parties in interest at least seventy-five (75) days from the entry of the order to investigate such matters. **The proposed Interim Order contains certain limited findings and admissions by the Borrower Debtors relating to the validity, perfection, enforceability and amount of the Prepetition Bonds Secured Parties' prepetition liens and claims, as set forth therein. Interim Order, ¶¶ E(v),(vi),(vii), (viii), (ix), 4.1.**

e. Local Rule 4001-2(a)(i)(R) requires the disclosure of provisions that immediately approval all terms and conditions of the underlying loan agreement. **The proposed Interim Order provides for the immediate approval of DIP Loan Documents and DIP Obligation. Interim Order, ¶ 1.3.**

f. Local Rule 4001-2(a)(i)(S) and Bankruptcy Rule 4001(c)(1)(B)(iv) requires disclosure of provisions that constitute a waiver or modification of the automatic stay. **The proposed Interim Order describes the modification of the automatic stay to the extent necessary to implement the Interim Order. Interim Order, ¶ 3.4. The proposed Interim Order provides for the requisite five (5) business days prior to the expiration of the Remedies Notice Period before the exercise of remedies. Interim Order, ¶ 3.3.**

g. Local Rule 4001-2(a)(i)(T) requires the disclosure of provisions that limit what arguments parties can raise using a default remedies period. **The proposed Interim Order does not prohibit parties from raising any particular defenses during the Remedies Notice Period. Interim Order, ¶ 3.3.**

h. Local Rule 4001-2(a)(i)(U) and Bankruptcy Rule 4001(c)(1)(B)(xi) requires disclosure of provisions that immediately grant to the prepetition secured creditor liens on the debtor's claims and causes of action arising under sections 544, 545, 547, 548 and 549 of the Bankruptcy Code. **The DIP Collateral includes the proceeds of avoidance actions, except for actions under Section 549 of the Bankruptcy Code upon entry of a Final Order. Interim Order, ¶ F(vi).**

i. Local Rule 4001-2(a)(i)(V) and Bankruptcy Rule 4001(c)(1)(B)(x) require the disclosure of provisions that seek to waive a debtor's rights without notice under section 506(c) of the Bankruptcy Code. **The proposed Interim Order provides, subject to entry of the Final Order, that the Borrower Debtors waive irrevocably all claims and rights, if any, it or its estates might otherwise assert against the DIP Collateral pursuant to Sections 506(c) of 105(a) of the Bankruptcy Code. Interim Order, ¶ 5.11.**

j. Local Rule 4001-2(a)(i)(W) requires disclosure of provision that affect the Court's power to consider the equities of the case under 11 U.S.C. § 552(b)(1). **The proposed Interim Order does not include any provision that affects the Court's power to consider the equities of the case. The Interim Order does provide that such a waiver will be applicable upon entry of the Final Order. Interim Order, ¶ 5.12.**

k. Local Rule 4001-2(a)(i)(X) requires disclosure of provision that affect the Court's power to use the equitable doctrine of marshaling. **The proposed Interim Order does not include any provision that affects the Court's power to marshal assets. The Interim Order does provide that such a limitation will be applicable upon entry of the Final Order. Interim Order, ¶ 5.13.**

l. Bankruptcy Rule 4001(c)(1)(B)(ii) requires disclosure of the provision of adequate protection or priority for claims arising prior to the commencement of the case. **The proposed Interim Order provides that the Prepetition Bonds Secured Parties are entitled to adequate protection of their interests in the Prepetition Bonds Collateral (including Cash Collateral) solely to the extent of the diminution in value of the Prepetition Bonds Collateral. Interim Order, ¶ 2.5.**

m. Bankruptcy Rule 4001(c)(1)(B)(v) requires disclosure of a waiver or modification of any entity's authority or right to file a plan, seek an extension of time in which the debtor has the exclusive right to file a plan, request the use of cash collateral under § 363(c), or request authority to obtain credit under § 364. **The proposed Interim Order does not include any such provisions.**

n. Bankruptcy Rule 4001(c)(1)(B)(vi) requires disclosure of the establishment of deadlines for filing a plan of reorganization, for approval of a disclosures statement, for a hearing on confirmation, or for entry of a confirmation order. **The proposed Interim Order does not include any such provisions.**

o. Bankruptcy Rule 4001(c)(1)(B)(vii) requires disclosure of provisions that waive or modify the applicability of non-bankruptcy law relating to the perfection of a lien on property of the estate. **The proposed Interim Order includes provisions that provide for the automatic perfection and validity of the DIP Lien and Prepetition Adequate Protection Liens without the necessity of any further filing or recording under the laws of any jurisdiction. Interim Order, ¶ 2.1.**

p. Bankruptcy Rule 4001(c)(1)(B)(viii) requires disclosure of a release, waiver, or limitation on any claim or other cause of action belonging to

the estate or the trustee, including any modification of the statute of limitations or other deadlines to commence an action. **The Interim Order provides that, subject to the Final Order, the Releasors, including the Debtor, release, discharge and acquit the Releasees, including the DIP Lender and each of the Prepetition Bonds Secured Parties, from all Released Claims. Interim Order, ¶ 5.17.**

q. Bankruptcy Rule 4001(c)(1)(B)(ix) requires disclosure of the indemnification of any party**. The DIP Documents provide the Borrower will indemnify (subject to customary carve-outs for gross negligence, fraud and willful misconduct) the DIP Lender and their respective affiliates against any liabilities arising out of the transaction, in each case whether or not any of the transactions close or are consummated. Interim Order, ¶ 1.4.**

BACKGROUND

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

7. 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"), owned by Debtor Sierra BioFuels, located approximately twenty miles east of Reno, Nevada, began successfully producing low carbon synthetic crude oil from landfill waste in December 2022.

8. Despite the Debtors' successful proof of concept at the Sierra Plant and substantial progress with ongoing research and development, the Debtors have faced significant liquidity

issues in the last few years and were forced to cease operations at the Sierra Plant in May 2024. The Debtors have determined that a comprehensive financial restructuring, through chapter 11 bankruptcy, is the only path forward to realize value on the Debtors assets for the benefit of their stakeholders.

9. For further information about the Debtors and the circumstances that have led to the filing of these Chapter 11 Cases, the Debtors refer to the *Declaration of Mark Smith, Restructuring Advisor to Fulcrum, BioEnergy, Inc. in Support of the Chapter 11 Petitions and First Day Motions* (the "First Day Declaration") filed simultaneously herein and incorporated herein by reference.

The Debtors Prepetition Financing

I. Overview.

10. The debtors' prepetition capital structure included approximately $456.6 million in funded debt just prior to the Petition Date, consisting of: (a) the Parent Prepetition Term Loan Facility; (b) Parent Secured Convertible Promissory Notes; (c) the Parent Unsecured Convertible Promissory Notes; (d) the Sierra BioFuels Term Loan Facility; (e) the Sierra BioFuels Bonds; and (f) the Sierra Holdings Bonds (each as defined below).

11. As of the Petition Date, the Debtors' prepetition funded indebtedness can be summarized as follows:

DEBTOR FINANCING FACILITIES		
Facility	**Maturity**	**Outstanding Principal Amount (Approximate)**
Fulcrum Parent Debt		
Parent Prepetition Term Loan Facility	December 23, 2023	$90,500,000
2021 A&R Secured Convertible Promissory Notes	December 31, 2023	$30,000,000

DEBTOR FINANCING FACILITIES		
Facility	**Maturity**	**Outstanding Principal Amount (Approximate)**
2020 Secured Convertible Promissory Notes	December 31, 2023	$34,500,000
Unsecured Convertible Promissory Note	June 23, 2024	$5,000,000
Paycheck Protection Program Loan	May 6, 2025	$169,896
Sierra Holdings Debt		
6.950% Series 2018 Sierra Holdings Bonds	February 15, 2038	$39,638,065
5.750% Series 2019 Sierra Holdings Bonds	February 15, 2038	$46,002,680
6.750% Series 2020 Sierra Holdings Bonds	February 15, 2038	$18,426,837
Sierra BioFuels Debt		
5.875% Series 2017 Sierra BioFuels Bonds	December 15, 2027	$29,203,151
6.250% Series 2017 Sierra BioFuels Bonds	December 15, 2037	$101,769,499
5.125% Series 2017B Sierra BioFuels Bonds	December 15, 2037	$18,971,740
5.250% Series 2018 Sierra BioFuels Bonds	December 15, 2037	$2,633,702
Sierra BioFuels Unsecured Term Loan Facility	December 31, 2023	$39,774,423
Total Outstanding Debt:		**$456,589,993**

These obligations are discussed below:

II. Debtor Financing Facilities.

A. Parent Prepetition Term Loan Facility.

12. On June 23, 2023, Fulcrum Parent, as borrower, and certain of its subsidiaries as guarantors thereto entered into that certain credit agreement (as amended, restated, amended and restated, supplemented or otherwise modified in accordance with the terms thereof, the "Prepetition Term Loan Credit Agreement") with PCL Administration LLC, as administrative agent and as collateral agent, providing for a term loan facility in an initial aggregate principal amount of $84,500,000, which was subsequently increased on September 29, 2023, by an amendment thereto to a total aggregate principal amount of $90,500,000 (the "Parent Prepetition Term Loan Facility"). Certain of the Debtors' obligations under the Parent Prepetition Term Loan Facility are guaranteed by eight of Fulcrum Parent's direct and indirect subsidiaries. The Parent Prepetition Term Loan Facility is secured on a first-lien basis by substantially all of the personal

and real property assets of Fulcrum Parent and those subsidiaries which provided a guaranty thereunder. The Parent Prepetition Term Loan Facility has an interest rate of twenty percent (20.00%) and matured on December 23, 2023. As of the date hereof, the entire $90,500,000 principal amount of the Parent Prepetition Term Loan Facility remains outstanding. The Borrower Debtors are not borrowers or guarantors of this financing, and none of the Borrower Debtors' assets secure this financing.

B. Parent Secured Convertible Promissory Notes.

13. Fulcrum Parent is party to the following secured convertible promissory notes (the "Parent Secured Convertible Promissory Notes"): (a) those certain secured convertible promissory notes issued to Newtop Partners and Newtop Partners II pursuant to that certain Securities Purchase Agreement, dated as of July 29, 2014 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time) in the principal amount of $15,000,000 with respect to Newtop Partners and $15,000,000 with respect to Newtop Partners II, (b) those certain secured convertible promissory notes issued to Crestline Praeter, L.P. – Fulcrum ("Crestline"), BP Technology Ventures Limited ("BP"), Rustic Canyon Ventures III, L.P. ("Rustic Canyon"), and Cathay Pacific Airways Limited ("Cathay") pursuant to that certain Securities Purchase Agreement, dated as of November 13, 2020 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time) in the principal amount of $26,000,000 with respect to Crestline, $5,000,000 with respect to BP, $2,500,000 with respect to Rustic Canyon, and $1,000,000 with respect to Cathay. Fulcrum Parent also had secured promissory notes, as amended, issued to BP and Marubeni America Corporation ("Marubeni"), dated as of March 15, 2023, and February 15, 2023, respectively, in the principal amount of $10,000,000 with respect to BP and $4,500,000 with respect to Marubeni. Through the terms of the amended secured promissory notes, the outstanding principal and accrued interest on these secured promissory notes

were converted into shares of Fulcrum Parent's Series D-8 Preferred Stock on December 31, 2023. Certain of the Debtors' obligations under the Parent Secured Convertible Promissory Notes are guaranteed by several of Fulcrum Parent's direct and indirect subsidiaries and secured on a first-lien basis by substantially all of the personal and real property assets, subject to the lien granted to Nuveen EIC pursuant to the Parent Prepetition Term Loan Facility. The Parent Secured Convertible Promissory Notes bear interest ranging up to fifty percent (50%). As of the date hereof, $64,500,000 of the principal amount of the Parent Secured Convertible Promissory Notes remains outstanding. The Borrower Debtors are not borrowers or guarantors of this financing, and none of the Borrower Debtors' assets secure this financing.

C. Parent Unsecured Convertible Promissory Notes.

14. Fulcrum Parent is party to the unsecured convertible promissory note (the "Parent Unsecured Convertible Promissory Note") dated as of June 23, 2023, issued to Rustic Canyon Ventures III, L.P., in the principal amount of $5,000,000. This Parent Unsecured Convertible Promissory Note remains outstanding as of the date hereof. In late 2022 and early 2023, the Company issued the following unsecured convertible promissory notes: (a) that certain convertible promissory notes issued to BP, dated as of September 8, 2022 and November 23, 2022 in the principal amount of $14,500,000 and $10,500,000, respectively, (b) that certain convertible promissory note issued to CDP Infrastructures Fund G.P., dated as of September 8, 2022, in the principal amount of $4,500,000, (c) that certain convertible promissory note issued to Marubeni Corporation, dated as of October 26, 2022, in the principal amount of $10,500,000, (d) that certain convertible promissory note issued to OCI Fuels USA Inc., dated as of January 13, 2023, in the principal amount of $9,000,000, and (e) that certain convertible promissory note issued to SK Innovation Co., Ltd., dated as of February 27, 2023, in the principal amount of $10,000,000. Through the terms of these unsecured promissory notes, the outstanding principal and accrued

interest on these unsecured promissory notes were converted into shares of the Company's Series D-8 Preferred Stock on December 31, 2023. The Borrower Debtors are not borrowers or guarantors of this financing, and none of the Borrower Debtors' assets secure this financing.

D. Paycheck Protection Program Promissory Note

15. In May 2020, Fulcrum Parent received loan proceeds in the amount of $1,624,434 under the Paycheck Protection Program ("PPP") established by the Coronavirus Aid, Relief, and Economic Securities Act ("CARES Act"). In August 2022, $1,232,210 was forgiven by the Small Business Administration ("SBA"). The loan bears interest of one percent (1%). As of the date hereof, approximately $169,896 of the principal remains outstanding. The Borrower Debtors are not borrowers or guarantors of this financing, and none of the Borrower Debtors' assets secure this financing.

E. Sierra BioFuels Term Loan Facility.

16. On October 13, 2023, Debtor Sierra BioFuels, as borrower, entered into that certain senior unsecured term loan agreement (as amended, restated, supplemented or otherwise modified in accordance with the terms thereof, the "Sierra BioFuels Term Loan Agreement") with PCL, as administrative agent, providing for a term loan facility in an initial aggregate principal amount of $2,400,000, which has been subsequently increased by amendments thereto on October 25, 2023, November 17, 2023, December 8, 2023, December 22, 2023, January 19, 2024, February 8, 2024, March 5, 2024, March 25, 2024 and April 5, 2024 to a total aggregate principal amount of $40,900,000 (the "Sierra BioFuels Term Loan Facility"). The Sierra BioFuels Term Loan Facility is unsecured and Sierra BioFuels' obligations under the Sierra BioFuels Term Loan Facility are not guaranteed by any other Debtors. The Sierra BioFuels Term Loan Facility has an interest rate of twenty percent (20.00%) and matured on December 31, 2023, and amounts loaned after such

maturity date were payable on demand. As of the date hereof, $39,774,423 of the principal amount of the Sierra BioFuels Term Loan Facility remains outstanding.

F. Bonds.

a. The Sierra BioFuels Bonds

17. In October 2017, the Director of the State of Nevada Department of Business and Industry issued $150,000,000 in aggregate principal amount of bonds (the "Series 2017A BioFuels Bonds") and loaned the proceeds of such issuance to Sierra BioFuels pursuant to a certain financing agreement (as amended, restated, amended and restated, supplemented or otherwise modified, the "BioFuels Financing Agreement"). The Series 2017A BioFuels Bonds were issued pursuant to a certain trust indenture, dated as of October 1, 2017 (as amended and supplemented as of December 1, 2017, and again as of March 1, 2018, the "BioFuels Trust Indenture") by and between the Director of the State of Nevada Department of Business and Industry, as issuer, and the Bank of New York Mellon Trust Company, N.A., as trustee ("BNY"). Then, in December 2017, the Director of the State of Nevada Department of Business and Industry issued an additional $21,960,000 in bonds on a parity basis with the Series 2017A BioFuels Bonds (the "Series 2017B BioFuels Bonds," and together with the Series 2017A BioFuels Bonds, the "2017 BioFuels Bonds"), as authorized by the BioFuels Trust Indenture (as amended and supplemented in connection with this issuance) and loaned the proceeds to Sierra BioFuels pursuant to the BioFuels Financing Agreement. Again, in March 2018, the Director of the State of Nevada Department of Business and Industry issued an additional $3,040,000 in bonds on a parity basis with the 2017 BioFuels Bonds, (the "Series 2018A BioFuels Bonds," and together with the 2017 BioFuels Bonds, the "BioFuels Bonds"), as authorized by the BioFuels Trust Indenture (as amended and supplemented in connection with this issuance) and loaned the proceeds to Sierra BioFuels

pursuant to the BioFuels Financing Agreement. UMB Bank, N.A., is successor trustee for the BioFuels Bonds (in such capacity, the "BioFuels Trustee").

18. The BioFuels Bonds are secured by (a) all of Sierra BioFuels' personal property, (b) all of Sierra Finance's membership interests in Sierra BioFuels, (c) the revenues and other moneys and rights Trust Estate (as defined in the BioFuels Trust Indenture), (d) the Sierra BioFuels' Sierra Plant through a deed of trust recorded with the County Recorder of Storey County, Nevada on October 26, 2017, and (e) all funds held in certain accounts. The BioFuels Bonds are also guaranteed by Fulcrum Parent. For the Series 2017A BioFuels Bonds, $29,203,151.29 of remaining principal bears interest at a default rate of 8.875% and had an initial stated maturity of December 15, 2027, and $101,796,499.63 of remaining principal bears interest at a rate of 9.250% and had an initial stated maturity of December 15, 2037. For the Series 2017B BioFuels Bonds, $18,971,740.83 of remaining principal bears interest at a rate of 8.125% and had an initial stated maturity of December 15, 2037. For the 2018 BioFuels Bonds, $2,633,702.82 of remaining principal bears interest at a default rate of 8.250% and had an initial stated maturity of December 15, 2037. All principal, interest, and other amounts owed under the Biofuels Bonds became immediately due and payable upon delivery of the notice of defaults, events of default, and acceleration by the BioFuels Trustee, on October 16, 2023. After delivering such notice, the BioFuels Trustee forbore from continuing or taking additional enforcement actions pursuant to a forbearance agreement ("Bond Forbearance Agreement"), dated as of October 25, 2023, between the BioFuels Trustee, Holdings Trustee, certain holders of BioFuels Bonds and Holdings Bonds, Sierra BioFuels, Debtor Fulcrum Sierra Holdings, LLC ("Sierra Holdings"), and certain other Debtors, until the Bond Forbearance Agreement expired on May 8, 2024.

b. The Sierra Holdings Bonds

19. In September 2018, the Director of the State of Nevada Department of Business and Industry issued $44,000,000 in aggregate principal amount of bonds (the "Series 2018 Holdings Bonds") and loaned the proceeds of such issuance to Sierra Holdings, pursuant to a certain financing agreement (as amended, restated, amended and restated, supplemented or otherwise modified, the "Holdings Financing Agreement"). The Series 2018 Holdings Bonds were issued pursuant to a certain trust indenture, dated as of September 1, 2018 (as amended, restated, amended and restated, supplemented or otherwise modified, the "Holdings Trust Indenture") by and between the Director of the State of Nevada Department of Business and Industry, as issuer, and BNY, as trustee. Then, on September 1, 2019, the Director of the State of Nevada Department of Business and Industry issued an additional $50,000,000 in bonds on a parity basis with the Series 2018 Holdings Bonds (the "Series 2019 Holdings Bonds"), as authorized by the Holdings Trust Indenture (as amended and supplemented in connection with this issuance) and loaned the proceeds of such issuance to Sierra Holdings pursuant to the Holdings Financing Agreement. Again, in December 2020, the Director of the State of Nevada Department of Business and Industry issued an additional $20,000,000 in bonds on a parity basis with the Series 2018 Holdings Bonds and the Series 2019 Holdings Bonds (the "Series 2020 Holdings Bonds," and together with the Series 2018 Holdings Bonds and the Series 2019 Holdings Bonds, the "Holdings Bonds"), as authorized by the Holdings Trust Indenture (as amended and supplemented in connection with this issuance) and loaned the proceeds of such issuance to Sierra Holdings pursuant to the Holdings Financing Agreement. UMB Bank, N.A., is successor trustee for the Holdings Bonds (in such capacity, the "Holdings Trustee," and together with the BioFuels Trustee, the "Bonds Trustee").

20. The Holdings Bonds are secured by (a) all of Sierra Holdings' and Sierra Finance's personal property and (b) the revenues and other moneys and rights that constitute the Trust Estate

(as defined in the Holdings Trust Indenture), (c) all of Sierra Holdings' membership interests in Sierra Finance, (d) all of Fulcrum Parent's membership interests in Sierra Holdings, and (e) all funds held in certain accounts. The Holdings Bonds are also guaranteed by Fulcrum Parent. For the Series 2018 Holdings Bonds, $39,638,065.21 of remaining principal bears default interest at a rate of 9.95% and had an initial stated maturity of February 15, 2038. For the Series 2019 Holdings Bonds, $46,002,680.90 of remaining principal bears interest at a default rate of 8.75% and had an initial stated maturity of February 15, 2038. For the Series 2020 Holdings Bonds, $18,426,837.29 of remaining principal bears interest at a default rate of 9.75% and had an initial stated maturity of February 15, 2038. All principal, interest, and other amounts owed under the Holdings Bonds became immediately due and payable upon delivery of the notices of default, events of default, and acceleration by the Holdings Trustee, on October 16, 2023. After delivering such notice, the Holdings Trustee forbore from continuing or taking additional enforcement actions pursuant to the Bond Forbearance Agreement, until the Bond Forbearance Agreement expired on May 8, 2024.

BASIS FOR RELIEF AND IMMEDIATE NEED FOR FINANCING

21. The Debtors have an immediate and critical need to obtain post-petition financing in order to pursue their efforts to maximize value of their estates in chapter 11. Specifically, due to severe liquidity constraints[3], if the Debtors do not immediately receive the DIP Facility, they will be unable to secure and maintain their assets, including obtaining insurance on their property, paying their utility providers, and obtaining physical security to protect and preserve the plant, which is now idled. Moreover, the Debtors need the DIP Facility to pay for the costs of administering their chapter 11 cases, including the payment of professional fees, while pursuing a going-concern sale of their assets.

[3] In fact, to the best of the Debtors' knowledge, the estates have zero liquidity.

22. Prior to the Petition Date, the Debtors diligently pursued pre- and post-petition financing sources and potential stalking horse bidders. The Debtors have been unable to obtain financing in the form of unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code, as an administrative expense under section 364(a) or (b) of the Bankruptcy Code, or in exchange for the grant of an administrative expense priority claim pursuant to section 364(a)(1) of the Bankruptcy Code, without the grant of liens on assets.

23. The Debtors have been unable to obtain funding on terms that are more favorable than offered by the DIP Lender.

24. The DIP Lender has indicated a willingness to provide the Debtors with certain financing, but only in compliance with the terms and conditions set forth in the DIP Loan Documents, including the DIP Note and Interim Order. The Debtors have concluded, in an exercise of their sound business judgment, that the financing to be provided by the DIP Lender represents the best financing presently available to the Debtors. These funds will be used to immediately secure the Debtors' assets during the pendency of their chapter 11 case—including to obtain insurance, pay utilities and obtain a security force—while the Debtors pursue a going-concern sale of substantially all of their assets which will maximize the value of the Debtors' estate. The DIP Facility will also be used to cover the costs of administration of these chapter 11 cases and to pay for such other costs expressly agreed to by the DIP Lender in accordance with the Approved Budget.

25. The Debtors have negotiated the DIP Facility in good faith with the DIP Lender. The Debtors believe that the terms of the DIP Facility are fair and reasonable, reflect the Debtors' exercise of prudent business judgment, and are supported by reasonably equivalent value and fair consideration.

APPLICABLE AUTHORITY

A. The Debtors Should be Permitted to Obtain Post-Petition Financing Pursuant to Sections 364(c) and 364(d)(1) of the Bankruptcy Code.

26. Section 364(c) of the Bankruptcy Code requires a finding, made after notice and a hearing, that the debtor seeking post-petition financing on a secured basis cannot "obtain unsecured credit allowable under section 503(b)(1) of the [the Bankruptcy Code] as an administrative expense." 11 U.S.C. § 364(c). In addition, section 364(d)(1) of the Bankruptcy Code, which governs the incurrence of post-petition debt secured by "priming" liens, provides that the Court, after notice and a hearing, may:

> (d)(1) authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if –
>
> (A) the [debtor] is unable to obtain credit otherwise; and
>
> (B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

11 U.S.C. § 364(d)(1).

27. In evaluating proposed post-petition financing under sections 364(c) and (d) of the Bankruptcy Code, courts perform a qualitative analysis and generally consider similar factors, including whether:

a. unencumbered credit or alternative financing without superpriority status is available to the debtor;

b. the credit transactions are necessary to preserve assets of the estate;

c. the terms of the credit agreement are fair, reasonable, and adequate;

d. the proposed financing agreement was negotiated in good faith and entry thereto is an exercise of sound and reasonable business judgment and in the best interest of the debtor's estate and its creditors; and

e. the proposed financing agreement adequately protects prepetition secured creditors. *See e.g. In re Aqua Assoc.*, 132 B.R. 192 (Bankr. E.D. Pa. 1991) (applying the first three factors in making a determination under section 364(c)); *In re Crouse Group, Inc.,* 71 B.R. 544 (Bankr. E.D. Pa. 1987) (same); *Bland v. Farmworker Creditors*, 308 B.R. 109, 113-14 (S.D. Ga. 2003) (applying all factors in making a determination under section 364(d)).

28. For the reasons discussed below, the Borrower Debtors satisfy the standards required to access post-petition financing on a secured superpriority and priming lien basis under sections 364(c) and 364(d) of the Bankruptcy Code.

B. The Debtors Were Unable to Obtain Financing on More Favorable Terms

29. The Debtors solicited several alternative financing proposals prior to the Petition Date in connection with seeking a potential stalking horse purchaser for their assets. However, the Debtors were unable to procure unsecured financing. The current proposal is on the terms that are most beneficial to the estate. The Debtors believe their efforts to obtain post-petition financing therefore satisfy the standard required under section 364(c) of the Bankruptcy Code. *See e.g. In re Los Angeles Dodges LLC*, 457 B.R. 308, 313 (Bankr. D. Del. 2011) ("The Court 'may not approve any credit transaction under subsection (c) [of Section 364] unless the debtor demonstrates that it has attempted, but failed, to obtain unsecured credit under section 364(a) or (b).'"); *In re Simasko Production Co.*, 47 B.R. 444, 448-49 (D. Colo. 1985) (authorizing interim financing stipulation where debtor's best business judgment indicated financing was necessary and reasonable for benefit of estates); *In re Ames Dept. Stores*, 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990) (with respect to post-petition credit, courts "permit debtors in possession to exercise their basic business judgment consistent with their fiduciary duties"); *In re Sky Valley, Inc*., 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988) (where few lenders can or will extend the necessary credit to a debtor, "it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing").

30. Additionally, given the immediate and critical need for the Borrower Debtors to obtain financing—*i.e.*, the Debtors will be unable to secure and maintain their assets and pursue a going-concern sale to maximize the value of their assets—the Debtors do not have an unlimited amount of time to find more favorable terms. *See e.g. In re Snowshoe Co.*, 789 F.2d 1085, 1088 (4th Cir. 1986) (stating that section 364(d) of the Bankruptcy Code "imposes no duty to seek credit from every possible lender, particularly when time is of the essence to preserve a vulnerable seasonal enterprise").

C. The DIP Facility is Necessary to Preserve and Maximize the Assets of the Debtors' Estates.

31. As debtors-in-possession, the Debtors have a fiduciary duty to protect and maximize the assets of their estates. *See In re Mushroom Transp. Co.*, 382 F.3d 325, 339 (3d Cir. 2004). The DIP Facility allows the Borrower Debtors to satisfy such obligation. As noted *supra*, the Debtors need financing and was forced into these chapter 11 cases as a result of severe liquidity constraints and depleted lending resources. Without the agreement of the DIP Lender to provide the Borrower Debtors with financing, the Debtors would be unable to preserve their assets and purse a going-concern sale of their assets pursuant to Section 363 of the Bankruptcy Code, which will enable the Debtors to maximize value and recovery to their creditors. The Borrower Debtors immediately need financing for critical expenses, including to secure insurance on their property, pay for utilities and hire a security force to protect the idled plant. The Borrower Debtors' inability to make such payments would certainly cause immediate harm to the Debtors, the Prepetition Lenders, and the Debtors' creditors.

D. The Terms of the DIP Facility are Fair, Reasonable and Appropriate

32. In considering whether the terms of post-petition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential

lender. *In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003); *See also In re Ellingsen MacLean Oil Co.*, 65 B.R. 385, 365 (W.D. Mich. 1986) (a debtor may have to enter into hard bargains to acquire funds).

33. Prior to the Petition Date, the Debtors, and representatives of the Bond Trustee, reached out to a number of parties to solicit interest in providing both pre- and postpetition financing to the Debtors in connection with a sale of substantially all of the Debtors' assets. As a result of these efforts, only one potential lender and stalking horse purchaser was serious about providing a post-petition loan to the Borrower Debtors. The DIP Facility was negotiated in good faith between the Borrower Debtors and the DIP Lender, and the terms of the DIP Facility were the best terms available to the Borrower Debtors under the circumstances. The Borrower Debtors' negotiations with the DIP Lender resulted in an agreement which will allow the Debtors to immediately secure and maintain their assets and pursue an orderly sale of their assets which will maximize value for the estates.

E. Entry into the DIP Facility Reflects the Debtors' Sound Business Judgment.

34. A debtor's decision to enter into a post-petition financing arrangement under section 364 of the Bankruptcy Code is governed by the business judgment standard. *See e.g. In re Los Angeles Dodgers LLC*, 457 B.R. at 313; *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 38 (Bankr.S.D.N.Y. 1990) (financing decisions under section 364 of the Bankruptcy Code must reflect a debtor's business judgment).

35. Bankruptcy courts generally will defer to a debtor-in-possession's business judgment regarding the need for and the proposed use of funds, unless such decision is arbitrary and capricious. *In re Curlew Valley Assocs.*, 14 B.R. 506, 511-13. (Bankr. D. Utah 1981). The court will generally not second-guess a debtor-in-possession's business decisions involving a

"business judgment made in good faith, upon a reasonable basis, and within the scope of [its] authority under the [Bankruptcy] Code." *Id.* at 513-14.

36. As noted above, the Debtors have exercised sound business judgment in determining that the DIP Facility satisfies the legal prerequisites to incur debt under section 364 of the Bankruptcy Code. As definitively set forth in the DIP Note and DIP Loan Documents, the Debtors believe the DIP Facility provides the best terms that are available under the circumstances. The DIP Facility is essential to enable the Debtors to avoid irreparable harm to the value of the Debtors' assets, the Prepetition Bonds Secured Parties, and the Debtors' other secured and unsecured creditors.

37. Therefore, pursuant to sections 364(c) and (d)(1) of the Bankruptcy Code, the Debtors respectfully submit that they should be granted authority to enter the DIP Facility and to obtain the DIP Facility on the secured and administrative superpriority basis described herein.

F. Section 363 of the Bankruptcy Code Authorizes the Debtors' Use of Cash Collateral

38. Section 363(c)(2) of the Bankruptcy Code provides that a debtor in possession may not use cash collateral unless (A) each entity that has an interest in such cash collateral provides consent, or (B) the court approves the use of cash collateral after notice and a hearing. *See* 11 U.S.C. § 363(c). Section 363(e) of the Bankruptcy Code provides that, "on request of an entity that has an interest in property used . . . or proposed to be used . . . by the [debtor in possession], the court . . . shall prohibit or condition such use . . . as is necessary to provide adequate protection of such interest." 11 U.S.C. § 363(e).

39. By this Motion, the Debtors seek authority to use Cash Collateral whenever or wherever acquired, and the proceeds of Prepetition Bonds Collateral, in accordance with the terms of the DIP Loan Documentation, including the Approved Budget and on terms consistent with the

Interim Order. Bankruptcy Rule 4001(b) permits a court to approve a debtor's request for use of cash collateral during the 14-day period following the filing of a motion requesting authorization to use cash collateral, "only . . . as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing." Bankruptcy Rule 4001(b)(2). In examining requests for interim relief under this rule, courts apply the same business judgment standard applicable to other business decisions. *See, e.g., In re Simasko Production Co.*, 47 B.R. 444, 449 (D. Colo. 1985); *see also In re Ames Dep't Stores Inc.,* 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990). After the 14-day period, the request for use of cash collateral is not limited to those amounts necessary to prevent harm to the debtor's business.

40. Absent access to Cash Collateral, the Debtors would face immediate and irreparable harm. The Debtors' inability to secure and preserve their assets during their chapter 11 cases would result in the loss of going concern value at the expense of the Debtors' stakeholders. Thus, immediate access to Cash Collateral is essential to the Debtors' continued viability and ability to successfully reorganize.

G. Sections 105 and 363 of the Bankruptcy Code Authorize the Debtors' Use of Cash Collateral

38. Section 363(c)(2) of the Bankruptcy Code provides that a debtor in possession may not use cash collateral unless (i) each entity that has an interest in such cash collateral provides consent, or (ii) the court approves the use of cash collateral after notice and a hearing. 11 U.S.C. § 363(c). Section 105(a) of the Bankruptcy Code provides that the court may issue any order that is necessary or appropriate to carry out the provisions of title 11. 11 U.S.C. § 105(a).

39. Here, the Debtors have the consent of the Prepetition Bonds Secured Parties to access Cash Collateral on the terms described in the Motion and set forth in the DIP Orders and Approved Budget. In addition, the Prepetition Bonds Secured Parties' interests in the Prepetition

Bonds Collateral are adequately protected by a combination of protections proposed in the Interim Order and through the preservation of going concern value in the Debtors' assets.

H. The Proposed Adequate Protection of the Prepetition Bonds Secured Parties Is Warranted

40. As set forth above, Section 364(d)(1) of the Bankruptcy Code provides that the Court may authorize the Debtors to obtain credit or incur debt secured by priming lien only if (a) the Debtors is unable to obtain such credit otherwise; and (b) there is adequate protection of the holder of the lien on the property of the estate on which the priming lien is proposed to be granted. Additionally, Section 363(e) of the Bankruptcy Code provides that, "on request of an entity that has an interest in property used . . . or proposed to be used . . . by the [debtor in possession], the court . . . shall prohibit or condition such use . . . as is necessary to provide adequate protection of such interest." 11 U.S.C. § 363(e). Courts typically authorize a debtor to use cash collateral to continue operations so long as the interests asserted by affected creditors in such collateral, which equal the value of the collateral rather than of the debt, are adequately protected or they consent to such use. *Id.*; *U.S. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365 (1988) (interest in property referenced in 11 U.S.C. § 363(e) refers to the value of the collateral as opposed to the value of the loan). What constitutes adequate protection must be decided on a case-by-case basis. *See, e.g., MBank Dallas v. O'Connor (In re O'Connor)*, 808 F.2d 1393, 1396-97 (10th Cir. 1987) (citing *Martin v. United States (In re Martin)*, 761 F.2d 472, 474 (8th Cir. 1985)); *Metro. Life Ins. Co. v. Monroe Park (In re Monroe Park)*, 17 B.R. 934, 940 (D. Del. 1982) (citations omitted).

41. Section 361 of the Bankruptcy Code authorizes a debtor to provide adequate protection by granting replacement liens, making periodic cash payments, or granting such other

relief "as will result in the realization by such entity of the indubitable equivalent of such entity's interest in such property." 11 U.S.C. § 361. According to the legislative history of section 361 of the Bankruptcy Code, a finding of adequate protection is "left to case-by-case interpretation and development. It is expected that the courts will apply the concept [of adequate protection] in light of the facts of each case and general equitable principles." H.R. Rep. No. 595, 95th Cong., 1st Sess. 339 (1977), reprinted in 1978 U.S.C.C.A.N. 5787, 6295; *see also O'Connor*, 808 F.2d at 1396-97 ("[T]he courts have considered 'adequate protection' a concept which is to be decided flexibly on the proverbial 'case-by-case' basis.").

42. The Interim Order provides that the Prepetition Bonds Secured Parties will be entitled to adequate protection of their interests in the Prepetition Bonds Collateral (including Cash Collateral) solely to the extent of the diminution in value of the Prepetition Bonds Collateral as a result of (a) the provisions of the Interim Order granting first priority and/or priming liens on such Prepetition Bonds Collateral to the DIP Lender, (b) the Debtors' use of the Prepetition Bonds Collateral (including Cash Collateral), (c) the imposition of the automatic stay pursuant to § 362 of the Bankruptcy Code, and (d) otherwise, pursuant to Sections 361, 363(c), and 364(d)(l) of the Bankruptcy Code. In addition to the payment of its legal fees in accordance with the Approved Budget, the Prepetition Bonds Secured Parties will be granted, solely to the extent of Diminution in Value of the Prepetition Bonds Liens in the Prepetition Bonds Collateral from and after the Petition Date, a replacement lien in all DIP Collateral (the "Prepetition Adequate Protection Lien"), junior only to (i) the DIP Loan and (ii) the Permitted Liens.

43. The proposed adequate protection described above is fair and reasonable and compensates the Prepetition Bonds Secured Parties for any possible diminution in value of the Prepetition Bonds Collateral. Given the significant value that the Debtors stand to lose in the event

they are unable to obtain the DIP Facility and/or denied access to the continued use of Cash Collateral, such protections are appropriate. Without access to the DIP Facility or the use of Cash Collateral, the Debtors will be unable to secure and preserve their assets or pursue a value maximizing sale of their assets, and their creditors will be irreparably damaged.

I. Interim Approval of the DIP Facility Should be Granted.

44. It is essential that the Borrower Debtors immediately receive financing to secure and maintain their property. The court should grant the Debtors' request for immediate authority to use the DIP Facility to prevent immediate and irreparable harm to the Debtors' estates and stakeholders pending a final hearing on the motion pursuant to Bankruptcy Rule 4001(c). The availability of sufficient capital through the DIP Facility is vital to the preservation of the Debtors' estates and the value of the Debtors' assets. The Debtors, therefore, seek authority to obtain approval of the DIP Facility on an immediate interim basis.

45. Bankruptcy Rule 4001(c)(2) governs the procedures for obtaining authorization to obtain post-petition financing and provides, in relevant part:

> The court may commence a final hearing on a motion for authority to obtain credit no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a hearing before such 14-day period expires, but the court may authorize the obtaining of credit only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

46. In examining requests for interim relief under this rule, courts apply the same business judgment standard to other business decisions. *See e.g. Ames Dep't Stores,* 115 B.R. at 36; *Simasko,* 47 B.R. at 449. Under this standard, the Debtors' request for entry of the DIP Orders, in the time periods and for the financing amounts requested herein, is appropriate.

47. The Debtors believe that, under the circumstances, the terms and conditions set forth herein are fair and reasonable for the approval of the DIP Facility.

REQUEST FOR A FINAL HEARING

48. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtors request that the Court set a date for the Final Hearing that is as soon as practicable, in no event later than fourteen days following the entry of the Interim Order, and fix the time and date prior to the Final Hearing for parties to file objections to the motion.

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

49. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

NOTICE

50. The Debtors will provide notice of this Motion to: (a) the Office of the United States Trustee for the District of Delaware, Attn: Rosa Sierra-Fox, 844 King Street, Suite 2207, Wilmington, Delaware 19801, rosa.sierra@usdoj.gov; (b) the holders of the 30 largest unsecured claims against the Debtors; (c) counsel to the DIP Lender; (d) counsel to the Prepetition Bonds Secured Parties and other secured lenders to the Debtors; (e) any party that has requested notice pursuant to Bankruptcy Rule 2002; and (f) any such other party entitled to notice pursuant to Rule 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware. As this Motion is seeking "first day" relief, within two business days of the hearing on this Motion, the Debtors will serve copies of this Motion and any order entered in respect to this Motion as required by Local Rule 9013-1(m). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

CONCLUSION

WHEREFORE the Debtors respectfully request that the Court enter the DIP Orders granting the relief requested in this Motion, and such other 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

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Proposed Counsel for the Debtors and Debtors in Possession

Exhibit 1

Proposed Interim 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)

INTERIM ORDER PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, 364, 503 AND 507 (I) AUTHORIZING THE DEBTORS TO OBTAIN SENIOR SECURED SUPERPRIORITY POSTPETITION FINANCING; (II) GRANTING (A) LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS AND (B) ADEQUATE PROTECTION TO CERTAIN PREPETITION BONDHOLDERS; (III) AUTHORIZING USE OF CASH COLLATERAL; (IV) SCHEDULING A FINAL HEARING; AND (V) GRANTING RELATED RELIEF

Upon the *Debtors' Emergency Motion for Interim and Final Orders Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, 503 and 507 (I) Authorizing the Debtors to Obtain Senior Secured Superpriority Postpetition Financing; (II) Granting (A) Liens and Superpriority Administrative Expense Claims and (B) Adequate Protection To Certain Prepetition Bondholders; (III) Authorizing Use Of Cash Collateral; (IV) Scheduling a Final Hearing; and (V) Granting Related Relief]* (the "**Motion**")[2] of the above-captioned debtors and debtors-in-possession (collectively, the "**Debtors**") in the above-captioned chapter 11 cases (collectively, the "**Chapter 11 Cases**"), for entry of an interim order (this "**Interim Order**") and a final order (the "**Final Order**"), pursuant to sections 105, 361, 362, 363, 364(c)(1), 364(c)(2) 364(c)(3), 364(d), 364(e), 503 and 507 of Title 11 of the United States Code (the "**Bankruptcy Code**"), Rules 2002, 4001(b) and (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 Debtors' service address is: Fulcrum BioEnergy Inc., P.O. Box 220 Pleasanton, CA 94566.

[2] Each capitalized term used but not defined herein shall have the meaning ascribed to it in the applicable DIP Loan Documents (as defined below).

6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Rule 4001-2 of the Local Bankruptcy Rules (the "**Local Rules**") for the United States Bankruptcy Court for the District of Delaware (this "**Court**"), requesting, among other things:

(1) authorization for the Borrower (as defined in the DIP Note (as defined below)) to obtain postpetition financing pursuant to the DIP Facility (as defined below), and for each of the Guarantors (as defined in the DIP Note) to guarantee unconditionally on a joint and several basis, and subject to the terms and limitations set forth in the DIP Note in all respects, the Borrower's obligations under the DIP Facility, consisting of a senior secured super-priority term loan facility (the "**DIP Facility**"), on the terms and conditions substantially in the form annexed hereto as **Exhibit A** (as the same may be amended, restated, amended and restated, supplemented, waived, extended, or otherwise modified from time to time, the "**DIP Note**" and, together with any other related agreements, documents, security agreements, or pledge agreements, including this Interim Order and (when entered) the Final Order, collectively, the "**DIP Loan Documents**"), by and among the Borrower, the Guarantors, Switch, Ltd. ("**Switch**"), as lender (in such capacity together with its permitted successor and assigns, the "**DIP Lender**"), in an aggregate principal amount of up to $5.0 million in term loan commitments, which shall be available as term loans (the "**DIP Loans**") to the Borrowers upon entry of this Interim Order and satisfaction of the other conditions set forth therein in an interim amount not to exceed $3,204,103 million (the "**Interim DIP Loan**") prior to entry of the Final Order, and the remainder of the DIP Facility available upon entry of the Final Order to the extent set forth therein.

(2) authorization for the Debtors to execute, deliver, and enter into the DIP Loan Documents and to perform all of the Debtors' respective obligations thereunder, and such other and further acts as may be required in connection with the DIP Loan Documents;

(3) authorization for the Debtors to pay the principal, interest, fees, expenses and other amounts payable to the DIP Lender pursuant to the DIP Loan Documents, including, without limitation, all loans, advances, debts, liabilities and obligations for the performance of covenants, tasks or duties or for payment of monetary amounts (whether or not such performance is then required or contingent, or such amounts are liquidated or determinable) owing by Borrower to the DIP Lender arising under the DIP Loan Documents, and all covenants and duties regarding such amounts, of any kind or nature, present or future, arising under the DIP Loan Documents, including all principal, interest, fees, charges, expenses, reasonable and documented attorneys' fees and any other sum chargeable to Borrower under the DIP Loan Documents (such obligations, the "**DIP Obligations**");

(4) authorization for the Debtors, immediately upon entry of this Interim Order, to use proceeds of the DIP Facility solely for the purposes permitted under the DIP Loan Documents and solely in accordance with this Interim Order and the applicable Approved Budget (as defined below), subject to permitted variances and other exclusions set forth in the DIP Loan Documents;

(5) the grant and approval of superpriority administrative expense claim status, pursuant to sections 364(c)(1), 503(b)(1) and 507(b) of the Bankruptcy Code, to the DIP Lender, in respect of all DIP Obligations, subject and subordinate only to the Carve-Out (as defined below);

(6) granting the DIP Lender valid, enforceable, non-avoidable, automatically and fully perfected DIP Liens (as defined below) in all DIP Collateral (as defined below) to secure the DIP Obligations, which DIP Liens shall be subject and subordinate to the Carve-Out and Permitted Liens (as defined below);

(7) authorization for the Debtors to use, solely in accordance with the Approved Budget (subject to permitted variances and other exclusions set forth in the DIP Loan Documents) and the

limitations provided herein and in the DIP Loan Documents, any Cash Collateral in which any of the Prepetition Bonds Secured Parties (as defined below) may have an interest, and the granting of adequate protection solely to the extent of any diminution in the value of their respective interests in the Prepetition Bonds Collateral, including, without limitation, the Cash Collateral, as a result of (i) the incurrence of the DIP Obligations, (ii) the Debtors' use of Cash Collateral, (iii) the subordination of the Prepetition Bond Obligations to the DIP Obligations and the Carve-Out, (iv) any other diminution in value of the Prepetition Bonds Collateral arising from the Debtors' use, sale, or disposition of such Prepetition Bonds Collateral or the proceeds thereof, (v) the priming of the Prepetition Bond Liens by the DIP Liens, and (vi) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code (collectively, "**Diminution in Value**");

(8) the modification of the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of this Interim Order and the other DIP Loan Documents to the extent hereinafter set forth;

(9) subject to entry of the Final Order, a waiver of the Debtors' ability to surcharge pursuant to section 506(c) of the Bankruptcy Code against any DIP Collateral and the Prepetition Bonds Collateral, and any right of the Debtors under the "equities of the case" exception in section 552(b) of the Bankruptcy Code;

(10) this Court's waiver of any applicable stay (including under Bankruptcy Rule 6004) and providing for immediate effectiveness of this Interim Order;

(11) the scheduling of a final hearing on the Motion (the "**Final Hearing**") to consider entry of the Final Order granting the relief requested in the Motion on a final basis, and approving the form of notice with respect to the Final Hearing; and

(12) granting the Debtors such other and further relief as is just and proper.

The initial hearing on the Motion having been held by this Court on September 12, 2024 (the "**Interim Hearing**"), and the Court having found that, under the circumstances, due and sufficient notice of the Motion and Interim Hearing was provided by the Debtors as set forth in Paragraph D of this Interim Order, and upon the record made by the Debtors at the Interim Hearing, including the Motion, the Declaration of Mark Smith in Support of First Day Relief [Docket No. [●]] (the "**First Day Declaration**")]; any exhibits in connection with the foregoing, and the filings and pleadings in these Chapter 11 Cases, the Court having found that the interim relief requested in the Motion is fair and reasonable and is in the best interests of the Debtors, the Debtors' bankruptcy estates (as defined under section 541 of the Bankruptcy Code, the "**Estates**"), their stakeholders and other parties in interest, and represents a sound exercise of the Debtors' business judgment and is essential for the continued operation and maintenance of the Debtors' businesses; it appearing to the Court that granting the interim relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their Estates pending the Final Hearing; and all objections, if any, to the relief requested in the Motion having been withdrawn, resolved, or overruled by the Court; and after due deliberation sufficient cause appearing therefor;

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:[3]

(A) Petition Date. On September 9, 2024 (the "Petition Date"), each Debtor filed a voluntary petition for relief (each, a "**Petition**") under chapter 11 of the Bankruptcy Code. The Debtors continue to operate and maintain their businesses and manage their properties as

[3] The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No chapter 11 trustee or examiner has been appointed in any of the Chapter 11 Cases.

(B) Jurisdiction and Venue. This Court has jurisdiction over these Cases, the Debtors, property of the Debtors' Estates and this matter under 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 within the meaning of 28 U.S.C. § 157(b)(2). Pursuant to Rule 9013-1(f) of the Local Rules, the Debtors consent to the entry of a final judgment or order with respect to the Motion if it is determined that this Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief sought herein are sections 105, 361, 362, 363, 364, 503 and 507 of the Bankruptcy Code and Bankruptcy Rules 2002, 4001, 9013 and 9014 and Local Rules 7007-1, 9013-1, 9013-4, and 9014-2.

(C) Committee Formation. As of the date hereof, no official committee of unsecured creditors under section 1102 of the Bankruptcy Code (the "**Committee**") or any other statutory committee has been appointed in the Chapter 11 Cases.

(D) Notice. Good and sufficient notice of the Motion under the circumstances has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules and the Local Rules.

(E) Parties' Acknowledgments, Agreements, and Stipulations. In requesting the DIP Facility and use of Cash Collateral, and in exchange for and as a material inducement to the DIP Lender and the Prepetition Bonds Secured Parties to agree to provide, or consent to, the DIP Facility, access to the Cash Collateral, and subordination of the Prepetition Bond Liens (as defined below) to the DIP Obligations and Carve-Out, as provided herein, and as a condition to providing

financing under the DIP Facility and consenting to the use of Cash Collateral as set forth herein, subject to the rights of parties in interest (other than the Debtors) set forth in Section 4.1 of this Interim Order, the Debtors admit, stipulate, acknowledge, and agree, as follows:

(i) Prepetition Biofuels Bond Obligations. Certain of the Debtors are party to certain prepetition agreements relating to tax-exempt bonds issued by the Director of the State of Nevada Department of Business and Industry, as conduit bond issuer (in such capacity, the "**Biofuels Bonds Conduit Issuer**"), and such agreements and related documents include: (a) that certain Trust Indenture, dated as of October 1, 2017 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "**Biofuels Bond Indenture**"), by and between the Biofuels Bonds Conduit Issuer and UMB Bank, N.A., as successor trustee (in such capacity, the "**Biofuels Trustee**"), as trustee for the bonds issued pursuant to the Biofuels Indenture (the "**Biofuels Bonds**" and the holders of such bonds, the "**Biofuels Bondholders**") which, *inter alia*, assigned all of the Biofuels Bonds Conduit Issuer's interests in any of the Biofuels Bond Documents (other than the Unassigned Director's Rights (as defined in the Biofuels Bond Indenture)) to the Biofuels Trustee, (b) that certain Second Amended and Restated Collateral Agency and Account Agreement, dated as of March 1, 2018 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "**Biofuels Bonds Collateral Agency Agreement**"), by and among Debtor Fulcrum Sierra BioFuels, LLC ("**Biofuels**") and UMB Bank, N.A., as successor collateral agent and securities intermediary (in such capacity, the "**Biofuels Collateral Agent**", and together with the Biofuels Trustee and the Biofuels Bondholders, the "**Prepetition Biofuels Bonds Secured Parties**"), (c) that certain Financing Agreement, dated as of October 1, 2017 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "**Biofuels Bonds Financing**

Agreement"), by and between the Biofuels Bonds Conduit Issuer and Biofuels, (d) that certain Security Agreement, dated as of October 1, 2017 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "**Biofuels Bonds Security Agreement**"), by and between Biofuels and the Biofuels Collateral Agent, (e) that certain Guaranty Agreement, dated as of October 1, 2017 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "**Biofuels Bonds Guaranty Agreement**"), by and between Debtor Fulcrum BioEnergy, Inc., as guarantor (in such capacity, the "**Biofuels Bonds Guarantor**", and together with Biofuels, the "**Biofuels Bonds Obligors**") and the Biofuels Trustee, (f) that certain Expense Reimbursement Agreement, dated as of May 23, 2024 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "**Prepetition Expense Reimbursement Agreement**"), by and between the Debtors, the Prepetition Trustees, and the Prepetition Bonds Collateral Agents, (g) that certain Membership Interest Pledge Agreement, dated as of October 1, 2017 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "Biofuels Bonds Pledge Agreement"), by and between Debtor Fulcrum Sierra Finance Company, LLC, as pledgor and the Biofuels Collateral Agent, and (h) that certain Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing made by Biofuels, as grantor, to the Biofuels Trustee, for the benefit of the Biofuels Collateral Agent, as beneficiary, dated as of October 26, 2017 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "**Biofuels Bonds Mortgage**").[4] Pursuant to the Biofuels Bond Indenture, the Biofuels Bonds

[4] The Biofuels Bonds Indenture, Biofuels Bonds, Biofuels Bonds Collateral Agency Agreement, Biofuels Bonds Financing Agreement, Biofuels Bonds Security Agreement, Biofuels Bonds Guaranty Agreement, Prepetition Expense Reimbursement Agreement, Biofuels Bonds Pledge Agreement, and Biofuels Bonds Mortgage, together with all other agreements, documents, and instruments executed and/or delivered with, to or in favor of the Prepetition Biofuels Bonds Secured Parties, including, without limitation, all security agreements, deposit account control agreements, control agreements, notes, guarantees, mortgages, promissory notes, pledge agreements,

Conduit Issuer issued Biofuels Bonds with an aggregate principal amount of $175,000,000.00. As of the Petition Date, approximately $168,067,871.14 of principal and unpaid interest under the Biofuels Bonds Indenture was outstanding, which amount is comprised of $152,605,094.57 in principal amount, and accrued and unpaid interest in the amount of $15,462,776.57 (and, together with any other amounts outstanding under the Biofuels Bond Documents, including interest, fees, and expenses, the "**Prepetition Biofuels Bond Obligations**"). The Prepetition Biofuels Bond Obligations are obligations of the Biofuels Bond Obligors pursuant to the Biofuels Bonds Documents. The Prepetition Biofuels Bond Obligations are secured by first priority security interests in and liens (subject only to any liens permitted under the Biofuels Bond Documents) on the "Collateral" or "Pledged Collateral" (as such terms are defined in the Biofuels Bond Documents) and the Mortgaged Property (as defined in the Biofuels Bonds Mortgage) (collectively, such Collateral, Pledged Collateral and Mortgage Property, collectively, the "**Prepetition Biofuels Bonds Collateral**" and such liens and security interests on such Prepetition Biofuels Bonds Collateral, the "**Prepetition Biofuels Bond Liens**").

(ii) Prepetition Holdings Bond Obligations. Certain of the Debtors are party to certain prepetition agreements relating to tax-exempt bonds issued by the Director of the State of Nevada Department of Business and Industry, as conduit bond issuer (in such capacity, the "**Holdings Bonds Conduit Issuer**"), and such agreements and related documents include: (a) that certain Trust Indenture, dated as of September 1, 2018 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "**Holdings Bonds Indenture**" and together with the Biofuels Bond Indenture, the "**Prepetition Indentures**"), by

Uniform Commercial Code financing statements, documents, and instruments, including any fee letters, executed and/or delivered in connection therewith or related thereto, are referred to herein as the "**Biofuels Bond Documents**."

and between the Holdings Bonds Conduit Issuer and UMB Bank, N.A., as successor trustee (in such capacity, the "**Holdings Trustee**" and together with the Biofuels Trustee, the "**Prepetition Trustees**"), as trustee for the bonds issued pursuant to the Holdings Indenture (the "**Holdings Bonds**" and together with the Biofuels Bonds, the "**Prepetition Bonds**"; and the holders of the Holdings Bonds, the "**Holdings Bondholders**" and together with the Biofuels Bondholders, the "**Prepetition Bondholders**") which, *inter alia*, assigned all of the Holdings Bonds Conduit Issuer's interests in any of the Holdings Bond Documents (other than the Unassigned Director's Rights (as defined in the Holdings Bond Indenture)) to the Holdings Trustee; (b) that certain Second Amended and Restated Collateral Agency and Account Agreement, dated as of December 1, 2020 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "**Holdings Bonds Collateral Agency Agreement**" and together with the Biofuels Bonds Collateral Agency Agreement, the "**Collateral Agency Agreements**"), by and among Debtor Fulcrum Sierra Holdings, LLC ("**Holdings**") and UMB Bank, N.A., as successor collateral agent and securities intermediary (in such capacity, the "**Holdings Collateral Agent**", and together with the Biofuels Collateral Agent, the "**Prepetition Bonds Collateral Agents**"; the Holdings Collateral Agent together with the Holdings Trustee and the Holdings Bondholders, the "**Prepetition Holdings Bonds Secured Parties**"; and the Prepetition Biofuels Bonds Secured Parties and the Prepetition Holdings Bonds Secured Parties, collectively, the "**Prepetition Bonds Secured Parties**"), (c) that certain Financing Agreement, dated as of September 1, 2018 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "**Holdings Bonds Financing Agreement**", and together with the Biofuels Bonds Financing Agreement, the "**Prepetition Financing Agreements**"), by and between the Holdings Bonds Conduit Issuer and Holdings, (d) that certain Security Agreement, dated as of September 1, 2018

(as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "**Holdings Bonds FSH Security Agreement**"), by and between Holdings and the Holdings Collateral Agent, (e) that certain Security Agreement, dated as of September 1, 2018 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "**Holdings Bonds FSFC Security Agreement**", and together with the Holdings Bonds FSH Security Agreement, the "**Holdings Bonds Security Agreements**"), by and between Debtor Fulcrum Sierra Finance Company, LLC and the Holdings Collateral Agent, (f) that certain Guaranty Agreement, dated as of September 1, 2018 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "**Holdings Bonds Guaranty Agreement**", and together with the Biofuels Bonds Guaranty Agreement, the "**Prepetition Bonds Guaranty Agreements**"), by and between Debtor Fulcrum BioEnergy, Inc. (in such capacity, the "**Holdings Bonds Guarantor**", and together with Holdings, the "**Holdings Bonds Obligors**", and the Holdings Bonds Obligors collectively with the Biofuels Bonds Obligors, the "**Prepetition Obligors**") and the Holdings Trustee, and (g) the Expense Reimbursement Agreement.[5] Pursuant to the Holdings Bond Indenture, the Holdings Bonds Conduit Issuer issued Holdings Bonds with an aggregate principal amount of $114,000,000.00. As of the Petition Date, approximately $113,982,595.13 of principal and unpaid interest under the Holdings Bonds Indenture was outstanding, which amount is comprised of $104,067,583.40 in principal amount, and accrued and unpaid interest in the amount of $9,915,011.73 (and, together with any other amounts outstanding

[5] The Holdings Bonds Indenture, Holdings Bonds, Holdings Bonds Collateral Agency Agreement, Holdings Bonds Financing Agreement, Holdings Bonds Security Agreements, Holdings Bonds Guaranty Agreement, and Prepetition Expense Reimbursement Agreement together with all other agreements, documents, and instruments executed and/or delivered with, to or in favor of the Prepetition Holdings Bonds Secured Parties (as defined below), including, without limitation, all security agreements, deposit account control agreements, control agreements, notes, guarantees, mortgages, promissory notes, pledge agreements, Uniform Commercial Code financing statements, documents, and instruments, including any fee letters, executed and/or delivered in connection therewith or related thereto, are referred to herein as the "**Holdings Bond Documents**." The Biofuels Bond Documents together with the Holdings Bond Documents are referred to herein as the "**Prepetition Bond Documents**."

under the Holdings Bond Documents, including interest, fees, and expenses, the "**Prepetition Holdings Bond Obligations**", and together with the Prepetition Biofuels Bond Obligations, the "**Prepetition Bond Obligations**"). The Prepetition Holdings Bond Obligations are obligations of the Holdings Bond Obligors pursuant to the Holdings Bond Documents. The Prepetition Holdings Bond Obligations are secured by first priority security interests in and liens (subject only to any liens permitted under the Biofuels Bond Documents) on the "Collateral" (as such terms are defined in the Holdings Bond Documents) (the "**Prepetition Holdings Bonds Collateral**" and together with the Prepetition Biofuels Bonds Collateral, the "**Prepetition Bonds Collateral**"; and such liens and security interests on such Prepetition Holdings Bonds Collateral, the "**Prepetition Holdings Bond Liens**", and together with the Prepetition Biofuels Bond Liens, the "**Prepetition Bond Liens**").

(iii) Prepetition Biofuels Bonds Collateral. To secure the Prepetition Biofuels Bond Obligations, the Debtors entered into certain guaranty and collateral agreements and certain other security documents, including the Biofuels Bonds Mortgage, Biofuels Bonds Pledge Agreement, and the Biofuels Bonds Security Agreement, governing the Prepetition Biofuels Bonds Secured Parties' security interests in the Prepetition Biofuels Bonds Collateral (such agreements, as amended, restated, amended and restated, supplemented or otherwise modified from time to time, and together with any ancillary collateral documents, including, without limitation, any related mortgages and deeds of trust, the "**Prepetition Biofuels Bonds Collateral Documents**"). Pursuant to the Prepetition Biofuels Bonds Collateral Documents, and on the terms set forth therein, the Debtors granted to the Prepetition Bonds Secured Parties the Prepetition Biofuels Bond Liens on the Prepetition Biofuels Bonds Collateral.

(iv) Prepetition Holdings Bonds Collateral. To secure the Prepetition Holdings Bond Obligations, the Debtors entered into certain guaranty and collateral agreements and certain other security documents, including the Holdings Bonds Security Agreements, governing the Prepetition Holdings Bonds Secured Parties' security interests in the Prepetition Holdings Bonds Collateral (such agreements, as amended, restated, amended and restated, supplemented or otherwise modified from time to time, and together with any ancillary collateral documents, including, without limitation, any related mortgages and deeds of trust, the "**Prepetition Holdings Bonds Collateral Documents**", and together with the Prepetition Biofuels Bonds Collateral Documents, the "**Prepetition Bonds Collateral Documents**"). Pursuant to the Prepetition Holdings Bonds Collateral Documents, and on the terms set forth therein, the Debtors granted to the Prepetition Holdings Bonds Secured Parties the Prepetition Holdings Bond Liens on the Prepetition Holdings Bonds Collateral.

(v) Validity of Prepetition Biofuels Bond Obligations. The Prepetition Biofuels Bond Obligations owing to the Prepetition Biofuels Bonds Secured Parties constitute legal, valid, and binding obligations of the Debtors and the other Prepetition Biofuels Obligors, enforceable against them in accordance with their respective terms (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), and no portion of the Prepetition Biofuels Bond Obligations owing to the applicable Prepetition Biofuels Bonds Secured Parties is subject to avoidance, recharacterization, reduction, set-off, offset, counterclaim, cross-claim, recoupment, defenses, disallowance, impairment, recovery, subordination, or any other challenges pursuant to the Bankruptcy Code or applicable non-bankruptcy law or regulation by any person or entity, including in any Successor Cases (as defined below).

(vi) Validity of Prepetition Holdings Bond Obligations. The Prepetition Holdings Bond Obligations owing to the Prepetition Holdings Bonds Secured Parties constitute legal, valid, and binding obligations of the Debtors and the other Prepetition Holdings Obligors, enforceable against them in accordance with their respective terms (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), and no portion of the Prepetition Holdings Bond Obligations owing to the applicable Prepetition Holdings Bonds Secured Parties is subject to avoidance, recharacterization, reduction, set-off, offset, counterclaim, cross-claim, recoupment, defenses, disallowance, impairment, recovery, subordination, or any other challenges pursuant to the Bankruptcy Code or applicable non-bankruptcy law or regulation by any person or entity, including in any Successor Cases (as defined below).

(vii) Validity of Prepetition Biofuels Bond Liens. The Prepetition Biofuels Bond Liens granted to the Prepetition Biofuels Bonds Secured Parties constitute legal, valid, binding, enforceable (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), and perfected security interests in and liens on the Prepetition Biofuels Bonds Collateral, were granted to, or for the benefit of, the Prepetition Biofuels Bonds Secured Parties for fair consideration and reasonably equivalent value, and are not subject to defense, counterclaim, recharacterization, subordination, avoidance, or recovery pursuant to the Bankruptcy Code or applicable non-bankruptcy law or regulation by any person or entity.

(viii) Validity of Prepetition Holdings Bond Liens. The Prepetition Holdings Bond Liens granted to the Prepetition Holdings Bonds Secured Parties constitute legal, valid, binding, enforceable (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), and perfected security interests in and liens on the Prepetition Holdings Bonds Collateral, were granted to, or for the benefit of, the Prepetition Holdings Bonds Secured

Parties for fair consideration and reasonably equivalent value, and are not subject to defense, counterclaim, recharacterization, subordination, avoidance, or recovery pursuant to the Bankruptcy Code or applicable non-bankruptcy law or regulation by any person or entity.

(ix) No Challenges/Claims. No offsets, challenges, objections, defenses, claims or counterclaims of any kind or nature to any of the Prepetition Bond Liens or Prepetition Bond Obligations exist, and no portion of the Prepetition Bond Liens or Prepetition Bond Obligations is subject to any challenge or defense including, without limitation, avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law. The Debtors and their Estates have no valid Claims (as such term is defined in section 101(5) of the Bankruptcy Code) objections, challenges, causes of action, and/or choses in action against any of the Prepetition Bonds Secured Parties or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors or employees with respect to the Prepetition Bond Documents, the Prepetition Bond Obligations, the Prepetition Bond Liens, or otherwise, whether arising at law or at equity, including, without limitation, any challenge, recharacterization, subordination, avoidance, recovery, disallowance, reduction, or other claims arising under or pursuant to sections 105, 502, 510, 541, 542 through 553, inclusive, or 558 of the Bankruptcy Code or applicable state law equivalents. The Prepetition Bond Obligations constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code.

(x) Indemnity. The DIP Lender has acted in good faith, and without negligence or violation of public policy or law, in respect of all actions taken by it in connection with or related in any way to negotiating, implementing, documenting, or obtaining the requisite approvals of the DIP Facility and the use of Cash Collateral, including in respect of the granting of the DIP Liens

and the Prepetition Bonds Secured Parties Adequate Protection Liens (as defined below), any challenges or objections to the DIP Facility or the use of Cash Collateral, and all documents related to any and all transactions contemplated by the foregoing. Accordingly, the DIP Lender shall be and hereby is indemnified and held harmless by the Debtors in respect of any claim or liability incurred in respect thereof or in any way related thereto in accordance with and as set forth in the DIP Loan Documents, *provided that* no such parties will be indemnified for any cost, expense, or liability to the extent determined in a final, non-appealable judgment of a court of competent jurisdiction to have resulted primarily from such parties' gross negligence or willful misconduct. No exception or defense exists in contract, law, or equity as to any obligation set forth, as the case may be, in this paragraph E(vi), in the Prepetition Bond Documents, or in the DIP Loan Documents, to the Debtors' obligation to indemnify and/or hold harmless the Prepetition Bonds Secured Parties or the DIP Lender, as the case may be.

(xi) Release. Each of the Debtors, their Estates and the Prepetition Obligors, on their own behalf and on behalf of each of their past, present and future predecessors, successors, heirs, subsidiaries, and assigns have agreed to provide releases to each of the Released Parties (as defined below) as provided in Section 5.17 of this Interim Order.

(xii) Cash Collateral. The Debtors admit, stipulate, acknowledge, and agree that, in each case, except for any and all proceeds of the DIP Loans, all other cash of the Debtors, wherever located, and all cash equivalents, including cash in deposit accounts of the Debtors, as income, proceeds, products, rents or profits of other Prepetition Bonds Collateral, or otherwise, constitutes "cash collateral" of the Prepetition Bonds Secured Parties within the meaning of section 363(a) of the Bankruptcy Code (the "**Cash Collateral**").

(F) Findings Regarding the Postpetition Financing and Use of Cash Collateral.

(i) Request for Postpetition Financing. The Debtors have requested from the DIP Lender, and the DIP Lender is willing, subject to the terms of this Interim Order and satisfaction of the conditions set forth in the DIP Loan Documents, to extend the DIP Loans on the terms and conditions set forth in this Interim Order and the DIP Loan Documents, respectively.

(ii) Need for Postpetition Financing and Use of Cash Collateral. The Debtors do not have sufficient liquidity, including Cash Collateral, without the financing requested in the Motion. The Debtors' ability to fund their operations and other efforts and activities is essential to the Debtors' continued viability as the Debtors seek to maximize the value of the assets of the Estates for the benefit of all creditors of the Debtors. The ability of the Debtors to obtain sufficient working capital and liquidity through the proposed postpetition financing arrangements with the DIP Lender and the use of Cash Collateral as set forth in this Interim Order, the DIP Note and the other DIP Loan Documents, as applicable, is vital to the preservation, maximization, and maintenance of the going concern value of each Debtor. Accordingly, the Debtors have an immediate need to obtain the postpetition financing and to use Cash Collateral as set forth in this Interim Order to, among other things, permit the orderly implementation and pursuit of a comprehensive marketing and sale process, and preserve and maximize the value of the assets of the Debtors' Estates to maximize the recovery to all creditors of the Estates.

(iii) No Credit Available on More Favorable Terms. The Debtors are unable to procure financing (x) in the form of unsecured credit allowable as an administrative expense under sections 364(a), 364(b), or 503(b)(1) of the Bankruptcy Code, (y) in exchange for the grant of a superpriority administrative expense under section 364(c)(1) of the Bankruptcy Code, or (z) in exchange for the grant of liens on property of the Estates pursuant to sections 364(c)(2) or 364(c)(3) of the Bankruptcy Code. The Debtors assert in the Motion, the First Day Declaration,

and in the DIP Declaration, and demonstrated at the Interim Hearing, that it would be futile under the circumstances for the Debtors to undertake further efforts to seek, and they would not obtain, the necessary postpetition financing, let alone on terms more favorable, taken as a whole, than the financing offered by the DIP Lender pursuant to the DIP Loan Documents. In light of the foregoing, and considering the futility of all other alternatives, the Debtors have reasonably and properly concluded, in the exercise of their sound business judgment, that the DIP Facility represents the best financing available to the Debtors at this time, and are in the best interests of the Debtors, their Estates, and all of their stakeholders.

(iv) Budget. The Debtors have prepared and delivered to the DIP Lender an initial budget (the "**Initial Budget**"), a copy of which is attached hereto as **Exhibit B**. The Initial Budget reflects the Debtors' projected receipts, disbursements, net cash flow, liquidity and loans for each calendar week during the period from the Petition Date through and including the end of the ninth (9th) calendar week following the Petition Date (the Initial Budget and each subsequent budget approved by the DIP Lender in its sole discretion and then in effect, the "**Approved Budget**"), in each case, subject to (i) with respect to any (A) for the first three Variance Testing Dates (which shall be each Friday of each week after the date hereof) commencing with the first full week after the date hereof, the period commencing on the Petition Date and ending on such Variance Testing Date and (B) thereafter, the four-week period ending on such Variance Testing Date (the "**Variance Testing Period**"), (X) in respect of the aggregate amount of Actual Disbursement Amounts (as defined in the DIP Note), 15% for such Variance Testing Period and (Y) in respect of Actual Cash Receipts (as defined in the DIP Note) 15% for such Variance Testing Period ("**Permitted Variances**"); and (ii) other exclusions set forth in the DIP Loan Documents. The Debtors believe that the Initial Budget is reasonable under the facts and circumstances. The

DIP Lender is relying upon the Debtors' agreement to comply with the terms set forth in the DIP Note, the other DIP Loan Documents, and this Interim Order, and with the Approved Budget, in determining to enter into the postpetition financing arrangements provided for herein and to consent to the Debtors' use of Cash Collateral as set forth herein. The Prepetition Biofuels Bonds Secured Parties are relying upon the Debtors' agreement to comply on the terms set forth in the Initial Budget (and thereafter any Approved Budget) and this Interim Order in determining to consent to the use of Cash Collateral and entering into the postpetition financing arrangements provided for herein. The Debtors shall provide the DIP Lender a revised proposed budget every other Thursday commencing with the second Thursday after the date hereof and continuing each two week period thereafter (each, a "**Proposed Budget**"). If a Proposed Budget is approved by the DIP Lender, it shall become the Approved Budget.

(v) Sale Process. The DIP Lender's willingness to make the DIP Loans and the Prepetition Bonds Secured Parties' willingness to consent to the use of Cash Collateral (each on the terms and subject to the conditions set forth in the DIP Loan Documents and this Interim Order) is predicated upon (i) the Debtors filing a motion seeking approval of an order approving, among other things, the DIP Lender as a stalking horse bidder, the Bidding Procedures, the Break-Up Fee, and the Expense Reimbursement (each as defined in the Stalking Horse Purchase Agreement, as defined in the DIP Note) in the form attached as Exhibit A to the Stalking Horse Purchase Agreement and otherwise in form and substance acceptable to DIP Lender (the "**Bidding Procedures Order**" and the motion seeking entry of such order, the "**Bidding Procedures Motion**") in accordance with the Milestones (as defined in the DIP Note) and (ii) the Debtors' agreement to the Milestones as set forth in the DIP Note. Absent such arrangements, the DIP Lender and the Prepetition Bonds Secured Parties would not have agreed to make the DIP Loans

or consent to the use of Cash Collateral as provided in the DIP Loan Documents and this Interim Order.

(vi) Certain Conditions to DIP Facility. The DIP Lender's willingness to make the DIP Loans is conditioned upon, among other conditions set forth in the DIP Note: (a) the Debtors obtaining Court approval to enter into the DIP Loan Documents and to incur all of the obligations thereunder, and to confer upon the DIP Lender all applicable rights, powers, and remedies thereunder in each case as modified by this Interim Order; (b) the Debtors' obtaining Court approval of and compliance with the "**Milestones**" set forth in the DIP Note, which are hereby approved in all respects; and (c) the DIP Lender being granted, as security for the prompt payment of the DIP Facility and all other obligations of the Debtors under the DIP Loan Documents, perfected security interests in and liens upon all property and assets of the Debtors, other than assets of Fulcrum BioEnergy, Inc., including, but not limited to, a valid and perfected security interest in and lien upon all of the following now existing or hereafter arising or acquired property and assets: (i) all property and assets comprising Prepetition Bonds Collateral and (ii) all other property and assets of the Debtors, including any property or assets consisting of "**Excluded Collateral**"[6] under any of the Prepetition Bond Documents and any other Collateral Documents (as defined in the DIP Note) (collectively hereinafter referred to as the "**DIP Collateral**" which, for avoidance of doubt, shall (subject to the entry of the Final Order) include, the proceeds (the "**Avoidance Proceeds**") of any claim or cause of action arising under or pursuant to chapter 5 of the Bankruptcy Code or under any other similar provisions of applicable state, federal, or foreign

[6] For the avoidance of doubt, DIP Collateral shall not include the FT Catalyst and FT CANS (as defined in the DIP Note).

law (including any other avoidance actions under the Bankruptcy Code) (collectively, the "**Avoidance Actions**")).

(vii) Business Judgment and Good Faith Pursuant to Section 364(e). Any credit extended, loans made, and other financial accommodations extended to the Debtors by the DIP Lender, including, without limitation, pursuant to this Interim Order, has been extended, issued, or made, as the case may be, in "good faith" within the meaning of section 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and the DIP Facility, the DIP Liens, and the DIP Superpriority Claim (as defined below) shall be entitled to the full protection of section 364(e) of the Bankruptcy Code.

(viii) Sections 506(c) and 552(b). The Debtors have agreed as a condition to obtaining financing under the DIP Facility and the use of Cash Collateral as set forth in this Interim Order that as a material inducement to the DIP Lender to agree to provide the DIP Facility and the Prepetition Bonds Secured Parties' consent to the priming by the DIP Facility and to the use of Cash Collateral as set forth in this Interim Order, and in exchange for (a) the DIP Lender's willingness to provide the DIP Facility to the extent set forth herein, (b) the DIP Lender's and the Prepetition Bonds Secured Parties' agreement to subordinate their liens and superpriority claims to the Carve-Out, and (c) the consensual use of Cash Collateral consistent with the Approved Budget, the terms of the DIP Note, and the terms of this Interim Order, subject to the entry of a Final Order, the DIP Lender and each of the Prepetition Bonds Secured Parties are entitled to receive (1) a waiver of any equities of the case exceptions or claims under section 552(b) of the Bankruptcy Code, and (2) a waiver of the provisions of section 506(c) of the Bankruptcy Code.

(ix) Good Cause. Good cause has been shown for the entry of this Interim Order. The relief requested in the Motion is necessary, essential, and appropriate under the

circumstances as its implementation will, among other things, provide the Debtors with the necessary liquidity to (1) pursue a Court-approved marketing and sale process, (2) preserve and maximize the value of the Debtors' Estates for the benefit of all the Debtors' creditors, and (3) avoid immediate and irreparable harm to the Debtors, their creditors, and their assets. The terms of the DIP Facility and this Interim Order are fair and reasonable, reflect each Debtor's exercise of its business judgment, and are supported by reasonably equivalent value and fair consideration. The DIP Facility and this Interim Order are the product of reasonable, arm's length, good faith negotiations between the Debtors, the DIP Lender and the Prepetition Bonds Secured Parties.

(x) Adequate Protection. The Prepetition Bonds Secured Parties are entitled, pursuant to sections 361, 362, 363, and 364 of the Bankruptcy Code, to receive adequate protection against any Diminution in Value of their respective interests in the Prepetition Bonds Collateral (including Cash Collateral), as set forth in this Interim Order.

(xi) Immediate Entry. Sufficient cause exists for immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(c)(2). Any objections that were made (to the extent such objections have not been withdrawn, waived, resolved, or settled) are hereby overruled on the merits.

(xii) Interim Hearing. Notice of the Interim Hearing and the relief requested in the Motion has been provided by the Debtors, whether by facsimile, electronic mail, overnight courier or hand delivery, to (a) the Office of the United States Trustee for the District of Delaware, (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) the DIP Lender; (d) the Biofuels Trustee, (e) PLC Administration LLC ("**PLC**"); (f) the Office of the United States Attorney for the District of Delaware; (g) the Internal Revenue Service; (h) all parties that, to the best of the Debtor's knowledge, information, and belief, have asserted a lien

in the Debtor's assets; (i) the Securities and Exchange Commission; (j) the Banks; (k) any party that has requested notice pursuant to Bankruptcy Rule 2002; and (l) any such other party entitled to notice pursuant to Local Rule 9013-1(m). Under the circumstances, such notice of the Interim Hearing and the relief requested in the Motion complies with section 102(1) of the Bankruptcy Code, Bankruptcy Rules 2002 and 4001(b) and (c), and the Local Rules.

Based upon the foregoing, and upon the record made before the Court at the Interim Hearing and after due consideration and good cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

Section 1. Authorization and Conditions to Financing and Use of Cash Collateral.

1.1 Motion Granted. The Motion is granted on an interim basis solely to the extent provided in this Interim Order. Any objections to the entry of this Interim Order that have not been withdrawn, waived, resolved, or settled, are hereby denied and overruled on the merits.

1.2 Authorization of DIP Financing and Use of Cash Collateral.

(a) The Debtors are hereby authorized to immediately borrow, incur, and guarantee (as applicable) the DIP Loans, pursuant to the terms and conditions of the DIP Loan Documents, this Interim Order and the Approved Budget, in an aggregate principal amount not to exceed $3,204,103, with such Interim DIP Loan to be made upon entry of this Interim Order and satisfaction of other conditions set forth in the DIP Loan Documents and in accordance with the Approved Budget.

(b) The Debtors are hereby authorized to (i) borrow under the DIP Facility and use Cash Collateral during the period (the "**Interim Financing Period**") commencing on the date of this Interim Order through and including the earlier to occur of (x) the date of entry of the Final Order or (y) the occurrence of a DIP Termination Event (as defined below) solely in accordance

with, and for the purposes permitted by, the DIP Loan Documents, this Interim Order and the Approved Budget and (ii) pay all interest, costs, fees, and other amounts and obligations accrued or accruing under the DIP Note and other DIP Loan Documents, all pursuant to the terms and conditions of this Interim Order, the Approved Budget, the DIP Note, and the other DIP Loan Documents. The Initial Budget is hereby approved in all respects.

1.3 Financing Documents.

(a) Authorization. The Debtors are hereby authorized to enter into, execute, deliver, and perform all obligations under the DIP Loan Documents. No obligation, payment, transfer, or grant of security hereunder or under the DIP Loan Documents shall be stayed, restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under any applicable state, federal, or foreign law (including, without limitation, under chapter 5 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or foreign law), or be subject to any defense, reduction, setoff, counterclaim, recoupment, offset, recharacterization, subordination (whether equitable, contractual or otherwise), cross-claims, or any other challenge under the Bankruptcy Code or any applicable law, rule, or regulation by any person or entity.

(b) Approval; Evidence of Borrowing Arrangements. The DIP Loan Documents and DIP Obligations shall be valid, binding, and enforceable against the Debtors, their Estates, and any successors thereto, including, without limitation, any trustee appointed in any of these Chapter 11 Cases or any case under chapter 7 of the Bankruptcy Code upon the conversion of any of these Chapter 11 Cases (collectively, the "**Successor Cases**"), and their creditors and other parties in interest, in each case, in accordance with the terms of this Interim Order and the DIP Loan Documents.

(c) Payment of DIP Fees and Other Expenses. Any and all fees and expenses payable pursuant to the DIP Loan Documents (collectively, any and all such fees and expenses, the "**DIP Fees**") are hereby approved and the Debtors are hereby authorized to pay, in cash, all reasonable and documented out-of-pocket costs, disbursements, and expenses the DIP Lender incurred at any time, as provided by the DIP Loan Documents and this Interim Order in accordance with Section 5.15 hereof upon the presentment to the Office of the U.S. Trustee, counsel for the Committee (if any), and the Debtors of their fee and expense statements or invoices, in summary form, which shall not be required to contain time entries but shall include the number of hours billed by the applicable professional and a summary statement of services provided and the expenses incurred (redacted if necessary for privileged, confidential or otherwise sensitive information), to the extent available in the Approved Budget and in accordance with the DIP Note. For the avoidance of doubt, the professionals to the DIP Lender shall not be required to file an application seeking compensation for services or reimbursement of expenses with the Court or comply with the U.S. Trustee fee guidelines. Within ten (10) calendar days of presentment of such statements, if no written objection to the reasonableness of the fees and expenses charged in any such invoice (or portion thereof) is made by the U.S. Trustee, the Committee (if any), or the Debtors, the Debtors shall pay in cash all such fees and expenses of the DIP Lender, and its advisors and professionals. Any such objection to the payment of such fees or expenses shall specify in writing the amount of the contested fees and expenses and the detailed basis for such objection. To the extent such an objection only contests a portion of an invoice, the undisputed portion thereof shall be promptly paid. If any such objection to payment of an invoice (or any portion thereof) is not otherwise resolved between the objecting party and the issuer of the invoice, either party may submit such dispute to the Court for a determination as to the reasonableness of

the relevant disputed fees and expenses set forth in the invoice. This Court shall resolve any dispute as to the reasonableness of any fees and expenses. Except as otherwise provided in this Interim Order, the DIP Fees shall not be subject to any offset, defense, claim, counterclaim, or diminution of any type, kind, or nature whatsoever.

(d) Amendments to DIP Loan Documents. Subject to the terms and conditions of the applicable DIP Loan Documents, the Debtors and the DIP Lender may make amendments, modifications, or supplements to any DIP Loan Document, and the DIP Lender may waive any provisions in the DIP Loan Documents, without further approval of the Court; *provided that* any amendments, modifications, or supplements to any DIP Loan Documents that operate to increase the aggregate commitments, the rate of interest payable thereunder, or existing fees, or to add new fees thereunder (excluding, for the avoidance of doubt, any amendment, consent or waiver fee) other than as currently provided in the DIP Loan Documents (collectively, the "**Material DIP Amendments**"), shall be filed with the Court, and the Debtors shall provide not less than three (3) Business Days prior written notice of any Material DIP Amendment and the proposed the effective date thereof to (i) counsel to the Committee, or, in the event no such Committee is appointed at the time of such Material DIP Amendment, the Debtors' 30 largest unsecured creditors on a consolidated basis and (ii) the U.S. Trustee; *provided*, *further*, *that* the consent of the foregoing parties will not be necessary to effectuate any such amendment, modification or supplement, except that any Material DIP Amendment that is subject to an objection filed and served on the DIP Lender and the Debtors within three (3) Business Days following receipt of such Material DIP Amendment must be approved by the Court prior to becoming effective. For the avoidance of doubt, the Debtors must receive written consent as to any Material DIP Amendment prior to filing notice thereof with the Court from the Biofuels Trustee.

1.4 Indemnification. The Debtors are authorized to indemnify and hold harmless the DIP Lender, and, each Indemnified Person (as defined in the DIP Loan Documents), in accordance with, and as set forth in, the DIP Note.

Section 2. Postpetition Lien; Superpriority Administrative Claim Status.

2.1 Postpetition Lien.

(a) Postpetition DIP Lien Granting. To secure performance and payment when due (whether at the stated maturity, by acceleration or otherwise) of any and all DIP Obligations of the Debtors to the DIP Lender of whatever kind, nature, or description, whether absolute or contingent, now existing or hereafter arising, the DIP Lender shall have and is hereby granted, effective as of the Petition Date, continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected security interests in and liens (collectively, the "**DIP Liens**") in and upon all DIP Collateral, subject and subordinate to the Carve-Out and Permitted Liens and the rankings and priority set forth in Section 2.1(b) below.

(b) DIP Lien Priority in DIP Collateral. The DIP Liens on the DIP Collateral securing the DIP Obligations shall be first and senior in priority to all other interests and liens of every kind, nature, and description, whether created consensually, by an order of the Court or otherwise, including, without limitation, liens or security interests granted in favor of third parties in conjunction with sections 363, 364, or any other section of the Bankruptcy Code or other applicable law; *provided*, *however*, *that* the DIP Liens on (A) the Prepetition Bonds Collateral (whether in existence on the Petition Date or hereafter arising) shall be subject to the Carve-Out and Permitted Liens;[7] (B) assets of the Debtors, excluding the assets of Fulcrum BioEnergy, Inc.

[7] For purposes of this Interim Order, "**Permitted Liens**" shall mean any liens that are senior by operation of law (including any such liens that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code) or that were, as of the Petition Date, valid, properly perfected, non-avoidable and senior in priority to the Prepetition Bond Liens.

(the "**Non-Bondholder Encumbered Assets**") that were subject to validly perfected liens or security interests as of the Petition Date other than the Prepetition Bond Liens (if any, the "**Non-Bondholder Existing Liens**") shall be subject to such Non-Bondholder Existing Liens and the Carve-Out; and (C) any other assets of the Debtors ("**Unencumbered Assets**") that were not subject to any validly perfected liens or security interest as of the Petition Date (including, subject to the entry of a Final Order, Avoidance Proceeds) shall be subject and subordinate to the Carve-Out. For the avoidance of doubt, the DIP Liens shall prime and be senior to the Prepetition Bond Liens of the Prepetition Bonds Secured Parties on the Prepetition Bonds Collateral.

(c) Postpetition Lien Perfection. This Interim Order shall be sufficient and conclusive evidence of the priority, perfection, and validity of the DIP Liens, the Prepetition Bonds Secured Parties Adequate Protection Liens, and the other security interests granted herein, effective as of the Petition Date, without any further act and without regard to any other federal, state, or local requirements or law requiring notice, filing, registration, recording, or possession of the DIP Collateral, or other act to validate or perfect such security interest or lien, including, without limitation, control agreements with any financial institution(s) party to a control agreement or other depository account consisting of DIP Collateral, or requirement to register liens on any certificates of title (a "**Perfection Act**"). Notwithstanding the foregoing, if the DIP Lender or the Prepetition Trustees, as applicable, shall, in their sole discretion, elect for any reason to file, record, or otherwise effectuate any Perfection Act, then the DIP Lender or Prepetition Trustees, as applicable, is authorized to perform such act, and the Debtors are authorized and directed to perform such act to the extent necessary or required by the DIP Loan Documents and this Interim Order, which act or acts shall be deemed to have been accomplished as of the date and time of entry of this Interim Order notwithstanding the date and time actually accomplished, and, in such

event, the subject filing or recording office is authorized to accept, file, or record any document in regard to such act in accordance with applicable law. The DIP Lender or Prepetition Trustees, as applicable, may choose to file, record, or present a certified copy of this Interim Order in the same manner as a Perfection Act, which shall be tantamount to a Perfection Act, and, in such event, the subject filing or recording office is authorized to accept, file, or record such certified copy of this Interim Order in accordance with applicable law. Should the DIP Lender or Prepetition Trustees, as applicable, so choose and attempt to file, record, or perform a Perfection Act, no defect or failure in connection with such attempt shall in any way limit, waive, or alter the validity, enforceability, attachment, priority, or perfection of the postpetition liens and security interests granted herein by virtue of the entry of this Interim Order.

(d) To the extent that any applicable non-bankruptcy law otherwise would restrict the granting, scope, enforceability, attachment, or perfection of any liens and security interests granted and created by this Interim Order (including the DIP Liens and the Prepetition Bonds Secured Parties Adequate Protection Liens) or otherwise would impose filing or registration requirements with respect to such liens and security interests, such law is hereby preempted to the maximum extent permitted by the Bankruptcy Code, applicable federal or foreign law, and the judicial power and authority of this Court; *provided*, *however*, *that* nothing herein shall excuse the Debtors from payment of any local fees, if any, required in connection with such liens. By virtue of the terms of this Interim Order, to the extent that the DIP Lender or Prepetition Trustees, as applicable, has filed Uniform Commercial Code financing statements, mortgages, deeds of trust, or other security or perfection documents under the names of any of the Debtors (including all Guarantors), such filings shall be deemed to properly perfect its liens and security interests granted

and confirmed by this Interim Order without further action by the DIP Lender or Prepetition Trustees, as applicable.

(e) Except as provided in this Interim Order, the DIP Liens, the DIP Superpriority Claim, the Prepetition Bonds Secured Parties Adequate Protection Liens, and the Prepetition Bonds Secured Parties Adequate Protection Claims (as defined below) (i) shall not be made subject to or *pari passu* with (A) any lien, security interest, or claim heretofore or hereinafter granted in any of these Chapter 11 Cases or any Successor Cases and shall be valid and enforceable against the Debtors, their Estates, any trustee, or any other estate representative appointed or elected in these Chapter 11 Cases or any Successor Cases and/or upon the dismissal of any of these Chapter 11 Cases or any Successor Cases; (B) any lien that is avoided and preserved for the benefit of the Debtors and their Estates under section 551 of the Bankruptcy Code or otherwise; and (C) any intercompany or affiliate lien or claim; and (ii) shall not be subject to sections 510, 549, 550, or 551 of the Bankruptcy Code.

2.2 Superpriority Administrative Expenses.

(a) DIP Loans. Subject to the Carve-Out, on account of all DIP Obligations now existing or hereafter arising pursuant to this Interim Order, the DIP Loan Documents, or otherwise, the DIP Lender is granted allowed superpriority administrative expense claims pursuant to section 364(c)(1) of the Bankruptcy Code, having priority in right of payment over any and all other obligations, liabilities, and indebtedness of the Debtors (including, for the avoidance of doubt, Debtor Fulcrum BioEnergy, Inc.), whether now in existence or hereafter incurred by the Debtors, and over any and all administrative expenses or priority claims of the kind specified in, or ordered pursuant to, *inter alia*, sections 105, 326, 328, 330, 331, 364(c)(1), 365, 503(b), 507(a), 507(b), 546(c), 1113, or 1114 of the Bankruptcy Code, whether or not such expenses or claims

may become secured by a judgment lien or other non-consensual lien, levy, or attachment, which allowed superpriority administrative claim shall be payable from and have recourse to all prepetition and postpetition property of the Debtors (including, for the avoidance of doubt, Debtor Fulcrum BioEnergy, Inc.) and all proceeds thereof (including, subject to entry of the Final Order, proceeds of Avoidance Actions) (such superpriority administrative expense claim, the "**DIP Superpriority Claim**").

2.3 Carve-Out. For purposes of this Interim Order, "**Carve-Out**" shall mean: (i) all fees required to be paid to the Clerk of the Court and to the U.S. Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below) (collectively, the "**Statutory Fees**"); plus the sum of (ii) all reasonable fees and expenses up to $25,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below) (the "**Chapter 7 Trustee Carve-Out**"); (iii) to the extent allowed at any time, whether by final order, interim order, procedural order, or otherwise, subject to the Approved Budget, all unpaid fees, costs, disbursements and expenses (the "**Allowed Professional Fees**") incurred or earned by persons or firms retained by the Debtors pursuant to sections 327, 328, or 363 of the Bankruptcy Code (the "**Debtor Professionals**") or the Committee pursuant to sections 327, 328 or 1103 of the Bankruptcy Code (the "**Committee Professionals**" and, together with the Debtor Professionals, the "**Professionals**") at any time before or on the first business day following delivery by the DIP Lender of a Carve-Out Trigger Notice (as defined below), whether allowed by the Court prior to, on or after delivery of a Carve-Out Trigger Notice (the "**Pre-Trigger Carve-Out Cap**"); and (iv) Allowed Professional Fees of Professional in an aggregate amount not to exceed $250,000 (inclusive of any prepetition retainer held by the applicable Professional Person to the extent not previously applied or returned)

incurred after the first business day following delivery by the DIP Lender of the Carve-Out Trigger Notice (such date, the "**Trigger Date**"), to the extent allowed at any time, whether by final order, interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the "**Post-Carve-Out Trigger Notice Cap**" and such amounts set forth in clauses (i) through (iv), the "**Carve-Out Cap**"); *provided that*, nothing herein shall be construed to impair any party's ability to object to court approval of the fees, expenses, reimbursement of expenses or compensation of any Professional Person. For purposes of the foregoing, "**Carve-Out Trigger Notice**" shall mean a written notice delivered by email by the DIP Lender to the Debtors, their restructuring counsel, counsel to the Prepetition Trustees, the U.S. Trustee, and counsel to the Committee, if any (collectively, the "**Carve-Out Trigger Notice Parties**"), which notice may be delivered following the occurrence and during the continuation of a DIP Termination Event, and shall describe in reasonable detail such DIP Termination Event that is alleged to have occurred and be continuing and stating that the Post-Carve-Out Trigger Notice Cap has been invoked. Neither the DIP Lender nor the Prepetition Bonds Secured Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with the Chapter 11 Cases or any Successor Cases under any chapter of the Bankruptcy Code, other than payment or reimbursement of any fees or disbursements from proceeds of DIP Collateral to the extent of the Carve-Out. Nothing in this Interim Order or otherwise shall be construed to obligate the DIP Lender or the Prepetition Bonds Secured Parties, in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

2.4 **Professional Fees Escrow Account.** The Debtors are authorized to open a new bank account or designate an existing bank account that shall function as a segregated account held

in trust for and exclusively available for the payment of fees and expenses of Professionals pursuant to this Interim Order (the "**Professional Fees Escrow Account**") in the amount equal to, but not to exceed, the Allowed Professional Fees budgeted for Professionals retained by the Debtors and a Committee, if any (the "**Budgeted Professional Expenses**"). Except for funding the Carve-Out from the DIP Collateral, the DIP Lender shall have no responsibility, liability, or obligation whatsoever to fund, direct payment or reimbursement of any fees or disbursements, or otherwise ensure that the Debtors fund the Professional Fees Escrow Account or that the Professional Fees Escrow Account has funds equal to the aggregate amount of the Budgeted Professional Expenses for any applicable period. The Debtors are authorized and directed to fund the Professional Fees Escrow Account on a weekly basis in an amount up to, but not to exceed, the Budgeted Professional Expenses for that week. Such funds shall be held in an identifiable segregated account for the benefit of the Professionals to be applied to the Allowed Professional Fees of the Professionals that are approved for payment pursuant to one or more orders of this Court. Any Allowed Professional Fees payable to the Professionals shall be paid first out of the Professional Fees Escrow Account. Any excess amounts in the Professional Fees Escrow Account after payment of the Professional Fees shall be subject in all respects to the DIP Liens. The funds in the Professional Fees Escrow Account shall remain DIP Collateral (subject to the Carve-Out) unless and until such funds are paid to the Professionals.

2.5 Prepetition Bonds Secured Parties Adequate Protection.

(a) Adequate Protection Claims and Liens. The Prepetition Bonds Secured Parties are entitled, pursuant to sections 361, 363(e), 364(d)(1), 503(b), 507(a), and 507(b) of the Bankruptcy Code and effective as of the Petition Date, to adequate protection of their respective interests in the Prepetition Bonds Collateral, including any Cash Collateral, in an amount equal to

the aggregate Diminution in Value of the Prepetition Bonds Secured Parties' interests in the Prepetition Bonds Collateral from and after the Petition Date. On account of such adequate protection, the Prepetition Bonds Secured Parties are hereby granted the following, in each case subject to the DIP Liens and the Carve-Out (collectively, the "**Adequate Protection**"):

(i) Prepetition Adequate Protection Liens. Subject to Section 4.1 and in addition to all valid and enforceable security interests existing in favor of the Prepetition Bonds Secured Parties and not in substitution thereof, the Prepetition Bonds Secured Parties are hereby granted (effective and perfected upon the date of this Interim Order and without the necessity of any Perfection Act) valid and perfected postpetition replacement security interests in and liens upon the DIP Collateral (the "**Prepetition Adequate Protection Liens**"), which liens shall be, with respect to: (A) the Prepetition Bonds Collateral (whether in existence on the Petition Date or hereafter arising), subject and subordinate solely to the Carve-Out, Permitted Liens and the DIP Liens; (B) the Non-Bondholder Encumbered Assets, subject to the Non-Bondholder Existing Liens, the Carve-Out and the DIP Liens; and (C) Unencumbered Assets, subject to the Carve-Out and the DIP Liens.

(ii) Adequate Protection Superpriority Claims. To the extent of any Diminution in Value, the Prepetition Bonds Secured Parties are hereby granted allowed superpriority administrative expense claims pursuant to sections 503(b), 507(a), and 507(b) of the Bankruptcy Code (the "**Prepetition Bonds Secured Parties Adequate Protection Claims**"), which shall be allowed claims against each of the Debtors (jointly and severally), with priority (except as otherwise provided herein) over any and all administrative expenses and all other claims against the Debtors now existing or hereafter arising, of any kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and all other administrative expenses or other claims arising under any

other provision of the Bankruptcy Code, including, without limitation, sections 105, 326, 327, 328, 330, 331, 365, 503(b), 507(a), 507(b), or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other nonconsensual lien, levy, or attachment. The Prepetition Bonds Secured Parties Adequate Protection Claims shall be payable from and have recourse to all pre- and post-petition property of the Debtors, subject to the Carve-Out, Permitted Liens, and the DIP Superpriority Claims.

(b) Reporting. The Debtors shall timely provide the Prepetition Bonds Secured Parties with (x) reasonable access to the Debtors' facilities, management, books, and records required under the Prepetition Bond Documents and (y) copies of all financial reporting provided to the DIP Lender pursuant to the DIP Loan Documents substantially simultaneously with such delivery to the DIP Lender.

Section 3. DIP Termination Events; Waivers; Rights and Remedies; Relief from Stay.

3.1 DIP Termination Events. Each of the following shall constitute a "DIP Termination Event" unless waived in writing by the DIP Lender and in accordance with the applicable DIP Loan Documents: (i) the occurrence of any "**Event of Default**" as that term is defined in the DIP Note; (ii) any failure to meet or satisfy any Milestone in accordance with the applicable DIP Loan Documents; (iii) the occurrence of the "**Maturity Date**" as defined in the DIP Note; (iv) any material violation, breach, or default by any Debtor with respect to any of its obligations under this Interim Order or the DIP Loan Documents; (v) the termination of the DIP Loan Documents, or the modification of this Interim Order in a manner adverse to the DIP Lender or any of the Prepetition Bonds Secured Parties without the prior written consent of such party; (vi) entry of any order authorizing any party in interest to reclaim any of the DIP Collateral, granting any party in interest relief from the automatic stay with respect to the DIP Collateral, or requiring that Debtors

turnover any of the DIP Collateral, in each case prior to full, final and indefeasible repayment in full in cash of all DIP Obligations and Prepetition Bond Obligations and with respect to DIP Collateral having value in excess of $25,000; (vii) conversion of any Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code; (viii) a trustee is appointed or elected in any Chapter 11 Case, or an examiner with the power to operate the Debtors' businesses is appointed in any Case; (ix) the date that is thirty-five (35) calendar days following the entry of this Interim Order if a Final Order is not entered in form and substance acceptable to the DIP Lender and the Prepetition Bonds Secured Parties by such date; (xi) the date of the Final Hearing, if this Interim Order is modified at the Final Hearing in a manner unacceptable to the DIP Lender or the Prepetition Bonds Secured Parties; (xii) the Debtors shall withdraw the Bidding Procedures Motion and/or propose an Alternative Transaction (as defined in the Stalking Horse Purchase Agreement) that, in any case, does not provide for the repayment in full, in cash, of the DIP Obligations directly from the proceeds of such Alternative Transaction and upon the initial closing of such Alternative Transaction; (xiii) the DIP Lender shall have received a Phase II environmental site assessment of the Real Property (as defined in the Stalking Horse Purchase Agreement), conducted by a firm selected by the DIP Lender, which contains evidence of contamination at the applicable site(s) above applicable thresholds such that any further investigation or that are above the amounts listed in the Phase I environmental site assessment or similar report previously received by the DIP Lender or any Material Remediation (as defined in the Stalking Horse Purchase Agreement) 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 the Debtors within a reasonable time upon receipt

by the DIP Lender; provided, further, that the DIP Lender may not terminate if the Debtors agree to reduce the Purchase Price (as defined in the Stalking Horse Purchase Agreement) by the amount of the estimated costs of the Material Remediation; and (xiv) any modification, amendment, vacatur or stay of this Interim Order in any manner not consented to in writing by the DIP Lender and the Biofuels Trustee.

3.2 Additional DIP Termination Events.

(a) Prior to the payment in full in cash of all Prepetition Bond Obligations and all DIP Obligations, any request by the Debtors with respect to the following shall also constitute a DIP Termination Event: (i) to obtain postpetition loans or other financial accommodations pursuant to section 364(c) or 364(d) of the Bankruptcy Code that does not provide for the repayment in full in cash of the DIP Obligations at the initial closing of such transaction, other than as provided in this Interim Order or as may be otherwise permitted pursuant to the DIP Loan Documents; (ii) to challenge the application of any payments authorized by this Interim Order pursuant to section 506(b) of the Bankruptcy Code; (iii) to propose or support any challenge pursuant to Section 4.1 of this Interim Order, or any challenge by any party in interest seeking to limit or prevent the DIP Lender or the Prepetition Bonds Secured Parties from exercising their credit bid rights in connection with the sale of any assets of the Debtors; *provided*, *that* the Debtors' response to any information request by a party in interest shall not constitute "support" of a challenge; or (iv) to seek relief under the Bankruptcy Code, including, without limitation, under section 105 of the Bankruptcy Code, to the extent any such relief would interfere with or modify (A) the rights and remedies of the DIP Lender or any of the Prepetition Bonds Secured Parties against the Debtors as provided in this Interim Order, any of the DIP Loan Documents or any of the Prepetition Bond Documents (B) the exercise of such rights or remedies by the DIP Lender or

any of the Prepetition Bonds Secured Parties against the Debtors in accordance with the DIP Loan Documents, this Interim Order or the Prepetition Bond Documents; *provided*, *however*, *that* the DIP Lender and the Biofuels Trustee may otherwise consent in writing, but no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Lender and the Prepetition Bonds Secured Parties.

(b) It shall also be a DIP Termination Event if the Debtors propose or support any chapter 11 plan or the sale of all or substantially all of the Debtors' assets (other than pursuant to the Sale Procedures Motion and the Sale Motion), or seek entry of an order confirming a chapter 11 plan or approving such non-conforming sale, that is not conditioned upon the payment of the DIP Obligations, in full in cash, directly from the proceeds of such transaction and upon the initial closing of such transaction, without the written consent of the DIP Lender and the Biofuels Trustee, as applicable.

3.3 Rights and Remedies upon a DIP Termination Event. Upon the expiration of five (5) business days following the delivery of a written notice by the DIP Lender of the occurrence of and during the continuance of a DIP Termination Event (such five (5) business day period, the "**Remedies Notice Period**"), (a) the DIP Lender shall be entitled to take any act or exercise any right or remedy as provided in this Interim Order or any DIP Loan Document, as applicable, including, without limitation, (i) declare all DIP Obligations owing under the DIP Loan Documents to be immediately due and payable; (ii) terminate, reduce, or restrict any commitment to extend additional credit to the Debtors to the extent any such commitment remains; (iii) terminate the DIP Facility and any DIP Loan Document as to any future liability or obligation of the DIP Lender, but without affecting any of the DIP Obligations or the DIP Liens securing the DIP Obligations; (iv) invoke the right to charge interest at the default rate under the DIP Loan Documents; and/or (v)

stop lending; and (b) the Biofuels Trustee shall (i) be entitled to terminate and/or revoke the Debtors' right, if any, under this Interim Order and the other DIP Loan Documents to use any Cash Collateral and all such authority to use Cash Collateral shall cease and (ii) have automatic and immediate relief from the automatic stay with respect to the Prepetition Bonds Collateral (without regard to the passage of time provided for in Fed. R. Bankr. P. 4001(a)(3)), and shall be entitled to exercise all rights and remedies available under the Prepetition Bond Documents and applicable non-bankruptcy law. For the avoidance of doubt, notwithstanding the foregoing, during the Remedies Notice Period, the Debtors may use Cash Collateral to fund the Carve-Out and in amounts necessary to avoid immediate and irreparable harm to the Debtors' Estates all in accordance with this Interim Order and the Approved Budget, or that have otherwise been approved in advance in writing by the DIP Lender.

3.4 Modification of Automatic Stay. The automatic stay provisions of section 362 of the Bankruptcy Code and any other restriction imposed by an order of the Court or applicable law are hereby modified without further notice, application, or order of the Court to the extent necessary to (i) permit the DIP Lender and Prepetition Trustees to perform any act authorized or permitted under or by virtue of this Interim Order, the DIP Note, or the other DIP Loan Documents, as applicable, including, without limitation, (i) to implement the postpetition financing arrangements authorized by this Interim Order, (ii) to take any act to create, validate, evidence, attach or perfect any lien, security interest, right or claim in the DIP Collateral, (iii) to assess, charge, collect, advance, deduct and receive payments with respect to the Prepetition Bond Obligations and DIP Obligations (or any portion thereof), including, without limitation, all interests, fees, costs, and expenses permitted under any of the DIP Loan Documents, and (iv) subject to the Remedies Notice Period, and *provided that* the Debtors or any party in interest with

requisite standing has not obtained an order from this Court to the contrary prior to the expiration of the Remedies Notice Period, to take any action and exercise all rights and remedies provided to it by this Interim Order, the DIP Loan Documents, or applicable law.

Section 4. Representations and Covenants.

4.1 Reservation of Third Party Challenge Rights. The stipulations, releases, agreements, and admissions contained in this Interim Order, including, without limitation, paragraph E hereof, and the releases contained in clause (vii) thereof, and paragraph 5.17 hereof (collectively, the "**Prepetition Lien and Claim Matters**"), shall be binding on the Debtors, any subsequent trustee, responsible person, examiner with expanded powers, any other estate representative and all creditors and parties-in-interest, and all of their successors in interest and assigns, including without limitation the Committee, unless, and solely to the extent that (a) a party-in-interest has sought standing and requisite authority to commence a Challenge (as defined below) (other than the Debtors, as to which the ability to commence any Challenge is irrevocably waived and relinquished) by timely filing an appropriate pleading (which shall include as an attachment or exhibit any applicable adversary complaint) under the Bankruptcy Code and Bankruptcy Rules, including, without limitation, as required pursuant to Part VII of the Bankruptcy Rules (in each case subject to the limitations set forth in this paragraph 4.1) challenging all or any portion of the Prepetition Lien and Claim Matters (each such proceeding or appropriate pleading commencing an adversary proceeding or other contested matter, a "**Challenge**") by no later than (i) the date which is 75 calendar days after entry of this Interim Order, (ii) any such later date as has been agreed to, in writing, by the Biofuels Trustee, or (iii) such later date as set by an order of the Court for cause shown (such time period established by the foregoing clauses (i) through (iii), the "**Challenge Period**"); *provided that* if a chapter 11 trustee is appointed or the Chapter 11 Cases

are converted to cases under chapter 7 prior to the expiration of the Challenge Period, the chapter 11 or chapter 7 trustee, as applicable, shall have until the later of (1) the expiration of the Challenge Period, and (2) the thirtieth (30th) day after the appointment of the chapter 11 trustee or conversion of the Chapter 11 Cases to cases under chapter 7, as applicable, to commence a Challenge; *provided further*, if any adversary proceeding or contested matter is timely filed and is pending on the date, if any, on which any of the Chapter 11 Cases are converted to chapter 7, the chapter 7 trustee may continue to prosecute such adversary proceeding or contested matter on behalf of the Debtors' estates, without any further authorization or order of the Court.

4.2 Binding Effect. To the extent no Challenge is timely commenced by the expiration of the Challenge Period, or to the extent such proceeding does not result in a final non-appealable judgment or order of this Court that is inconsistent with the Prepetition Lien and Claim Matters, then, without further notice, motion or application to, or order of or hearing before this Court, and without the need or requirement to file any proof of claim, the Prepetition Lien and Claim Matters shall become binding, conclusive and final on any person, entity or party-in-interest in the Cases and their successors and assigns, and in any Successor Case for all purposes, and shall not be subject to any challenge or objection by any party-in-interest, including, without limitation, a trustee, responsible individual, examiner with expanded powers or other representative of the Debtors' estates. Notwithstanding the foregoing, if any Challenge Proceeding is timely commenced, Prepetition Lien and Claims Matters shall nonetheless remain binding and preclusive (as provided in this paragraph) on the Debtors, the Committee (if any), and any other person, entity or party-in-interest, except as to any such findings and admissions that were expressly and successfully challenged in such Challenge Proceeding as set forth in a final, non-appealable order of a court of competent jurisdiction. Nothing in this Interim Order vests or confers on any Person

(as defined in the Bankruptcy Code), including the Committee (if any), standing or authority to pursue any cause of action belonging to the Debtors or their estates, including, without limitation, claims and defenses with respect to the Prepetition Bond Documents or the Prepetition Bond Liens on the Prepetition Bonds Collateral.

Section 5. Other Rights and DIP Obligations.

5.1 No Modification or Stay of this Interim Order. The DIP Lender has acted in good faith in connection with the DIP Facility and with this Interim Order, and their reliance on this Interim Order is in good faith, and the DIP Lender is entitled to the protections of section 364(e) of the Bankruptcy Code.

5.2 Rights of Access and Information. The Debtors shall comply with the rights of access and information afforded to the DIP Lender under the DIP Loan Documents and the Prepetition Bonds Secured Parties under the Prepetition Bond Documents.

5.3 Power to Waive Rights; Duties to Third Parties.

(a) Subject to the terms of the DIP Loan Documents, the DIP Lender shall have the right to waive any of the terms, rights, and remedies provided or acknowledged in this Interim Order that are in favor of the DIP Lender (the "**DIP Lender Rights**"), and shall have no obligation or duty to any other party with respect to the exercise or enforcement, or failure to exercise or enforce, any DIP Lender Rights; *provided that*, the DIP Lender shall obtain the prior written consent of the Prepetition Trustee for any waiver that affects any rights of the applicable Prepetition Bonds Secured Parties hereunder or any treatment of the Prepetition Bond Obligations. Any waiver by the DIP Lender of any DIP Lender Rights shall not be nor shall it constitute a continuing waiver unless otherwise expressly provided therein. Any delay in or failure to exercise or enforce any DIP Lender Right shall neither constitute a waiver of such DIP Lender Right,

subject the DIP Lender to any liability to any other party, nor cause or enable any party other than the Debtors to rely upon or in any way seek to assert as a defense to any obligation owed by the Debtors to the DIP Lender.

(b) The Prepetition Trustee shall have the right to waive any of the terms, rights, and remedies provided or acknowledged in this Interim Order that are in favor of the applicable Prepetition Bondholders (the "**Prepetition Bondholder Rights**"), and shall have no obligation or duty to any other party with respect to the exercise or enforcement, or failure to exercise or enforce, any Prepetition Bondholder Rights; *provided that*, the Prepetition Trustee shall obtain the prior written consent of the DIP Lender for any waiver that affects any rights of the DIP Lender hereunder or any treatment of the DIP Obligations. Any waiver by the Prepetition Trustee of any Prepetition Bondholder Rights shall not be nor shall it constitute a continuing waiver unless otherwise expressly provided therein. Any delay in or failure to exercise or enforce any Prepetition Bondholder Right shall neither constitute a waiver of such Prepetition Bondholder Right, subject the Prepetition Trustee or any Prepetition Bondholder to any liability to any other party, nor cause or enable any party other than the Debtors to rely upon or in any way seek to assert as a defense to any obligation owed by the Debtors to the Prepetition Trustee or any Prepetition Bondholder.

5.4 No Unauthorized Disposition of Collateral; Use of Cash Collateral; Investigation Budget.

(a) The Debtors shall not sell, transfer, lease, encumber, use, or otherwise dispose of any portion of the DIP Collateral (including receivables and Cash Collateral), other than pursuant to the terms of this Interim Order or as permitted by the DIP Loan Documents, and the Debtors are authorized to use Cash Collateral solely in a manner consistent with this Interim Order,

the Approved Budget and the DIP Loan Documents (including permitted variances and exclusions to the Approved Budget permitted thereunder).

(b) Notwithstanding anything herein to the contrary, no portion of the proceeds of the DIP Facility, the DIP Collateral or the Prepetition Bonds Collateral, including Cash Collateral, may be used for the payment of professional fees, disbursements, costs, or expenses incurred by any person in connection with (i) preventing, hindering, impeding, or delaying any of the DIP Lender's or Prepetition Bonds Secured Parties' enforcement or realization upon, or exercise of rights in respect of, any of the DIP Collateral or Prepetition Bonds Collateral, other than to seek (based on a good faith assertion) a determination that a DIP Termination Event (as defined below) has not occurred or is not continuing or in connection with a remedies hearing, (ii) seeking to amend or modify any of the rights or interests granted to the DIP Lender or Prepetition Bonds Secured Parties under this Interim Order or the DIP Loan Documents, including seeking to use Cash Collateral on a contested basis, (iii) asserting, commencing, or prosecuting any claims or causes of action, including, without limitation, any Challenge or any other actions under chapter 5 of the Bankruptcy Code (or any similar law), against the DIP Lender or any Prepetition Bonds Secured Party, or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, or employees, or (iv) asserting, joining, commencing, supporting, investigating, or prosecuting any Challenge, or any other action for any claim, counterclaim, action, cause of action, proceeding, application, motion, objection, defense, or other contested matter seeking any order, judgment, determination, or similar relief against, or adverse to the material interests of the DIP Lender or any Prepetition Bonds Secured Party, arising out of, in connection with, or relating to the DIP Loan Documents or the Prepetition Bond Documents, or the transactions contemplated thereunder, including, without limitation, (A) any action arising under the Bankruptcy Code, (B)

any so-called "lender liability" claims and causes of action, (C) any action with respect to the validity and extent of the DIP Obligations or the Prepetition Bond Obligations or the validity, extent, perfection and priority of the DIP Liens or the Prepetition Bond Liens, (D) any action seeking to invalidate, set aside, avoid, reduce, set off, offset, re-characterize, subordinate (whether equitable, contractual, or otherwise), recoup against, disallow, impair, raise any defenses, cross-claims, or counterclaims, or raise any other challenges under the Bankruptcy Code or any other applicable domestic or foreign law or regulation against, or with respect to, the DIP Liens or the Prepetition Bond Liens, in whole or in part, or (E) appeal or otherwise challenge this Interim Order or the Final Order. Notwithstanding the foregoing, no more than $25,000 in the aggregate of the proceeds of the DIP Facility, DIP Collateral, or Cash Collateral may be used by any Committee in connection with the investigation of, but not litigation of, any potential Challenge.

5.5 No Waiver. The failure of the DIP Lender or the Prepetition Bondholders, as applicable, to seek relief or otherwise exercise their rights and remedies under the DIP Loan Documents, the DIP Facility, the Prepetition Bond Documents, or this Interim Order, as applicable, shall not constitute a waiver of any of the DIP Lender's or Prepetition Bondholders' rights hereunder, thereunder, or otherwise. Notwithstanding anything herein, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair the rights of the DIP Lender or the Prepetition Bondholders under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the rights of the DIP Lender and the Prepetition Bondholders to: (a) request conversion of the Chapter 11 Cases to cases under chapter 7, dismissal of the Chapter 11 Cases, or the appointment of a trustee in the Chapter 11 Cases; (b) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a plan; or

(c) exercise any of the rights, claims, or privileges (whether legal, equitable, or otherwise) of the DIP Lender or the Prepetition Bondholders.

5.6 Maintenance of Collateral. Unless the DIP Lender otherwise consents in writing, until (i) the payment in full in cash or otherwise acceptable satisfaction of all DIP Obligations and (ii) the termination of the DIP Lender's obligations to extend credit under the DIP Facility, the Debtors shall comply with the covenants contained in the DIP Loan Documents regarding the maintenance and insurance of the DIP Collateral. Upon entry of this Interim Order and to the fullest extent provided by applicable law, the DIP Lender shall be, and shall be deemed to be, without any further action or notice, named as an additional insured and loss payee on each insurance policy maintained by the Debtors that in any way relates to the DIP Collateral.

5.7 Reservation of Rights. The terms, conditions, and provisions of this Interim Order are in addition to and without prejudice to the rights of the DIP Lender and each Prepetition Bonds Secured Party, as applicable, to pursue any and all rights and remedies under the Bankruptcy Code, the DIP Loan Documents, the Prepetition Bond Documents, or any other applicable agreement or law, including, without limitation, rights to seek adequate protection and/or additional or different adequate protection, to seek relief from the automatic stay, to seek an injunction, to oppose any request for use of Cash Collateral or granting of any interest in the DIP Collateral or the Prepetition Bonds Collateral, as applicable, or priority in favor of any other party, to object to any sale of assets, and to object to applications for allowance and/or payment of compensation of professionals or other parties seeking compensation or reimbursement from the Estates.

5.8 Binding Effect.

(a) All of the provisions of this Interim Order and the DIP Loan Documents, the DIP Obligations, all liens, and claims granted hereunder in favor of the DIP Lender and each

of the Prepetition Bonds Secured Parties, and any and all rights, remedies, privileges, immunities and benefits in favor of the DIP Lender and each Prepetition Bonds Secured Party set forth herein, including, without limitation, the parties' acknowledgements, stipulations, and agreements in Paragraph E of this Interim Order, subject to Section 4.1 hereof (without each of which the DIP Lender would not have entered into or provided funds under the DIP Loan Documents and the Prepetition Bonds Secured Parties would not have consented to the priming of the Prepetition Bond Liens as set forth herein and use of Cash Collateral provided for hereunder) provided or acknowledged in this Interim Order, and any actions taken pursuant thereto, shall be effective and enforceable as of the Petition Date immediately upon entry of this Interim Order and not subject to any stay of execution or effectiveness (all of which are hereby waived), notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, and 9024, or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, shall continue in full force and effect, and shall survive entry of any other order or action, including, without limitation, any order which may be entered confirming any chapter 11 plan providing for the refinancing, repayment, or replacement of the DIP Obligations, converting one or more of the Chapter 11 Cases to any other chapter under the Bankruptcy Code, dismissing one or more of the Chapter 11 Cases, approving any sale of any or all of the DIP Collateral or the Prepetition Bonds Collateral, or vacating, terminating, reconsidering, revoking, or otherwise modifying this Interim Order or any provision hereof; *provided that*, in the event a Final Order is entered, the terms and conditions of such Final Order shall control over this Interim Order; *provided further that* such Final Order must affirm each of the provisions, protections, grants, statements, stipulations, and agreements in this Interim Order in order for such provisions, protections, grants, statements, stipulations, and agreements to remain in effect after entry of the Final Order.

(b) Nothing in these Chapter 11 Cases may impair the DIP Superpriority Claim, the Prepetition Bonds Secured Parties Adequate Protection Claims, and the DIP Lender's and the Prepetition Bonds Secured Parties' respective liens on and security interests in the DIP Collateral and the Prepetition Bonds Collateral, respectively, and all other claims, liens, adequate protections, and other rights granted pursuant to the terms of this Interim Order, which shall continue in full force and effect notwithstanding any dismissal of one or more of the Chapter 11 Cases until the DIP Obligations and Prepetition Bond Obligations are indefeasibly paid and satisfied in full. Notwithstanding any such dismissal, this Court shall retain jurisdiction for the purposes of enforcing all such claims, liens, protections, and rights referenced in this paragraph and otherwise in this Interim Order.

(c) Except as set forth in this Interim Order, in the event this Court modifies, reverses, vacates, or stays any of the provisions of this Interim Order or any of the DIP Loan Documents, such modifications, reversals, vacatur, or stays shall not affect the (i) validity, priority, or enforceability of any DIP Obligations incurred prior to the actual receipt of written notice by the DIP Lender of the effective date of such modification, reversal, vacatur, or stay, (ii) validity, priority, or enforceability of the DIP Liens, the DIP Superpriority Claim, the Prepetition Bonds Secured Parties Adequate Protection Liens and the Prepetition Bonds Secured Parties Adequate Protection Claims or (iii) rights or priorities of the DIP Lender or any Prepetition Bonds Secured Party pursuant to this Interim Order with respect to the DIP Collateral or any portion of the DIP Obligations. All such liens, security interests, claims and other benefits shall be governed in all respects by the original provisions of this Interim Order, and the DIP Lender and the Prepetition Bonds Secured Parties shall be entitled to all the rights, remedies, privileges and benefits arising under sections 364(e) and 363(m) of the Bankruptcy Code.

(d) This Interim Order shall be binding upon the Debtors, all parties in interest in the Chapter 11 Cases, and their respective successors and assigns, including, without limitation, (i) any trustee or other fiduciary appointed in the Chapter 11 Cases or any subsequently converted bankruptcy case(s) of any Debtor and (ii) any liquidator, receiver, administrator, or similar such person or entity appointed in any jurisdiction or under any applicable law. This Interim Order shall also inure to the benefit of the Debtors, DIP Lender, and each of their respective successors and assigns.

5.9 No Discharge. The DIP Obligations and the obligations of the Debtors with respect to adequate protection hereunder, including granting the Prepetition Bonds Secured Parties Adequate Protection Liens and the Prepetition Bonds Secured Parties Adequate Protection Claims, shall not be discharged by the entry of an order confirming any plan of reorganization in any of these Chapter 11 Cases, notwithstanding the provisions of section 1141(d) of the Bankruptcy Code, unless such obligations have been indefeasibly paid in full in cash, on or before the effective date of such confirmed plan of reorganization, or the DIP Lender has otherwise agreed in writing.

5.10 No Priming of Prepetition Bond Obligations. Notwithstanding anything to the contrary herein, from and after the entry of this Interim Order, absent the express written consent of the applicable Prepetition Bondholders and the DIP Lender, no Debtor shall seek authorization from this Court to obtain or incur any indebtedness or enter into an alternative financing facility other than the DIP Facility (a "**Competing DIP Facility**") seeking to impose liens on any Prepetition Bonds Collateral ranking on a *pari passu* or priming basis with respect to the Prepetition Bond Liens held by the Prepetition Bonds Secured Parties or the DIP Liens held by the DIP Lender; *provided*, *however*, *that* nothing herein shall preclude the Debtors from seeking authorization to incur any indebtedness or enter into any Competing DIP Facility that provides for

the payment in full in cash of the DIP Obligations at the initial closing of such Competing DIP Facility.

5.11 Section 506(c) Waiver. Subject to entry of the Final Order, no costs or expenses of administration which have been or may be incurred in these Chapter 11 Cases at any time (including, without limitation, any costs and expenses incurred in connection with the preservation, protection, or enhancement of value by the DIP Lender upon the DIP Collateral, or by the Prepetition Bonds Secured Parties upon the Prepetition Bonds Collateral, as applicable) shall be charged against the DIP Lender or (subject to entry of the Final Order) the Prepetition Bonds Secured Parties, or any of the DIP Obligations or Prepetition Bond Obligations or the DIP Collateral or the Prepetition Bonds Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code or otherwise without the prior express written consent of the affected DIP Lender and/or affected Prepetition Bonds Secured Parties, in their sole discretion, and no such consent shall be implied, directly or indirectly, from any other action, inaction, or acquiescence by any such agents or creditors (including, without limitation, consent to the Carve-Out or the approval of any budget hereunder).

5.12 Section 552(b) Waiver. Subject to entry of the Final Order, the Debtors have agreed as a condition to obtaining financing under the DIP Facility and using Cash Collateral as provided in this Interim Order that the Prepetition Bonds Secured Parties are and shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and that the "equities of the case" exception under section 552(b) shall not apply to the DIP Lender, the DIP Obligations, the Prepetition Bonds Secured Parties, or the Prepetition Bond Obligations.

5.13 No Marshaling/Application of Proceeds.

(a) Subject to entry of the Final Order, in no event shall the DIP Lender or the Prepetition Bonds Secured Parties be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral or the Prepetition Bonds Collateral, as applicable, and all proceeds shall be received and applied in accordance with the DIP Loan Documents and the Prepetition Bond Documents, as applicable.

(b) Notwithstanding anything to the contrary in this Interim Order, the respective DIP Obligations shall be satisfied from the proceeds of DIP Collateral.

5.14 Right to Credit Bid. The Debtors acknowledge and agree that, pursuant to Section 363(k) of the Bankruptcy Code, the DIP Lender and each of the Prepetition Bonds Secured Parties shall have the right to credit bid the full amount of the DIP Obligations and the Prepetition Bond Obligations, respectively, in connection with any sale of the Debtors' assets pursuant to the Sale Motion or otherwise; *provided* that any credit bid by the Prepetition Bonds Secured Parties shall include cash sufficient to satisfy all DIP Obligations in full in cash, which shall indefeasibly paid in full in cash upon the initial closing of any Alternative Transaction that includes a credit bid by the Prepetition Bonds Secured Parties.

5.15 Payment of DIP Lender Fees and Expenses. Subject to the procedures set forth in paragraph 1.3 of this Interim Order, the Debtors shall pay (i) the fees and expenses of the DIP Lender, including its counsel and other advisors, in connection with the Chapter 11 Cases included to the extent reimbursable under the DIP Facility, the DIP Note, or the other DIP Loan Documents, as applicable, whether incurred before or after the Petition Date and (ii) all out-of-pocket costs and expenses of the DIP Lender incurred in connection with the Chapter 11 Cases, including, without limitation, fees and disbursements of counsel in connection with the enforcement or preservation

of any rights under the DIP Facility, the DIP Note, or the other DIP Loan Documents, in each of (i) and (ii), to the extent available in the Approved Budget and in accordance with the DIP Note.

5.16 Limits on Lender Liability.

(a) Solely as a result of making any loan under the DIP Note, authorizing the use of Cash Collateral or in exercising any rights or remedies as and when permitted pursuant to this Interim Order or the DIP Loan Documents, the DIP Lender, and, subject to entry of the Final Order, the Prepetition Bonds Secured Parties, shall not be deemed to (i) be in control of the operations of the Debtors or to be acting as a "controlling person," "responsible person," or "owner or operator" with respect to the operation or management of the Debtors, so long as the such party's actions do not constitute, within the meaning of 42 U.S.C. § 9601(20)(F), actual participation in the management or operational affairs of a facility owned or operated by a Debtor, or otherwise cause liability to arise to the federal or state government or the status of responsible person or managing agent to exist under applicable law (as such terms, or any similar terms, are used in the Internal Revenue Code, WARN Act, the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., as amended, or any similar federal or state statute) or (ii) owe any fiduciary duty to any of the Debtors. Furthermore, nothing in this Interim Order shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Lender or any of the Prepetition Bonds Secured Parties, of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors and their respective affiliates (as defined in section 101(2) of the Bankruptcy Code).

(b) Subject to entry of the Final Order, as to the United States, its agencies, departments, or agents, nothing in this Interim Order or the DIP Loan Documents shall discharge,

release or otherwise preclude any valid right of setoff or recoupment that any such entity may have.

5.17 Release. Each of the Debtors, their Estates and the Prepetition Obligors, on their own behalf and on behalf of each of their past, present and future predecessors, successors, heirs, subsidiaries, and assigns, hereby forever, unconditionally, permanently, and irrevocably release, discharge, and acquit the DIP Lender and each of the Prepetition Bonds Secured Parties, and (in such capacity) each of their respective successors, assigns, affiliates, parents, subsidiaries, partners, controlling persons, representatives, agents, attorneys, advisors, financial advisors, consultants, professionals, officers, directors, members, managers, shareholders, and employees, past, present and future, and their respective heirs, predecessors, successors and assigns (collectively, the "**Released Parties**") of and from any and all claims, controversies, disputes, liabilities, obligations, demands, damages, expenses (including, without limitation, attorneys' fees), debts, liens, actions, and causes of action of any and every nature whatsoever, whether arising in law or otherwise, and whether known or unknown, matured or contingent, arising under, in connection with, or relating to (i) the Prepetition Bond Obligations and the DIP Facility or (ii) the DIP Loan Documents and the Prepetition Bond Documents, as applicable, including, without limitation, (a) any so-called "lender liability" or equitable subordination claims or defenses, (b) any and all "claims" (as defined in the Bankruptcy Code) and causes of action arising under the Bankruptcy Code, and (c) any and all offsets, defenses, claims, counterclaims, set off rights, objections, challenges, causes of action, and/or choses in action of any kind or nature whatsoever, whether arising at law or in equity, including any recharacterization, recoupment, subordination, avoidance, or other claim or cause of action arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code or under any other similar provisions of applicable state, federal, or foreign

law, including, without limitation, any right to assert any disgorgement or recovery, in each case, with respect to the extent, amount, validity, enforceability, priority, security, and perfection of any of the Prepetition Bond Obligations and the DIP Obligations, the Prepetition Bond Documents and the DIP Loan Documents, or the Prepetition Bond Liens and the DIP Liens, and further waive and release any defense, right of counterclaim, right of setoff, or deduction to the payment of the Prepetition Bond Obligations and the DIP Obligations that the Debtors now have or may claim to have against the Released Parties, arising under, in connection with, based upon, or related to any and all acts, omissions, conduct undertaken, or events occurring prior to entry of this Interim Order. The Debtors are authorized in any payoff letter or similar agreement into which they enter upon payment in full of any DIP Obligations to provide a waiver and release substantially similar to the waiver and release set forth in this Section 5.17 of the DIP Lender and their related parties.

5.18 Survival. The provisions of this Interim Order, the validity, priority, and enforceability of the DIP Liens, the DIP Superpriority Claim, the Prepetition Bonds Secured Parties Adequate Protection Liens, the Prepetition Bonds Secured Parties Adequate Protection Claims, and any actions taken pursuant hereto shall survive, and shall not be modified, impaired or discharged by, entry of any order that may be entered (a) confirming any plan of reorganization in any of these Chapter 11 Cases, (b) converting any or all of these Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, (c) dismissing any or all of these Chapter 11 Cases, (d) terminating the joint administration of these Chapter 11 Cases or any other act or omission, (e) approving the sale of any DIP Collateral pursuant to section 363(b) of the Bankruptcy Code (except to the extent permitted by the DIP Loan Documents), or (f) pursuant to which the Court abstains from hearing any of these Chapter 11 Cases. The terms and provisions of this Interim Order, including the claims, liens, security interests, and other protections (as applicable) granted

to the DIP Lender and the Prepetition Bonds Secured Parties pursuant to this Interim Order, notwithstanding the entry of any such order, shall continue in any of these Chapter 11 Cases, following dismissal of any of these Chapter 11 Cases or any Successor Cases, and shall maintain their priority as provided by this Interim Order until (i) in respect of the DIP Facility, all of the DIP Obligations, pursuant to the DIP Loan Documents and this Interim Order, have been indefeasibly paid in full in cash (such payment being without prejudice to any terms or provisions contained in the DIP Facility which survive such discharge by their terms) and all commitments to extend credit under the DIP Facility are terminated, and (ii) in respect of the Prepetition Bond Obligations, all of the adequate protection obligations owed to the Prepetition Bonds Secured Parties provided for in this Interim Order and under the Prepetition Bond Documents have been indefeasibly paid in full in cash.

5.19 Proofs of Claim. None of the Prepetition Bonds Secured Parties shall be required to file proofs of claim in any of these Chapter 11 Cases or subsequent cases of any of the Debtors under any chapter of the Bankruptcy Code, and the Debtors' Stipulations in this Interim Order shall be deemed to constitute a timely filed proof of claim against the applicable Debtor(s). Notwithstanding the foregoing, the Prepetition Trustee (on behalf of itself and the applicable Prepetition Bondholders) is hereby authorized and entitled, in its discretion, but not required, to file (and amend and/or supplement, as applicable) a master proof of claim in the Debtors' lead Case (and such master proof of claim shall be also deemed filed in each of the Debtors' individual Cases) for any claims of the applicable Prepetition Bonds Secured Parties arising from the Prepetition Bond Documents or in respect of the Prepetition Bond Obligations; *provided*, *however*, *that* nothing in this Interim Order shall waive the right of any Prepetition Bondholder to file its own proof of claim against any of the Debtors.

5.20 No Third Party Rights. Except as specifically provided for herein, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holders, or any direct, indirect, or incidental beneficiary.

5.21 No Avoidance. No obligations incurred or payments or other transfers made by or on behalf of the Debtors on account of the DIP Facility shall be avoidable or recoverable from the DIP Lender under any section of the Bankruptcy Code, or any other federal, state, or other applicable law, *provided that*, nothing within this paragraph is intended to limit or curtail the provisions of Section 4.1 hereof, with respect to the Prepetition Bond Obligations.

5.22 Reliance on Order. All postpetition advances under the DIP Loan Documents are made in reliance on this Interim Order.

5.23 Payments Free and Clear. Subject to Section 4.1, any and all payments or proceeds remitted to the DIP Lender pursuant to the provisions of this Interim Order, any subsequent order of this Court or the DIP Loan Documents, shall, subject to the terms of this Section 5.23, be irrevocable, received free and clear of any claims, charge, assessment, or other liability, including, without limitation, any such claim or charge arising out of or based on, directly or indirectly, section 506(c) of the Bankruptcy Code or section 552(b) of the Bankruptcy Code, whether asserted or assessed by, through or on behalf of the Debtors, and in the case of payments made or proceeds remitted after the delivery of a Trigger Notice, subject to the Carve-Out in all respects.

5.24 No Direct Obligation To Pay Allowed Professional Fees. None of the DIP Lenders or the Prepetition Biofuels Bonds Secured Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with the Chapter 11 Cases or any successor cases under any chapter of the Bankruptcy Code. Nothing in this Interim Order or otherwise shall be construed to obligate the DIP Lender or the

Prepetition Biofuels Bonds Secured Parties, in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

5.25 Limited Effect. In the event of a conflict between the terms and provisions of any of the DIP Loan Documents and this Interim Order, the terms and provisions of this Interim Order shall govern.

5.26 Headings. Section headings used herein are for convenience only and are not to affect the construction of or to be taken into consideration in interpreting this Interim Order.

5.27 Bankruptcy Rules. The requirements of Bankruptcy Rules 4001, 6003, and 6004, in each case to the extent applicable, are satisfied by the contents of the Motion.

5.28 General Authorization. The Debtors, the DIP Lender, and the Prepetition Bonds Secured Parties are authorized to take any and all actions necessary to effectuate the relief granted in this Interim Order.

5.29 Retention of Exclusive Jurisdiction. This Court shall retain exclusive jurisdiction and power with respect to all matters arising from or related to the implementation or interpretation of this Interim Order, the DIP Note, and the other DIP Loan Documents.

5.30 Final Hearing and Response Dates. The Final Hearing on the Motion pursuant to Bankruptcy Rule 4001(c)(2) will be held on _____, 2024, at ____ [a./p.]m., prevailing Eastern Time. The Debtors shall promptly mail copies of this Interim Order to the (a) the Office of the United States Trustee for the District of Delaware, (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) the DIP Lender; (d) the Biofuels Trustee, (e) PLC Administration LLC; (f) the Office of the United States Attorney for the District of Delaware; (g) the Internal Revenue Service; (h) all parties that, to the best of the Debtor's

knowledge, information, and belief, have asserted a lien in the Debtor's assets; (i) the Securities and Exchange Commission, (j) the Banks; (k) any party that has requested notice pursuant to Bankruptcy Rule 2002; and (l) to any other party that has filed a request for notices with this Court and to any Committee after the same has been appointed, or the Committee's counsel if same shall have filed a request for notice. The Debtors may serve the Motion and this Interim Order without the exhibits attached thereto as such exhibits are voluminous and available, free of charge, at the Debtors' claims and noting agent's website: https://www.veritaglobal.net/Fulcrum, and such notice is deemed good and sufficient and no further notice need be given. Any party in interest objecting to the relief sought at the Final Hearing shall serve and file written objections, which objections shall be served upon (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: (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); (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) and shall be filed with the Clerk of the Court, in each case, to allow actual receipt of the foregoing no later than 4:00 p.m. (prevailing Eastern Time), on _____, 2024.

EXHIBIT A

(DIP Note)

DEBTOR IN POSSESSION SECURED TERM PROMISSORY NOTE

$5,000,000 New York, New York
September 10, 2024

On September 9, 2024 (the "Petition Date"), Fulcrum Sierra BioFuels, LLC, a Delaware limited liability company (the "Borrower"), and certain of its affiliates commenced Chapter 11 cases, which cases are being jointly administered under Chapter 11 Case No. 24-12008 (TMH) (each a "Chapter 11 Case" and collectively, the "Chapter 11 Cases"), by filing separate voluntary petitions for reorganization relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). The Loan Parties (as defined herein) continue to operate their respective businesses and manage their respective properties as debtors and debtors in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. The Borrower has requested that the lender (together with its permitted successor and assigns, the "DIP Lender") under this Debtor in Possession Secured Term Promissory Note (as amended, restated, amended and restated, supplemented, waived, extended, or otherwise modified from time to time, this "Note"), make term loans (the "Term Loans") from time to time evidenced by this Note. Certain affiliates of the Borrower who comprise the other debtors in the Chapter 11 Cases wish to guaranty the Borrower's Obligations under this Note (collectively, the "Guarantors"), and are simultaneously executing Guarantees in favor of the DIP Lender. Capitalized terms used herein and not otherwise defined herein shall have the meanings provided in Section 18 of this Note.

1. Term Loans.

(a) Subject to the terms and conditions hereof including the DIP Lender's receipt of a Borrowing Request (as defined below), the DIP Lender agrees to provide the Borrower with Term Loans on the Closing Date in the principal amount of $5,000,000 (the "Term Loans"). Subject to the terms and conditions hereof, to the extent the Interim Order does not permit the full amount of the Term Loans to be incurred by the Borrower on the Closing Date, the DIP Lender shall advance any remaining amount of the Term Loans that are authorized in the Final Order in one or multiple draws on the date or during the period permitted by the Final Order (any such Term Loans, the "Final Order Term Loans"). The Final Order Term Loans shall be Term Loans for all purposes of this Note. The Borrower may request the Term Loans pursuant to written notice (which may be by email) (a "Borrowing Request") delivered to the DIP Lender by a Responsible Officer no later than 12:00 p.m. New York City time two Business Days prior to the proposed borrowing date of the Term Loans (or such shorter period as the DIP Lender may agree). The Borrowing Request shall be in a form reasonably satisfactory to the DIP Lender and shall specify (i) the principal amount of the proposed Term Loan and (ii) the proposed borrowing date, which must be a Business Day. The DIP Lender shall provide each Term Loan in an aggregate amount not to exceed its Commitment with respect to such Term Loan. Upon receipt of a Borrowing Request with respect to any Term Loan, subject to the satisfaction (or waiver) of the conditions set forth in Section 2(a) hereof, the DIP Lender shall make the proceeds of such Term Loan available to the Borrower (or such other person in accordance with the proviso in Section 1(d) below) on the applicable date of funding of the Term Loan by transferring immediately available funds equal to such proceeds to the account specified in the Borrowing Request (or such account of such person in accordance with the proviso in Section 1(d) below). The Commitment of the DIP Lender shall be permanently reduced upon the making of the relevant Term Loan in an amount equal to such Term Loan advanced by the DIP Lender. Any principal amount of the Term Loan that is repaid or prepaid may not be reborrowed.

(b) The aggregate principal amount of Terms Loans outstanding, excluding any PIK Amounts, shall not exceed $5,000,000, subject to any limitation of credit extensions under this Note and the Financing Orders (the "Maximum Amount").

(c) The DIP Lender shall be entitled to rely upon, and shall be fully protected in relying upon, any Borrowing Request or similar notice believed by the DIP Lender to be genuine. The DIP Lender may assume that each Person executing and/or delivering any such notice was duly authorized, unless the responsible individual acting thereon for the DIP Lender has actual knowledge to the contrary.

(d) The Borrower shall utilize the proceeds of Term Loans, subject to the Financing Orders, to (i) fund general corporate needs of the Loan Parties, including without limitation working capital and other needs of the Loan Parties and (ii) pay costs, premiums, fees, and expenses incurred to administer or related to the Chapter 11 Cases of the Loan Parties, including fees and expenses of professionals, in each case in accordance with the Approved Budget, subject to any Permitted Variances, this Note, the Bankruptcy Code, and the Financing Orders; provided that an amount equal to $1,768,519 of the proceeds of the Term Loans shall be used solely for the purpose of purchasing insurance policies with amount and coverage satisfactory to, and approved by, the DIP Lender in its sole discretion, which amount may be funded directly to the insurer at the option of the DIP Lender in its sole discretion and shall be deemed to have been funded to the Borrower.

2. Certain Conditions to Making Term Loans.

(a) The effectiveness of this Note and the obligation of the DIP Lender to fund the Term Loans requested to be made by it shall be subject to the prior or concurrent satisfaction (or waiver by the DIP Lender) of each of the conditions precedent set forth in this clause (a):

(1) the Borrower shall have paid any payment obligations based on delivered invoices then payable hereunder (including the reasonable and documented out-of-pocket fees and expenses of the DIP Lender, including, without limitation, those of counsel for the DIP Lender) or under any other DIP Document;

(2) the Loan Parties shall have delivered corporate resolutions, incumbency certificates and similar documents, in form and substance reasonably satisfactory to the DIP Lender with respect to this Note and the other DIP Documents and the transactions contemplated hereby and thereby;

(3) the Loan Parties shall have delivered guarantees of each of the Guarantors, each in form and substance reasonably satisfactory to the DIP Lender with respect to this Note and the other DIP Documents and the transactions contemplated hereby and thereby;

(4) any representation or warranty by any Loan Party contained herein or in any other DIP Document shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of such date, except to the extent that such representation or warranty expressly relates to an earlier date;

(5) the Loan Parties shall have commenced the Chapter 11 Case and all of the "first day motions," "first day orders" and all related pleadings entered or to be entered at the time of the Petition Date or shortly thereafter shall have been made available to the DIP Lender in advance, and shall be satisfactory in form and substance to the DIP Lender;

(6) (i) with respect to the Term Loan made on the Closing Date, (A) the Bankruptcy Court shall have entered the Interim Order and (B) the Interim Order shall not have been stayed, vacated, reversed, modified or amended without the DIP Lender's consent, or (ii) with respect to the Final Order Term Loan, (A) the Bankruptcy Court shall have entered the Final Order and (B) the Final Order shall have not been stayed, vacated, reversed, modified or amended without the DIP Lender's consent;

(7) no Default or Event of Default shall have occurred and be continuing or would result after giving effect to the Term Loans and the transactions contemplated herein;

(8) after giving effect to the making of the Term Loans, the outstanding principal amount of all Term Loans would not exceed the Maximum Amount;

(9) the DIP Lender shall have received and approved the Approved Budget in accordance with this Note and the Financing Orders;

(10) the Chapter 11 Case shall not have been dismissed or converted to a case under chapter 7 of the Bankruptcy Code;

(11) the Bankruptcy Court shall have entered an order, in form and substance reasonably acceptable to the DIP Lender, authorizing the Loan Parties to use Cash Collateral in a manner consistent with the Approved Budget;

(12) the DIP Lender and the Borrower shall have entered into the Stalking Horse Purchase Agreement in form and substance acceptable to the DIP Lender; and

(13) with respect to the Term Loan made on the Closing Date that follows entry of the Interim Order, the Borrower shall have paid, or caused to be paid, at least $400,000 in legal expenses to Latham & Watkins LLP (subject to any requirements in the Interim Order).

Upon receipt of the Borrowing Request, satisfaction of the conditions set forth in Section 2(a), the DIP Lender shall promptly disburse funds to the Borrower on the funding date set forth in the applicable Borrowing Request.

Each Borrowing Request be deemed to constitute, as of the date of such request, acceptance or incurrence, a representation and warranty by the Borrower that the conditions in Section 2(a) have been satisfied.

3. Payment of Principal. FOR VALUE RECEIVED, the Borrower promises to pay to the DIP Lender the sum of (i) the lesser of (x) $5,000,000 and (y) the unpaid principal amount of all Term Loans, on the Maturity Date, plus (ii) PIK Amounts plus (iii) all accrued and unpaid interest, fees and expenses to the extent required by this Note.

4. Payment of Interest.

(a) Subject to the terms of this Note, the Term Loans or any portion thereof shall bear interest on the principal amount thereof from time to time outstanding, from the date of the Term Loan until repaid, at a rate per annum equal to 10.0% per annum, which shall be payable in kind.

(b) Interest on the Term Loans shall be payable monthly, in arrears, on the last Business Day of each month (each an "Interest Payment Date"), commencing on the last Business Day of the month in which the applicable Term Loan is made. If any payment of any of the Obligations becomes due and payable on a day other than a Business Day, the maturity thereof will be extended to the next succeeding Business Day and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension. On each Interest Payment Date, the Borrower shall pay interest by increasing the principal amount of this Note (such amounts the "PIK Amounts"). Following an increase in the principal amount of this Note as a result of a payment of a PIK Amount, this Note will accrue interest on such increased principal amount from and after the applicable Interest Payment Date. References herein to the "principal amount" of the Note include all increases in the principal amount of the Note as a result of a payment of PIK Amounts.

(c) All interest hereunder shall be computed on the basis of a year of 365 or 366 days, as applicable, and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). Each determination by the DIP Lender of an interest rate hereunder shall be final, binding and conclusive on the Borrower (absent manifest error).

(d) So long as an Event of Default shall have occurred and be continuing, and at the election of the DIP Lender, the interest rate applicable to the Obligations shall be increased by two percentage points (2.00%) per annum above the rate of interest otherwise applicable hereunder (the "Default Rate"), and all outstanding Obligations shall bear interest at the Default Rate applicable to such Obligations. Interest at the Default Rate shall accrue from the date of such Event of Default until such Event of Default is cured or waived (notwithstanding when the election by the DIP Lender was made) and shall be payable upon demand.

(e) It is the intention of the parties hereto that the DIP Lender shall conform strictly to usury laws applicable to it. Accordingly, if the transactions contemplated hereby or by any other DIP Document would be usurious as to the DIP Lender under laws applicable to it (including the laws of the United States of America and the State of New York or any other jurisdiction whose laws may be mandatorily applicable to the DIP Lender notwithstanding the other provisions of this Note), then, in that event, notwithstanding anything to the contrary in this Note or any other DIP Document or any agreement entered into in connection with or as security for the Obligations, it is agreed that the aggregate of all consideration which constitutes interest under law applicable to the DIP Lender that is contracted for, taken, reserved, charged or received by the DIP Lender under this Note or any other DIP Document or agreements or otherwise in connection with the Obligations shall under no circumstances exceed the maximum amount allowed by such applicable law, any excess shall be canceled automatically and if theretofore paid shall be credited by the DIP Lender on the principal amount of the Obligations (or, to the extent that the principal amount of the Obligations shall have been or would thereby be paid in full, refunded by the DIP Lender to the Borrower). If at any time and from time to time (i) the amount of interest payable to the DIP Lender on any date shall be computed at the highest lawful rate applicable to the DIP Lender pursuant to this Section 4(e) and (ii) in respect of any subsequent interest computation period the amount of interest otherwise payable to the DIP Lender would be less than the amount of interest payable to the DIP Lender computed at the highest lawful rate applicable to the DIP Lender, then the amount of interest payable to the DIP Lender in respect of such subsequent interest computation period shall continue to be computed at the highest lawful rate applicable to the DIP Lender until the total amount of interest payable to the DIP Lender shall equal the total amount of interest which would have been payable to the DIP Lender if the total amount of interest had been computed without giving effect to this Section 4(e).

(f) If, after the date hereof, the DIP Lender reasonably determines that any Change In Law has the effect of reducing the return on the DIP Lender's or such holding company's capital as a consequence of the DIP Lender's Term Loans hereunder to a level below that which the DIP Lender

or such holding company could have achieved but for such Change in Law (taking into consideration the DIP Lender's or such holding company's then existing policies with respect to capital adequacy and assuming the full utilization of such entity's capital) by any amount reasonably deemed by the DIP Lender to be material, then the DIP Lender may notify the Borrower thereof. Following receipt of such notice, the Borrower agrees to pay the DIP Lender on demand the amount of such reduction of return of capital as and when such reduction is determined, payable promptly (but in no event later than fifteen (15) days) after presentation by the DIP Lender to the Borrower of a statement in the amount and setting forth in reasonable detail the DIP Lender's calculation thereof and the assumptions upon which such calculation was based (which statement shall be deemed true and correct absent manifest error). In determining such amount, the DIP Lender may use any reasonable averaging and attribution methods.

5. Payments. All cash payments of principal, interest and all other Obligations in respect of this Note shall be made in lawful money of the United States of America in same day funds to the DIP Lender at the account as shall be designated in a written notice delivered by the DIP Lender to the Borrower. Each payment made hereunder shall be credited first to fees and expenses then due and payable, second to interest then due and payable and the remainder of such payment shall be credited to principal, and interest shall thereupon cease to accrue upon the principal so repaid. The Borrower shall make each payment required under this Note prior to 3:00 p.m. New York City time on the date when due, in immediately available funds. Any amounts received after such time on any date may, in the sole discretion of the DIP Lender, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. Notwithstanding the foregoing, at the sole election of the DIP Lender the full amount of the Obligations outstanding on the Maturity Date or the date of any prepayment in full may be applied against the purchase price to be paid by the DIP Lender (or its affiliates) under the Stalking Horse Purchase Agreement (or such other sale of the Acquired Assets to the DIP Lender as approved by the Bankruptcy Court).

6. Optional Prepayments. Subject to the terms and conditions of the Financing Orders, the Borrower shall have the right at any time and from time to time to prepay any Term Loans under this Note in whole or in part (without premium or penalty) upon two (2) Business Days' written notice to the DIP Lender by 1:00 p.m. New York City time (or such shorter time as the DIP Lender may agree); provided that each such prepayment shall be in a minimum amount of $500,000. Notice of prepayment having been given as aforesaid, the principal amount specified in such notice shall become due and payable on the prepayment date specified therein in the aggregate principal amount specified therein unless such repayment is conditioned on the receipt of any third party funds or the consummation of certain transactions that are not received or consummated. Any prepayment or repayment hereunder shall be accompanied by all accrued and unpaid interest on the principal amount of the Note being prepaid or repaid to the date of prepayment or repayment, which accrued and unpaid interest shall be paid in cash on such date.

7. Mandatory Prepayments.

(a) In each case, subject to the terms and conditions of the Financing Orders and the Approved Budget:

i. No later than three (3) Business Days following receipt by any Loan Party of cash proceeds of (x) any asset Disposition (other than Dispositions permitted by Section 15(f)) or (y) any Disposition of all or a portion of the Acquired Assets, unless the DIP Lender agrees otherwise, the Borrower shall prepay the Term Loans in an amount equal to all such proceeds, net of (x) commissions and other reasonable and customary transaction costs, fees and expenses properly attributable to such transaction and payable by the Borrower or any Loan Party in connection therewith (in each case, paid to non-affiliates), and (y) with respect to proceeds from the Disposition of assets securing obligations owed to a third party,

which Lien is senior to the Liens securing the Obligations under this Note, the amount of such proceeds required by an order of the Bankruptcy Court to repay such third party obligations.

ii. No later than one (1) Business Day following receipt by any Loan Party of cash proceeds of any debt securities or other indebtedness not permitted under this Note, the Borrower shall prepay the Term Loans in an amount equal to all such proceeds, net of underwriting discounts and commissions and other reasonable costs or fees paid to non-affiliates in connection therewith.

iii. No later than five (5) Business Days following receipt by any Loan Party of any Extraordinary Receipts, the Borrower shall prepay the outstanding principal of the Term Loans in an amount equal to all such Extraordinary Receipts, net of (x) any expenses (including reasonable broker's fees or commissions and legal fees) incurred in connection with such Extraordinary Receipts, and (y) with respect to Extraordinary Receipts from assets securing obligations owed to a third party, which Lien is senior to the Liens securing the Obligations under this Note, the amount of such Extraordinary Receipts required by an order of the Bankruptcy Court to repay such third party obligations.

(b) Nothing in this Section 7 shall be construed to constitute the DIP Lender's consent to any transaction that is not permitted by other provisions of the Financing Orders, this Note or the other DIP Documents.

8. Reserved.

9. Indemnity. With the exception of the taxes on Schedule II, the Borrower shall indemnify and hold harmless the DIP Lender and each of its affiliates, and each such Person's respective officers, directors, employees, attorneys, agents and representatives (each, an "Indemnified Person"), from and against any and all suits, actions, proceedings, claims, damages, losses, liabilities and reasonable and documented out-of-pocket expenses (including reasonable and documented out-of-pocket attorneys' fees and expenses limited to the reasonable and documented out-of-pocket fees and expenses of one primary outside counsel to the Indemnified Persons taken as a whole (and, if necessary, one local counsel in each relevant jurisdiction)) that may be instituted or asserted against or incurred by any such Indemnified Person as the result of credit having been extended, suspended or terminated under this Note and the other DIP Documents and the administration of such credit, and in connection with or arising out of the transactions contemplated hereunder and thereunder and any actions or failures to act in connection therewith, and legal costs and expenses arising out of or incurred in connection with disputes between the DIP Lender on the one hand and the Loan Parties on the other hand; provided, that (i) the Borrower shall not be liable for any indemnification to an Indemnified Person (a) to the extent that any such suit, action, proceeding, claim, damage, loss, liability or expense results solely from that Indemnified Person's gross negligence or willful misconduct as determined in a final non-appealable judgment by a court of competent jurisdiction or (b) any dispute that is among Indemnified Persons that a court of competent jurisdiction has determined in a final non-appealable judgment did not involve actions or omissions of any Loan Party or any of their respective Affiliates and (ii) this Section 9 shall not apply with respect to taxes other than any taxes that represent losses, claims, damages, etc. arising from any non-tax claim. **NO INDEMNIFIED PERSON SHALL BE RESPONSIBLE OR LIABLE TO ANY OTHER PARTY TO ANY DIP DOCUMENT, ANY SUCCESSOR, ASSIGNEE OR THIRD PARTY BENEFICIARY OF SUCH PERSON OR ANY OTHER PERSON ASSERTING CLAIMS DERIVATIVELY THROUGH SUCH PARTY, FOR INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES THAT MAY BE ALLEGED AS A RESULT OF CREDIT HAVING BEEN EXTENDED, SUSPENDED OR TERMINATED UNDER ANY DIP DOCUMENT OR AS A RESULT OF ANY OTHER TRANSACTION CONTEMPLATED HEREUNDER OR THEREUNDER.**

10. Adjustments for Withholding, Capital Adequacy Etc.

(a) All payments to the DIP Lender by the Borrower under this Note shall be made free and clear of and without deduction or withholding for any and all taxes, duties, levies, imposts, deductions, charges or withholdings and all related liabilities (all such taxes, duties, levies, imposts, deductions, charges, withholdings and liabilities being referred to as "Taxes") imposed by the United States of America or any other nation or jurisdiction (or any political subdivision or taxing authority of either thereof), unless such Taxes are required by applicable law to be deducted or withheld. If the Borrower shall be required by applicable law to deduct or withhold any such Taxes from or in respect of any amount payable under this Note other than taxes imposed on the DIP Lender or the DIP Lender's overall net income, then (A) if such Tax is an Indemnified Tax, the amount payable shall be increased as may be necessary so that after making all required deductions or withholdings, (including deductions or withholdings applicable to any additional amounts paid under this Note) the DIP Lender receives an amount equal to the amount it would have received if no such deduction or withholding had been made, (B) the Borrower shall make such deductions or withholdings, and (C) the Borrower shall timely pay the full amount deducted or withheld to the relevant governmental entity in accordance with applicable law.

(b) If the effect of the adoption, effectiveness, phase-in or applicability after the date hereof of any law, rule or regulation (including without limitation any tax, duty, charge or withholding on or from payments due from the Borrower (but excluding Indemnified Taxes, Excluded Taxes, and Connection Income Taxes)), or any change therein or in the interpretation or administration thereof by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, is to reduce the rate of return on the capital of the DIP Lender with respect to this Note or to increase the cost to the DIP Lender of making or maintaining amounts available under this Note, the Borrower agrees to pay to the DIP Lender such additional amount or amounts as will compensate the DIP Lender on an after-tax basis for such reduction or increase.

(c) The Borrower agrees to timely pay any present or future stamp or documentary taxes or similar Taxes (all such Taxes being referred to as "Other Taxes") which arise from any payment made by the Borrower under this Note or from the execution, delivery or registration of, or otherwise with respect to, this Note.

(d) The Borrower shall indemnify the DIP Lender for the full amount of Indemnified Taxes (including, without limitation, any Indemnified Taxes imposed by any jurisdiction on amounts payable by the Borrower hereunder) paid by the DIP Lender and any reasonable expenses arising from or with respect to such Indemnified Taxes, whether or not they were correctly or legally asserted, excluding taxes imposed on the DIP Lender or the DIP Lender's overall net income. Payment under this indemnification shall be made within 10 days from receipt of written demand specifying in reasonable detail the nature and amount of such Indemnified Taxes or expenses. A certificate as to the amount of such Indemnified Taxes submitted to the Borrower by the DIP Lender shall be conclusive evidence, absent manifest error, of the amount due from the Borrower to the DIP Lender.

(e) The Borrower shall furnish to the DIP Lender the original or a certified copy of a receipt evidencing any payment of Taxes made by the Borrower pursuant to this Section 10 within thirty (30) days after the date of any such payment. If any Recipient becomes aware that it has received a refund of any Taxes with respect to which the Borrower has paid any amount pursuant to this Section 10, such Recipient shall pay the amount of such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such Recipient and without interest (other than any interest received from the relevant governmental authority with respect thereto), to the Borrower promptly after receipt thereof.

(f) (i) Any Recipient of a payment hereunder shall, to the extent it is legally entitled to do so, deliver to the Borrower and the DIP Lender on or prior to the date hereof (and from time to time

thereafter upon the reasonable request of the Borrower or the DIP Lender), two properly completed and executed copies of IRS Forms W-8 or W-9 and properly completed and executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding tax, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the DIP Lender to determine the withholding or deduction (if any) required to be made. In addition, any such Recipient, if reasonably requested by the Borrower or the DIP Lender, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the DIP Lender as will enable the Borrower or the DIP Lender to determine whether or not such Recipient is subject to backup withholding or information reporting requirements. Each Recipient agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall timely update such form or certification or promptly notify the Borrower and the DIP Lender in writing of its legal inability to do so.

(ii) Without limiting the generality of the foregoing,

(A) any DIP Lender that is a U.S. Person shall deliver to the Borrower on or prior to the date on which such DIP Lender becomes a DIP Lender under this Note (and from time to time thereafter upon the reasonable request of the Borrower), executed copies of IRS Form W-9 certifying that such DIP Lender is exempt from U.S. federal backup withholding tax;

(B) any DIP Lender that is not a U.S. Person (a "Foreign Lender") shall, to the extent it is legally entitled to do so, deliver to the Borrower (in such number of copies as shall be reasonably requested by the recipient) on or prior to the date on which such Foreign Lender becomes a DIP Lender under this Note (and from time to time thereafter upon the reasonable request of the Borrower), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any DIP Document, executed copies of IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any DIP Document, IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed copies of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Internal Revenue Code, (x) a certificate substantially in the form of Exhibit B-1 hereto to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Internal Revenue Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Internal Revenue Code (a "U.S. Tax Compliance Certificate") and (y) executed copies of IRS Form W-8BEN or W-8BEN-E; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit B-2 or Exhibit B-3, IRS Form W-9, or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender

may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit B-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower (in such number of copies as shall be reasonably requested by the recipient) on or prior to the date on which such Foreign Lender becomes a DIP Lender under this Note (and from time to time thereafter upon the reasonable request of the Borrower), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower to determine the withholding or deduction required to be made; and

(D) if a payment made to a DIP Lender under any DIP Document would be subject to U.S. federal withholding Tax imposed by FATCA if such DIP Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Internal Revenue Code, as applicable), the DIP Lender shall deliver to the Borrower at the time or times prescribed by law and at such time or times reasonably requested by the Borrower such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Internal Revenue Code) and such additional documentation reasonably requested by the Borrower as may be necessary for the Borrower to comply with their obligations under FATCA and to determine that the DIP Lender has complied with the DIP Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Note.

The DIP Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower in writing of its legal inability to do so

11. Priority of Obligations and DIP Lender's Liens.

(a) To secure all of the Borrower's Obligations now existing or hereafter arising, the DIP Lender is granted (i) a super-priority administrative claim against each of the Borrower and Guarantors pursuant to Section 364(c)(1) of the Bankruptcy Code, and except as set forth in the Financing Orders, having a priority over all other costs and expenses of administration of any kind, including those specified in, or ordered pursuant to, sections 105, 326, 328, 330, 331, 363, 364, 503, 506, 507, 546, 726, 1113 or 1114 or any other provision of the Bankruptcy Code or otherwise (whether incurred in these Chapter 11 Cases and any Successor Case), and, except as set forth in the Financing Orders, shall at all times be senior to the rights of the Loan Parties or any domestic or foreign Subsidiary of the Loan Parties, any successor trustee or estate representative, or any other creditor or party in interest in the Chapter 11 Cases or any Successor Case, and (ii) pursuant to Sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code and subject to clause (b) below, Liens on, and security interests in, the Collateral, except as set forth in the Financing Orders. The security interests and Liens granted to the DIP Lender hereunder pursuant to Sections 364(c)(2) shall not be (i) subject to any Lien or security interest that is avoided and preserved for the benefit of the Loan Parties' estate under Section 551 of the Bankruptcy Code, or (ii) except as set forth in the Financing Orders, subordinated to or made pari passu with any other Lien or security interest under Section 364(d) of the Bankruptcy Code or otherwise.

(b) The priority of the DIP Lender's Liens on the Collateral shall be as set forth in the Financing Orders.

(c) Notwithstanding anything herein to the contrary all proceeds received by the DIP Lender from the Collateral subject to the Liens granted in this Section 11 and in each other DIP Document and by the Financing Orders shall be subject to the priorities set forth in the Financing Orders.

(d) Each of the Loan Parties agrees for itself that the Obligations of such Person shall constitute allowed administrative expenses in the Chapter 11 Cases, having priority over all administrative expenses of and unsecured claims against such Person now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, all administrative expenses of the kind specified in, or arising or ordered under, Sections 105, 326, 327, 328, 330, 331, 361, 362, 363, 364, 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726, 1113 and 1114 of the Bankruptcy Code, except as set forth in the Financing Orders.

12. Further Assurances. The Borrower agrees that it shall, at the Borrower's expense and upon the reasonable request of the DIP Lender, duly execute and deliver or cause to be duly executed and delivered, to the DIP Lender, as the DIP Lender shall direct such Borrower such further instruments and do and cause to be done such further acts as may be necessary or proper in the reasonable opinion of the DIP Lender to carry out more effectively the provisions and purposes of this Note or any other DIP Document, including, upon the written request of the DIP Lender and in form and substance reasonably satisfactory to the DIP Lender, security agreements, UCC-l financing statements and other Collateral Documents confirming and perfecting the granting to the DIP Lender of the Liens (subject to the Financing Orders) in the Collateral to secure the Obligations.

13. [Reserved.]

14. Affirmative Covenants. The Borrower agrees that until the Commitments shall have expired or been terminated and the Obligations payable under the DIP Documents shall have been paid in full in cash:

(a) Upon reasonable request of the DIP Lender, the Loan Parties will permit any officer, employee, attorney or accountant or agent of the DIP Lender to audit, review, make extracts from or copy, at the Borrower's expense, any and all corporate and financial and other books and records of the Loan Parties at all times during ordinary business hours and upon reasonable advance notice, to discuss the Loan Parties' affairs with any of their directors, officers, employees or accountants, so long as a Responsible Officer of a Loan Party is invited to attend such discussions. The Borrower will permit the DIP Lender, or any of its officers, employees, accountants, attorneys or agent, upon reasonable prior notice, to examine and inspect any Collateral or any other property of the Loan Parties at any time during ordinary business hours; provided, that, unless an Event of Default hereunder is continuing, the Loan Parties shall not be required to reimburse the DIP Lender for more than one such visit, audit, review or inspection. Notwithstanding the foregoing, none of the Loan Parties will be required to disclose information to the DIP Lender (or any agent or representative thereof) that is prohibited by applicable law or is subject to attorney-client or similar privilege or constitutes attorney work product.

(b) (i) The Loan Parties and their Subsidiaries will comply with all requirements of applicable law, the non-compliance with which could reasonably be expected to have a Material Adverse Effect and (ii) the Loan Parties and their Subsidiaries will obtain, maintain in effect and comply with all permits, licenses and similar approvals necessary for the operation of its business as now or hereafter conducted other than to the extent contemplated by the Approved Budget or the Financing Orders, the failure of which to do so could reasonably be expected to have a Materially Adverse Effect.

(c) The Loan Parties and their Subsidiaries will pay or discharge, before delinquency,

(i) all material taxes, assessments and governmental charges levied or imposed upon it or upon its income or profits, upon any properties of the Loan Parties and their Subsidiaries (including, without limitation, the Collateral) or upon or against the creation, perfection or continuance of the security interest, prior to the date on which penalties attach thereto, except in each case (1) where the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by such Loan Party or such Subsidiary, (2) taxes the nonpayment of which is permitted or required by the Bankruptcy Code or this Note or (3) taxes as set forth on Schedule II hereto, (ii) all federal, state and local taxes required to be withheld by it, and (iii) all lawful claims for labor, materials and supplies which, if unpaid, might by law become a lien or charge upon any properties of the Loan Parties and their Subsidiaries.

(d) (i) The Loan Parties and each of their Subsidiaries will keep and maintain the Collateral and all of its other properties necessary or useful in its business in good condition, repair and working order (normal wear and tear excepted) other than to the extent contemplated by the Approved Budget or the Financing Orders or as otherwise permitted hereunder, (ii) the Loan Parties and each of their Subsidiaries will defend the Collateral against all claims or demands of all Persons (other than Permitted Encumbrances) claiming the Collateral or any interest therein, and (iii) the Loan Parties and each of their Subsidiaries will keep all Collateral free and clear of all security interests, liens and encumbrances, except Permitted Encumbrances and liens otherwise permitted by the Financing Orders, in each case, except to the extent the failure to do so could not reasonably be expected to have a Material Adverse Effect.

(e) The Loan Parties and their Subsidiaries will maintain insurance with responsible and reputable insurance companies or associations (including, without limitation, commercial general liability, worker's compensation and business interruption insurance) with respect to the Collateral and its other properties (including all real property leased or owned by it) and business, in such amounts and covering such risks as is (i) carried generally in accordance with sound business practice by companies in similar businesses similarly situated, (ii) required by any law or regulation, and (iii) required by any material contract. All property and commercial general liability/hazard policies covering the Collateral are to be made payable to the DIP Lender as a lender loss payee/mortgagee, other than proceeds required by an order of the Bankruptcy Court to be applied to the repayment of debt secured by a Lien on the related assets that is senior to the Liens securing the Obligations under this Note, and are to contain such other provisions as the DIP Lender may reasonably require to fully protect its interest in the Collateral and to any payments to be made under such policies. All certificates of insurance are to be delivered to the DIP Lender and the policies are to be premium prepaid with the lenders' loss payee and additional insured endorsement in favor of the DIP Lender, and shall provide for not less than 30 days' (10 days' in the case of non-payment) prior written notice to the DIP Lender of the exercise of any right of cancellation. If any Loan Party or any of its Subsidiaries fails to maintain such insurance, the DIP Lender may arrange for such insurance, but at the Borrowers' expense and without any responsibility on the DIP Lender's part for obtaining the insurance, the solvency of the insurance companies, the adequacy of the coverage, or the collection of claims. Upon the occurrence and during the continuance of an Event of Default, the DIP Lender shall have the sole right, in the name of the DIP Lender, any Loan Party and its Subsidiaries, to file claims under any insurance policies, to receive, receipt and give acquittance for any payments that may be payable thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents that may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies. The Loan Parties may settle, adjust or compromise any insurance claim on terms reasonably acceptable to the DIP Lender, as long as the proceeds are delivered to the DIP Lender pursuant to this Note and the Financing Orders.

(f) The Loan Parties and their Subsidiaries will preserve and maintain their existence and all of their rights, privileges and franchises necessary or desirable in the normal conduct of its business, except to the extent contemplated by the Approved Budget or the Financing Orders or as permitted

hereunder, or to the extent the failure to do so could not reasonably be expected to have a Material Adverse Effect.

(g) The Loan Parties and their Subsidiaries each agree that they shall take all actions necessary to cause each of the following to occur (each a "Milestone"):

(1) no later than two (2) days after the Petition Date, the Loan Parties shall file a motion seeking approval of an order approving, among other things, the DIP Lender as a stalking horse bidder, the Bidding Procedures, the Break-Up Fee, and the Expense Reimbursement (each as defined in the Stalking Horse Purchase Agreement) in the form attached as Exhibit A to the Stalking Horse Purchase Agreement and otherwise in form and substance acceptable to DIP Lender (the "Bidding Procedures Order");

(2) no later than three (3) days after the Petition Date, the Interim Order approving the Note shall be entered by the Bankruptcy Court in form and substance acceptable to the DIP Lender;

(3) no later than thirty (30) days after the Petition Date, the Bankruptcy Court shall have entered the Bidding Procedures Order, in form and substance acceptable to the DIP Lender;

(4) no later than thirty (30) days after the Petition Date, the Final Order approving this Note shall be entered by the Bankruptcy Court in form and substance acceptable to the DIP Lender;

(5) no later than sixty (60) days after the Petition Date the Borrower shall have held the auction for the Acquired Assets or cancelled the auction and named Lender the winning bidder for the Acquired Assets;

(6) no later than sixty-five (65) days after the Petition Date the Bankruptcy Court shall have entered an order approving the sale of the Acquired Assets to the DIP Lender and authorizing the assignment of the Assigned Contracts to the DIP Lender, in form and substance acceptable to the DIP Lenders, or an order approving for an alternative sale of all or substantially all of the Loan Parties' assets that results in payment of the Obligations in full in cash prior to the Maturity Date; and

(7) no later than eighty (80) days after the Petition Date the sale of the Acquired Assets to the DIP Lender or other winning bidder approved by the Bankruptcy Court shall have been consummated in full.

(h) The Borrower will deliver (which delivery may be made by electronic communication (including email)) to the DIP Lender each of the reports and other items set forth on Schedule I attached hereto no later than the times specified therein (or such later time as the DIP Lender may agree). No less than once per week, the Borrower shall make its senior management and its advisors available at reasonable times and upon reasonable notice to the DIP Lender to discuss the financial position, cash flows, variances, operations, sale process and general case status of the Loan Parties.

15. Negative Covenants. So long as the DIP Lender shall have any Commitment hereunder, or any Term Loan or other Obligation hereunder shall remain unpaid or unsatisfied, the Loan Parties shall not, nor shall they permit any Subsidiary to, without the prior written consent of the DIP Lender:

(a) Neither the Loan Parties nor any of their Subsidiaries shall directly or indirectly, by operation of law or otherwise, (i) form or acquire any Subsidiary, or (ii) merge with, consolidate with, acquire all or substantially all of the assets or Equity Interests of, or otherwise combine with or acquire, any Person, except in the case of this clause (ii), with respect to existing Subsidiaries to the extent consented to by the DIP Lender (which consent shall not be unreasonably withheld), other than, in each case, any such action approved by an order of the Bankruptcy Court.

(b) Neither the Loan Parties nor any of their Subsidiaries shall create, incur, assume or permit to exist any Indebtedness, except (without duplication), to the extent not prohibited by the Financing Orders, Permitted Indebtedness.

(c) Neither the Loan Parties nor any of their Subsidiaries shall create, incur, assume or permit to exist any Lien on or with respect to any of its properties or assets (whether now owned or hereafter acquired) except for Permitted Encumbrances.

(d) Neither the Loan Parties nor any of their Subsidiaries shall make any Restricted Payment, except dividends and distributions by Subsidiaries of the Loan Parties paid to the Borrower. Except for claims of employees for unpaid wages, bonuses, accrued vacation and sick leave time, business expenses and contributions to employee benefit plans for the period immediately preceding the Petition Date and prepetition severance obligations, in each case to the extent permitted to be paid by order of the Bankruptcy Court, neither the Loan Parties nor any of their Subsidiaries shall make any payment in respect of, or repurchase, redeem, retire or defease any, prepetition Indebtedness, except for other payments consented to by the DIP Lender in writing; *provided*, that, nothing in this subsection (d) shall prohibit the Borrower from paying prepetition ordinary course obligations that are the subject of typical first day relief and as set forth in the budget or otherwise approved by the Bankruptcy Court.

(e) Neither the Loan Parties nor any of their Subsidiaries will assume, guarantee, endorse or otherwise become directly or contingently liable in connection with any obligations of any other Person (other than the Loan Parties or any of their Subsidiaries).

(f) Neither the Loan Parties nor any of their Subsidiaries will Dispose of any of its property, business or assets, whether now owned or hereinafter acquired other than (i) the sale of Inventory and other assets held for sale in the ordinary course of business, (ii) the Disposition of obsolete, damaged, unusable, immaterial, uneconomical, surplus or worn out property or equipment, (iii) the sale of other property on terms acceptable to the DIP Lender, (iv) leasing or subleasing assets in the ordinary course of business and the termination or cancellation of any lease or sublease in the ordinary course of business, (v) the lapse of Intellectual Property of the Loan Parties to the extent no longer used in or material to the conduct of their business, so long as such lapse is not materially adverse to the interests of the DIP Lender, (vi) any involuntary loss, damage or destruction of property or involuntary condemnation, seizure by taking, exercise of the power of eminent domain or otherwise, or confiscation or requisition of use of property, (vii) so long as such Disposition would not be otherwise prohibited hereunder, the transfer of assets from any Loan Party to another Loan Party, (viii) dispositions of property subject to casualty events, (ix) termination of leases, subleases, licenses, sublicenses or similar use and occupancy agreements by the applicable Loan Party that do not interfere in any material respect with the business of such Loan Party, and (x) Dispositions that are Permitted Liens.

(g) Neither the Loan Parties nor any of their Subsidiaries shall consent to any amendment, supplement or other modification of any of the terms or provisions contained in, or applicable to, (i) the Financing Orders or (ii) the Prepetition Bond Obligations.

(h) Neither the Loan Parties nor any of their Subsidiaries shall make any investment in, or make loans or advances of money to, any Person (other than another Loan Party), through the direct or indirect lending of money, holding of securities or otherwise.

(i) Neither the Loan Parties nor any of their Subsidiaries shall change its fiscal year.

(j) As of each Variance Testing Date, the Borrower shall not permit: the aggregate amount of Actual Disbursement Amounts to exceed the aggregate amount of Budgeted Disbursement Amounts (each calculated on a cumulative basis as opposed to on a line by line basis), in each case, for such Variance Testing Period, by more than the Permitted Variance.

(k) Neither the Loan Parties nor any of their Subsidiaries shall, directly or knowingly indirectly, use the Term Loans or the proceeds of the Term Loans, or lend, contribute or otherwise make available the Term Loans or the proceeds of the Term Loans to any Person, to fund any activities of or business with any Person, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of Sanctions, in violation of Sanctions applicable to any party hereto, or in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as DIP Lender or otherwise) of Sanctions.

16. Events of Default; Rights and Remedies. Notwithstanding the provisions of Section 362 of the Bankruptcy Code and without application or motion to the Bankruptcy Court, the occurrence of any one or more of the following events (regardless of the reason therefor) shall constitute an "Event of Default" hereunder:

(a) The Borrower (i) shall fail to make any payment of principal of, or interest on, or fees owing in respect of, the Term Loans or any of the other Obligations when due and payable, or (ii) shall fail to pay or reimburse the DIP Lender for any expense reimbursable hereunder or under any other DIP Document within three (3) Business Days following the DIP Lender's written demands for such reimbursement or payment and the passage of any notice period required in the Financing Orders.

(b) Any Loan Party shall fail to comply with any of the provisions of Sections 1(d), 14 (other than Section 14(g)) and 15 of this Note and such failure shall remain unremedied for two Business Days after the earlier of the date (i) a senior officer of any Loan Party becomes aware of such failure and (ii) the date written notice of such default shall have been given by the DIP Lender to such Loan Party.

(c) Any Loan Party shall fail to comply with any other provision of this Note or any of the other DIP Documents (other than any provision embodied in or covered by any other clause of this Section 16) and the same, if capable of being remedied, shall remain unremedied for fifteen (15) days after the earlier of the date (i) a senior officer of any Loan Party becomes aware of such failure and (ii) the date written notice of such default shall have been given by the DIP Lender to such Loan Party.

(d) Except for defaults occasioned by the filing of the Chapter 11 Cases and defaults resulting from obligations with respect to which the Bankruptcy Code prohibits any Loan Party or any Subsidiary from complying or permits any Loan Party or any Subsidiary not to comply, a default or breach shall occur under any agreement, document or instrument to which any Loan Party or any Subsidiary is a party (other than agreements, documents and instruments evidencing Prepetition Bond Obligations) that is not cured within any applicable grace period therefor, and such default or breach (i) involves the failure to make any payment when due in respect of any Indebtedness (other than the Obligations) of any Loan Party or any Subsidiary in excess of $150,000 in the aggregate, or (ii) causes, or permits any holder of such Indebtedness or a trustee to cause, Indebtedness or a portion thereof in excess of $150,000 in the aggregate

to become due prior to its stated maturity or prior to its regularly scheduled dates of payment, regardless of whether such default is waived, or such right is exercised, by such holder or trustee.

(e) Any representation or warranty herein or in any other DIP Document or in any written statement, report, financial statement or certificate made or delivered to DIP Lender by any Loan Party is untrue or incorrect in any material respect (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of the date when made or deemed made.

(f) Any Loan Party or any Subsidiary shall bring a motion in any Chapter 11 Case: (i) to obtain financing from any Person other than the DIP Lender under Section 364(c) or 364(d) of the Bankruptcy Code, except to the extent the proceeds of such financing would be used to repay in full in cash all of the Obligations under this Note; (ii) to grant any Lien other than Permitted Encumbrances upon or affecting any Collateral, except to the extent the proceeds of any such financing secured by such Lien would be used to repay in full all of the Obligations under this Note; or (iii) to authorize any other action or actions materially adverse to the DIP Lender, or the DIP Lender's rights and remedies hereunder or their interests in the Collateral.

(g) The entry of an order in any of the Chapter 11 Cases confirming a plan or plans of reorganization that does not contain a provision for the termination of the DIP Lender's commitment to make Term Loans and the repayment in full in cash of all the Obligations under this Note on or before the effective date of such plan or plans.

(h) The filing of any motion by the Borrower or any Loan Party or any Subsidiary against the DIP Lender seeking, or the entry of any order in the Chapter 11 Cases in respect of, any claim or claims under Section 506(c) of the Bankruptcy Code against or with respect to any Collateral.

(i) The sale, without the DIP Lender's consent, of all or substantially all of the Loan Parties' assets or the Acquired Assets either through a sale under Section 363 of the Bankruptcy Code, through a confirmed plan of reorganization in the Chapter 11 Cases, or otherwise, that does not provide for payment in full in cash of the Obligations directly from the proceeds and on the date of closing of such sale and termination of the DIP Lender's commitment to make Term Loans.

(j) The entry by the Bankruptcy Court of an order authorizing the appointment of an interim or permanent trustee in the Chapter 11 Cases or the appointment of an examiner in the Chapter 11 Cases with expanded powers to operate or manage the financial affairs, business, or reorganization of any Loan Party or any Subsidiary.

(k) The Chapter 11 Cases, or any of them, shall be dismissed or converted from cases under Chapter 11 to cases under Chapter 7 of the Bankruptcy Code prior to the payment in full in cash of the Obligations and terminations of the DIP Lender's commitment to make Term Loans.

(l) The entry of an order in any Chapter 11 Case avoiding or requiring repayment of any portion of the payments made on account of the Obligations owing under this Note or the other DIP Documents.

(m) The entry of an order in any Chapter 11 Case granting any other super-priority administrative claim or Lien equal to or superior to that granted to the DIP Lender (other than any such claim or Lien permitted by the Financing Orders), unless (i) consented to by the DIP Lender or (ii) the Obligations are paid in full in cash and the DIP Lender's commitment to make Term Loans is terminated.

(n) The entry of an order by the Bankruptcy Court granting relief from or modifying the automatic stay of Section 362 of the Bankruptcy Code to allow any creditor (other than the DIP Lender) to execute upon or enforce a Lien on any Collateral except with respect to Permitted Encumbrances arising prior to the Petition Date in an aggregate amount not to exceed $100,000.

(o) The Financing Orders (or either of them) shall be stayed, amended, modified, reversed or revoked in any respect without the DIP Lender's prior written consent.

(p) There shall commence any suit or action against the DIP Lender by or on behalf of (i) any Loan Party or any Subsidiary or (ii) any official committee in the Chapter 11 Cases (other than a motion for standing to commence a suit or action), in each case, that asserts a claim or seeks a legal or equitable remedy that would have the effect of subordinating the claim or Lien of the DIP Lender and, if such suit or action is commenced by any Person other than a Loan Party or any Subsidiary, officer, or employee of Borrower, such suit or action shall not have been dismissed or stayed within 10 days after service thereof on the DIP Lender and, if stayed, such stay shall have been lifted.

(q) Any provision of any DIP Document shall for any reason cease to be valid, binding and enforceable in accordance with its terms (or any Loan Party or any Subsidiary shall challenge the enforceability of any DIP Document or shall assert in writing, or engage in any action or inaction based on any such assertion, that any provision of any DIP Document has ceased to be or otherwise is not valid, binding and enforceable in accordance with its terms), or any Lien created under any DIP Document shall cease to be a valid and perfected first priority Lien (except as otherwise permitted herein or in the Financing Orders) in any of the Collateral purported to be covered thereby.

(r) The occurrence of a DIP Termination Event (as defined in the Financing Orders).

(s) A breach by any Loan Party or any Subsidiary of the terms of the Financing Orders.

(t) The Bidding Procedures Order, or any provision thereof, (i) shall fail to be in full force and effect or binding upon and enforceable against any Loan Party or any Subsidiary or any other party thereto in accordance with its terms, (ii) has been amended or modified without the consent of the DIP Lender, or (iii) has been breached due to the action or inaction of any Loan Party or any Subsidiary or any other party thereto.

(u) Entry of an order authorizing and/or directing the reclamation of goods pursuant to section 546(c) of the Bankruptcy Code in excess of $50,000.

(v) The failure to comply with a Milestone set forth in Section 14(g) on the date specified therein, for the avoidance of doubt, without the requirement for notice or an opportunity to cure the failure to comply with a Milestone if such Milestone is not satisfied on the date set forth in Section 14(g).

(w) The DIP Lender has not received a Phase II environmental site assessment of the Real Property (as defined in the Stalking Horse Purchase Agreement), conducted by a firm selected by the DIP Lender, which contains evidence of contamination at the applicable site(s) above applicable thresholds such that any further investigation or any Material Remediation (as defined in the Stalking Horse Purchase Agreement) 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 the Debtors within a reasonable time upon receipt by the

DIP Lender; *provided, further*, that this clause (w) will not be an Event of Default if the Debtors agree to reduce the Purchase Price (as defined in the Stalking Horse Purchase Agreement) by the amount of the estimated costs of the Material Remediation.

If any Event of Default shall have occurred and be continuing, then the DIP Lender may, upon written notice to the Borrower and subject to the terms of the Financing Orders: (i) terminate the Commitment of the DIP Lender with respect to further Term Loans; (ii) declare all or any portion of the Obligations, including all or any portion of any Term Loan, to be forthwith due and payable; (iii) revoke the Borrower's rights to use Cash Collateral in which the DIP Lender has an interest; and (iv) exercise any rights and remedies under the DIP Documents or at law or in equity, all in accordance with the Financing Orders. Upon the occurrence of an Event of Default and the exercise by the DIP Lender of its rights and remedies under this Note and the other DIP Documents pursuant to clause (iv) above and subject to the Financing Orders, each Loan Party shall assist the DIP Lender in effecting a Disposition of the Collateral upon such terms as are designed to maximize the proceeds obtainable from such Disposition.

Except as otherwise provided for in this Note, the Financing Orders or by applicable law, the Borrower waives: (a) presentment, demand and protest and notice of presentment, dishonor, notice of intent to accelerate, notice of acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all commercial paper, accounts, contract rights, documents, instruments, chattel paper and guaranties at any time held by the DIP Lender on which the Borrower may in any way be liable, and hereby ratifies and confirms whatever the DIP Lender may do in this regard; (b) all rights to notice and a hearing prior to the DIP Lender taking possession or control of, or the DIP Lender's replevy, attachment or levy upon, the Collateral or any bond or security that might be required by any court prior to allowing the DIP Lender to exercise any of its remedies; and (c) the benefit of all valuation, appraisal, marshaling and exemption laws.

To the extent permitted by law and subject in all respects to the terms of the Financing Orders, the DIP Lender's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under section 9-207 of the Uniform Commercial Code or otherwise, shall be to deal with it in the same manner as the DIP Lender deals with similar securities and property for its own account, the DIP Lender's duty of care with respect to Collateral in the custody or possession of a bailee or other third person shall be deemed fulfilled if the DIP Lender exercises reasonable care in the selection of the bailee or other third person, and the DIP Lender need not otherwise preserve, protect, insure or care for any Collateral, and the DIP Lender shall not be obligated to preserve any rights any Loan Party may have against prior parties.

Any amount or payment received by the DIP Lender from any Loan Party or from the proceeds of Collateral (subject to the terms of the Financing Orders) following (i) any acceleration of the Obligations under this Note or (ii) at the direction of the DIP Lender after any Event of Default, shall be applied to the Obligations as determined by the DIP Lender in its sole discretion and once paid in full, any excess shall be paid to the Borrower or as otherwise required by applicable law.

17. Reference Agreements. This Note evidences the Term Loans that may be made to Borrower from time to time in the aggregate principal amount outstanding of up to $5,000,000 and is issued pursuant to and entitled to the benefits of the Financing Orders, to which reference is hereby made for a more complete statement of the terms and conditions under which the Term Loans evidenced by this Note are made and are to be repaid.

18. Definitions; Certain Terms.

(a) Definitions. The following terms used in this Note shall have the following meanings (and any of such terms may, unless the context otherwise requires, be used in the singular or the plural depending on the reference):

"Acquired Assets" shall mean the "Acquired Assets" as defined in the Stalking Horse Purchase Agreement.

"Actual Disbursement Amounts" shall mean with respect to any period, the actual amount that corresponds to the line item "Totals" in the Approved Budget as then in effect.

"Approved Budget" shall mean a rolling eight (8) week forecast of projected receipts, disbursements, net cash flow, liquidity and loans for the immediately following consecutive eight (8) weeks after the date of delivery, which shall be in substantially the form of the Initial Approved Budget or otherwise in form and substance acceptable to the DIP Lender and shall be approved by the DIP Lender, in the DIP Lender's sole discretion.

"Approved Budget Variance Report" shall mean a report provided by the Borrower to the DIP Lender (a) showing, in each case, on a line item by line item and a cumulative basis, the Actual Disbursement Amounts, in each case as of the last day of the Variance Testing Period then most recently ended, noting therein (i) all variances, on a cumulative basis, from the Budgeted Disbursement Amounts for such period as set forth in the Approved Budget as in effect for such period and (ii) containing an indication as to whether each variance is temporary or permanent and analysis and explanations for all material variances, (iii) certifying compliance or non-compliance in such Variance Testing Period with the Permitted Variances and (iv) including explanations for all material variances and violations, if any, of such covenant and if any such violation exists, setting forth the actions which the Borrower has taken or intend to take with respect thereto and (b) which such reports shall contain supporting information, satisfactory to the DIP Lender in its sole discretion.

"Bankruptcy Code" shall have the meaning given such term in the recital to this Note.

"Bankruptcy Court" shall have the meaning given such term in the recital to this Note.

"Bidding Procedures Order" shall have the meaning given such term in Section 14(g)(1) of this Note.

"Borrower" shall have the meaning given such term in the recital to this Note.

"Budgeted Disbursement Amounts" shall mean with respect to any period, the amount that corresponds to the line item "Totals" in the Approved Budget as then in effect.

"Business Day" shall mean any day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required to close.

"Cash Collateral" shall have the meaning given to such term in the Financing Orders.

"Change In Law" shall mean the occurrence, after the date of this Note, of any of the following:

(a) the adoption or taking effect of any law, rule, regulation or treaty (excluding the taking effect after the date of this Note of a law, rule, regulation or treaty adopted prior to the date of this Note);

(b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority; or

(c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority.

It is understood and agreed that (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203, H.R. 4173), all Laws relating thereto, all interpretations and applications thereof and any compliance by a DIP Lender with any and all requests, rules, guidelines, requirements and directives thereunder or issued in connection therewith or in implementation thereof or relating thereto and (ii) all requests, rules, guidelines, requirements or directives issued by any United States or foreign regulatory authority in connection with the implementation of the recommendations of the Bank for International Settlements or the Basel Committee on Banking Regulations and Supervisory Practices (or any successor or similar authority) in each case pursuant to Basel III, shall, for the purposes of this Agreement, be deemed to be adopted subsequent to the date hereof and a Change in Law regardless of the date enacted, adopted, issued, promulgated or implemented.

"Chapter 11 Case" and "Chapter 11 Cases" shall have the respective meanings given such terms in the recital to this Note.

"Closing Date" shall mean the Business Day when each of the conditions applicable to the funding of the Term Loans (other than any Final Order Term Loans) and listed in Section 2(a) of this Note shall have been satisfied or waived in a manner satisfactory to the DIP Lender.

"Collateral" shall mean the assets and property covered by the Financing Orders and the other Collateral Documents and any other assets and property, real or personal, tangible or intangible, now existing or hereafter acquired, that may at any time be or become subject to a security interest or Lien in favor of the DIP Lender, to secure the Obligations and the Guaranteed Obligations. Without limiting the foregoing, the Collateral shall include all present and future property of each Loan Party under Section 541(a) of the Bankruptcy Code (including, without limitation, the proceeds of avoidance actions upon entry of the Final Order) and all proceeds thereof; provided, however, that the FT Catalyst and FT CANS shall not constitute Collateral.

"Collateral Documents" shall mean each agreement entered into pursuant to Section 12 hereof and all similar agreements entered into guaranteeing payment of, or granting a Lien upon property as security for payment of, the Obligations and the Guaranteed Obligations, including the Financing Orders and the Guaranty.

"Commitment" shall mean the commitment of the DIP Lender to make the Term Loans to the Borrower as the same may be terminated or reduced from time to time in accordance with the terms of this Note.

"Connection Income Taxes" shall mean Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"Debtors" shall have the meaning given to such term in the Financing Orders.

"Default" shall mean an event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

"Default Rate" shall have the meaning given such term in Section 4(d) of this Note.

"Designated Jurisdiction" shall mean any country or territory that is the target of comprehensive Sanctions (as of the date of this Agreement, Cuba, Iran, North Korea, Syria, the Crimea region of Ukraine, the so-called Donetsk People's Republic, and the so-called Luhansk People's Republic).

"DIP Documents" shall mean the Note, the Collateral Documents, the Guaranty, the Financing Orders and all other agreements, instruments, documents and certificates executed and delivered to, or in favor of the DIP Lender in connection with this Note. Any reference in this Note or any other DIP Document to a DIP Document shall include, to the extent any such document is material, all appendices, exhibits or schedules thereto, and all amendments, restatements, amendments and restatements supplements or other modifications thereto, and shall refer to such DIP Document as the same may be in effect at any and all times such reference becomes operative.

"DIP Lender" shall have the meaning given such term in the recital to this Note.

"Dispose" or "Disposition" shall mean any transaction, or series of related transactions, pursuant to which any Person or any of its Subsidiaries sells, assigns, transfers, leases, licenses (as licensor) or otherwise disposes of any property or assets (whether now owned or hereafter acquired) (excluding Liens) to any other Person, in each case, whether or not the consideration therefor consists of cash, securities or other assets owned by the acquiring Person. For purposes of clarification, "Disposition" shall include (a) the sale or other disposition for value of any contracts, (b) any disposition of property through a "plan of division" under the Delaware Limited Liability Company Act or any comparable transaction under any similar law, and (c) the early termination or modification of any contract resulting in the receipt by any Loan Party of a cash payment or other consideration in exchange for such event (other than payments in the ordinary course for accrued and unpaid amounts due through the date of termination or modification). Notwithstanding anything to the contrary herein, the disposition of assets in connection with court-approved bid and sale procedures requested pursuant to the Bidding Procedures Order shall in no event constitute a "Disposition" hereunder or under any DIP Document.

"Dollars" or "$" shall mean lawful currency of the United States of America.

"Equity Interests" shall mean, for any Person, any and all shares, interests, participations, or other equivalents, including membership or limited liability company interests (however designated, whether voting or non-voting) of equity of the Person, including, if the Person is a partnership, partnership interests (whether general or limited) or any other interest or participation that confers on a holder the right to receive a share of the profits and losses of, or distributions of assets of, the partnership, but not including debt securities convertible or exchangeable into equity unless and until actually converted or exchanged.

"Event of Default" shall have the meaning given such term in Section 16 of this Note.

"Excluded Taxes" shall mean any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of the DIP Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of the DIP Lender, federal withholding Taxes imposed on amounts payable to or for the account of the DIP Lender with respect to an applicable interest in Term Loans or Commitment pursuant to a law in effect on the date on which (i) the DIP Lender acquires such interest in the Term Loans or Commitment or (ii) the DIP Lender changes its lending office, except in each case to the extent that, pursuant to Section 10, amounts with respect to such Taxes were payable either to the DIP Lender's assignor immediately before the DIP Lender became a party hereto or to the DIP Lender immediately before it changed its lending office, (c) Taxes

attributable to such Recipient's failure to provide the Borrower with the tax documentation described in Section 10 hereof and (d) any withholding Taxes imposed under FATCA.

"Extraordinary Receipts" shall mean any cash received by the Loan Parties or any of their Subsidiaries not in the ordinary course of business (and not consisting of proceeds described in Sections 7(a)(i) and 7(a)(ii) hereof), in excess of $100,000, from (i) foreign, United States, state or local tax refunds, (ii) pension plan reversions, (iii) proceeds of insurance (other than to the extent such insurance proceeds are immediately payable to a Person that is not a Loan Party or any of their Subsidiaries) and including, for the avoidance of doubt, any director and officer insurance policies, (iv) judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action, (v) condemnation awards (and payments in lieu thereof), (vi) indemnity payments (other than to the extent such payments described in the foregoing clauses (iv) and (v) are immediately payable to a Person that is not an affiliate of a Loan Party or any of their Subsidiaries) and (vii) any purchase price adjustment received in connection with any purchase agreement.

"FATCA" shall mean Sections 1471 through 1474 of the Internal Revenue Code, as of the date of this Note (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among governmental authorities and implementing such Sections of the Internal Revenue Code.

"Final Order" shall mean the order of the Bankruptcy Court entered in the Chapter 11 Cases after a final hearing pursuant to Sections 105, 326, 363, 364, 503 and 507 of the Bankruptcy Code and Bankruptcy Rule 4001, in form and substance satisfactory to the DIP Lender, together with all extensions, modifications and amendments thereto, authorizing Borrower to obtain credit, incur Indebtedness, and grant Liens under this Note and/or certain financing documentation, all as set forth in such order.

"Final Order Term Loan" shall have the meaning given such term in Section 1(a).

"Financing Orders" shall mean, collectively, the Interim Order and the Final Order, as applicable.

"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.

"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.

"GAAP" shall mean generally accepted accounting principles in the United States of America.

"Governmental Authority" shall mean the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"Guaranteed Obligations" shall mean the obligations to be guaranteed by each Guarantor pursuant to the terms of the Guaranty.

"Guarantor" shall have the meaning given such term in the recital to this Note.

"Guaranty" shall mean the Guaranty, dated as of the date hereof, made by the Guarantors in favor of the DIP Lender.

"Indebtedness" shall mean, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business, (d) all obligations of such Person under leases which are or should be, in accordance with GAAP, recorded as capital leases in respect of which such Person is liable (or, if GAAP is revised so that capital leases no longer are categorized as capital leases, that would be recorded as capital leases under GAAP as in effect prior to such revision), (e) all unconditional obligations of such Person to purchase, redeem, retire, defease or otherwise acquire for value any capital stock or other equity interests of such Person or any warrants, rights or options to acquire such capital stock or other equity interests, (f) all deferred obligations of such Person to reimburse any bank or other Person in respect of amounts paid or advanced under a letter of credit or other similar instrument, (g) all Indebtedness of the kind described in clauses (a) through (f) of others secured by a Lien on any asset of such Person, whether or not such Debt is assumed by such Person, (h) all guaranteed obligations of such Person in respect of obligations of the kind referred to in clauses (a) through (f) above, and (i) obligations in respect of any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement or other similar agreements or arrangements which is designed to protect against fluctuations in interest rates.

"Indemnified Person" shall have the meaning given such term in Section 9 of this Note.

"Indemnified Taxes" shall mean (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Borrower under any DIP Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

"Initial Approved Budget" shall mean the Approved Budget delivered on or prior to the Closing Date that is acceptable to the DIP Lender.

"Interim Order" shall mean the interim order of the Bankruptcy Court entered in the Chapter 11 Cases after an interim hearing (assuming satisfaction of the standards prescribed in Sections 105, 326, 363, 364, 503 and 507 of the Bankruptcy Code and Bankruptcy Rule 4001 and other applicable law), together with all extensions, modifications and amendments thereto, satisfactory in form and substance to the DIP Lender, authorizing, on an interim basis, Borrower to execute and perform under the terms of this Note and the other DIP Documents.

"Inventory" shall have the meaning given such term in the Prepetition Term Loan Agreement whether or not such agreement remains in effect.

"Laws" shall mean, collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities and executive orders, including the binding interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

"Lien" shall mean any mortgage or deed of trust, pledge, hypothecation, assignment, deposit arrangement, lien, charge, claim, security interest, easement or encumbrance, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any lease or any financing lease having substantially the same economic effect as any of the foregoing, and the filing of, or agreement to give, any financing statement perfecting a security interest under the Uniform Commercial Code or comparable law of any jurisdiction).

"Loan Party" shall mean the Borrower and any Guarantor.

"Material Adverse Effect" shall mean a material adverse effect on (i) the operations, business, assets, properties or financial condition of the Loan Parties taken as a whole, (ii) the ability of the Loan Parties to perform payment obligations under any DIP Document, (iii) the legality, validity or enforceability of this Note or any other DIP Document, or (iv) the rights and remedies of the DIP Lender under any DIP Document; provided, however that "Material Adverse Effect" shall expressly exclude any change, event or occurrence, arising individually or in the aggregate, from events that could reasonably be expected to result from the filing or commencement of the Chapter 11 Cases or the announcement of the filing or commencement of the Chapter 11 Cases.

"Maturity Date" shall mean the earliest to occur of (i) eighty days after the Petition Date, or if such date is not a Business Day the immediately following Business Day, (ii) thirty days after the Petition Date, if the Final Order has not been entered by the Bankruptcy Court on or prior to such date, or if such date is not a Business Day the immediately following Business Day, (iii) the consummation of a sale of all or substantially of the Debtors' assets or the sale of the Acquired Assets pursuant to the Bidding Procedures Order or otherwise; (iv) the substantial consummation of a plan of reorganization filed in the Chapter 11 Cases that is confirmed pursuant to an order of the Bankruptcy Court, or (v) the date on which the Term Loans are accelerated pursuant to Section 16.

"Maximum Amount" shall have the meaning given such term in Section 1 of this Note.

"Milestone" shall have the meaning given such term in Section 14(g) of this Note.

"Note" shall have the meaning given such term in the recital to this Note.

"Obligations" shall mean all loans, advances, debts, liabilities and obligations for the performance of covenants, tasks or duties or for payment of monetary amounts (whether or not such performance is then required or contingent, or such amounts are liquidated or determinable) owing by Borrower to the DIP Lender arising under the Note or any of the other DIP Documents, and all covenants and duties regarding such amounts, of any kind or nature, present or future, arising under the Note or any of the other DIP Documents. This term includes all principal, interest, fees, charges, expenses, reasonable and documented attorneys' fees and any other sum chargeable to Borrower under the Note or any of the other DIP Documents.

"OFAC" shall mean the Office of Foreign Assets Control of the United States Department of the Treasury.

"Other Connection Taxes" shall mean, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any DIP Document, or sold or assigned an interest in any Term Loan or DIP Document).

"Other Taxes" shall have the meaning given such term in Section 10 of this Note.

"Payment Office" shall mean such account, office or offices of the DIP Lender as may be designated in writing from time to time by the DIP Lender to Borrower.

"Permitted Encumbrances" shall mean the following encumbrances: (a) Liens for taxes or assessments or other governmental charges (i) not yet due or that remain payable without penalty, (ii) that are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP, or (iii) the nonpayment of which is permitted or required by the Bankruptcy Code; (b) pledges or deposits of money securing statutory obligations under workmen's compensation, unemployment insurance, social security or public liability laws or similar legislation (excluding Liens under Title IV of the Employee Retirement Income Security Act of 1974); (c) pledges or deposits of money securing bids, tenders, contracts (other than contracts for the payment of money) or leases to which any Loan Party is a party as lessee made in the ordinary course of business; (d) carriers', warehousemen's, suppliers' or other similar possessory liens arising in the ordinary course of business; (e) zoning restrictions, easements, rights of way, encroachments, covenants, conditions, reservations, licenses, or other restrictions on the use of any real estate or other minor irregularities in title (including leasehold title) thereto so long as the same do not materially impair the use or value of such real estate; (f) the DIP Lender's Liens; (g) Liens existing on the Petition Date (to the extent valid, enforceable, perfected and not subject to avoidance as of the Petition Date or perfected after the Petition Date pursuant to section 546(b) of the Bankruptcy Code); (h) Liens granted pursuant to the Financing Orders (including, to the extent constituting a Lien); (i) to the extent constituting Liens, Liens on goods delivered to any Loan Party after the Petition Date under any consignment or similar title retention agreements, (j) non-exclusive licenses of intellectual property rights in the ordinary course of business, and (k) any interest or title of a lessor under any operating lease or operating sublease entered into by the Borrower or any Guarantor in the ordinary course of its business and other statutory and common law landlords' liens under such leases and subleases.

"Permitted Indebtedness" shall mean: (a) current Indebtedness incurred in the ordinary course of business for inventory, supplies, equipment, services, taxes or labor; (b) Indebtedness arising under this Note and the other DIP Documents; (c) Prepetition Bond Obligations; (d) deferred taxes and all other expenses incurred in the ordinary course of business; (e) any Indebtedness existing on the Petition Date; (f) administrative expenses of Borrower for which the Bankruptcy Court has not directed payment; and (g) Indebtedness owed to any Person providing worker's compensation, health, disability or other employee benefits or property, casualty or liability insurance to the Loan Parties and their Subsidiaries incurred in connection with such Person providing such benefits or insurance pursuant to customary reimbursement or indemnification obligations to such Person,.

"Permitted Variances" shall mean, with respect to any Variance Testing Period, in respect of the aggregate amount of Actual Disbursement Amounts, 15% for such Variance Testing Period.

"Person" shall mean any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, public benefit corporation, other entity or government (whether federal, state, county, city, municipal, local, foreign, or otherwise, including any instrumentality, division, agency, body or department thereof).

"Petition Date" shall have the meaning given such term in the recital to this Note.

"Prepetition Bonds" shall have the meaning given such term in the Financing Orders.

"Prepetition Bond Obligations" shall have the meaning given such term in the Financing

Orders.

"Recipient" shall mean the DIP Lender.

"Related Fund" shall mean, with respect to any Person, an affiliate of such Person, or a fund or account managed by such Person or an affiliate of such Person.

"Related Parties" shall mean, with respect to any specified Person, such Person's affiliates and the respective managers, administrators, trustees, partners, investors, directors, officers, employees, agents, advisors, sub-advisors or other representatives of such Person and such Person's affiliates.

"Restricted Payment" shall mean any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of any Person or any of its Subsidiaries, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to any Person's stockholders, partners or members (or the equivalent of any thereof), or any option, warrant or other right to acquire any such dividend or other distribution or payment.

"Responsible Officer" shall mean the chief executive officer, chief financial officer, chief operating officer, chief administration officer, general counsel or chief restructuring officer of the Borrower.

"Sanction" shall mean any sanction administered or enforced by the United States Government (including OFAC and the U.S. State Department), the United Nations Security Council, the European Union, or His Majesty's Treasury.

"Stalking Horse Purchase Agreement" shall mean that certain Asset Purchase Agreement by and among the DIP Lender, the Borrower and the other parties from time to time party thereto in the form filed with the Bankruptcy Court or as otherwise agreed by the DIP Lender in its sole discretion.

"Subsidiary" of a Person shall mean a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of each of the Loan Parties.

"Successor Case" shall have the meaning given such term in the Financing Orders.

"Taxes" shall have the meaning given such term in Section 10 of this Note.

"Term Loans" shall have the meaning given such term in Section 1 of this Note.

"U.S. Person" shall mean any Person that is a "United States Person" as defined in Section 7701(a)(30) of the Internal Revenue Code.

"Variance Testing Date" shall mean each Friday of each week after the date hereof commencing with the first full week after the date hereof.

"Variance Testing Period" shall mean (i) for the first three Variance Testing Dates, the period commencing on the Petition Date and ending on such Variance Testing Date and (ii) thereafter, the 4-week period ending on such Variance Testing Date.

19. Representations and Warranties. The Borrower and each of the other Loan Parties represents as follows:

(a) the Borrower and each of the Loan Parties are duly formed and/or organized and validly existing under the laws of their jurisdictions of incorporation or formation;

(b) upon entry of the Financing Orders, the execution and delivery of this Note and the other DIP Documents and the performance by the Borrower of the Borrower's obligations hereunder and under the other DIP Documents (i) are within its corporate powers, (ii) have been duly authorized by all necessary corporate action of the Borrower, (iii) have received all necessary bankruptcy, insolvency or governmental approvals, and (iv) do not contravene or conflict with any provisions of (A) applicable material law, (B) the Borrower's corporate charter or by-laws or (C) of any agreements binding upon or applicable to the Loan Parties or any of their Subsidiaries or any of their properties, except, in the case of clauses (iv)(A) and (iv)(C), to the extent such contravention or non-compliance could not reasonably be expected to have a Material Adverse Effect;

(c) the Chapter 11 Cases have been duly authorized by all necessary legal and corporate action by or on behalf of each Loan Party and have been duly and properly commenced;

(d) upon entry of the Financing Orders, this Note and each other DIP Document is a legal, valid and binding obligation, enforceable against the Borrower in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally, including the entry of the Financing Orders and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law;

(e) other than as a result of the Chapter 11 Cases or this Note and subject to any necessary orders or authorization of the Bankruptcy Court, the Borrower and the Loan Parties have good and marketable title to, or valid leasehold interests in, all of its material property and assets; none of the properties and assets of the Loan Parties and their Subsidiaries are subject to any Liens other than Permitted Encumbrances;

(f) no written statement furnished by or on behalf of the Loan Parties and their Subsidiaries to the DIP Lender pursuant to the terms of this Note (other than any projections, the Approved Budget, estimates and information of a general economic nature or general industry nature, each of which shall be reasonably believed to be trued and correct), when taken as a whole, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not materially misleading in light of all of the circumstances under which they were made;

(g) except for proceedings in or related to the Chapter 11 Cases, no action, claim, lawsuit, demand, investigation or proceeding is now pending or, to the knowledge of the Borrower, threatened in writing against the Loan Parties or their Subsidiaries before any governmental authority or before any arbitrator or panel of arbitrators that challenges the rights or powers of the Loan Parties or their Subsidiaries to enter into or perform any of its obligations under the DIP Documents to which it is a party, or the validity or enforceability of any DIP Document or any action taken thereunder that, in any case, if adversely determined, could reasonably be expected to have a Material Adverse Effect;

(h) each Loan Party is in compliance in all material respects with the requirements of all laws and regulations and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of law or regulation or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect;

(i) none of the Loan Parties is an "investment company", "affiliated person", "promoter" of, or "principal underwriter" of or for, an "investment company", as such terms are defined in the Investment Company Act of 1940, as amended;

(j) no Loan Party, nor, to the knowledge of the Loan Parties, any director, officer, employee, agent, affiliate or representative thereof, is an individual or entity that is, or is 50% or more owned or controlled by any individual or entity that is, (i) currently the subject or target of any Sanctions or (ii) located, organized or resident in a Designated Jurisdiction;

(k) since the Petition Date, there has been no event or circumstance that has had or would reasonably be expected to have a Material Adverse Effect; and

(l) the Loan Parties and their Subsidiaries have filed all material federal, state and other tax returns and reports required to be filed, and have paid all material federal, state and other taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable other than those not yet delinquent, that are being contested in good faith by appropriate proceedings and those that are set forth on Schedule II hereto.

20. [Reserved].

21. Miscellaneous.

(a) All notices and other communications provided for hereunder shall be in writing (including facsimile communication) and mailed, emailed or delivered as follows:

If to Borrower:	Fulcrum Sierra BioFuels, LLC P.O. Box 220 Pleasanton, CA 94566 Attn: Richard D. Barraza, Vice President & Secretary Email: rbarraza@fulcrum-bioenergy.com
with copies to (which shall not constitute notice):	Morris Nichols Arsht & Tunnell LLP 1201 North Market Street P.O. Box 1347 Wilmington, DE 19899-1347 Attn: Robert J. Dehney Curtis S. Miller Email: rdehney@morrisnichols.com cmiller@morrisnichols.com

If to the DIP Lender: Switch, Ltd.
7135 S. Decatur Blvd
Las Vegas, NV 89118
Attn: Lynnel Reyes, Associate General Counsel
Email: Policy@switch.com

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

-and-

Latham & Watkins LLP
1271 Avenue of the Americas
New York, New York 10022
Attn: Adam J. Goldberg
Kendra Kocovsky
Email: adam.goldberg@lw.com
kendra.kocovsky@lw.com

All such notices and communications shall, when mailed or sent by overnight courier, be effective when deposited in the mails or delivered to the overnight courier, as the case may be, or when sent by email be effective when confirmation is received.

(b) The Borrower shall reimburse the DIP Lender for all out-of-pocket expenses incurred in connection with the negotiation and preparation of the DIP Documents and the obtaining of approval of the DIP Documents by the Bankruptcy Court, including fees, costs and expenses of financial and other advisors (provided, that, with respect to legal fees and expenses, limited to the legal fees, costs and expenses of one legal counsel and one local counsel in each relevant jurisdiction), including fees, costs and expenses of financial and other advisors, in connection with:

(1) any amendment, modification or waiver of, consent with respect to, or termination or enforcement of, any of the DIP Documents or advice in connection with the administration of the Term Loans made pursuant hereto or its rights hereunder or thereunder;

(2) the review of pleadings and documents related to the Chapter 11 Cases and any subsequent Chapter 7 case, attendance at meetings related to the Chapter 11 Cases and any subsequent Chapter 7 case, and general monitoring of the Chapter 11 Cases and any subsequent Chapter 7 case;

(3) any litigation, contest, dispute, suit, proceeding or action (whether instituted by the DIP Lender, the Borrower or any other Person, and whether as a party, witness or otherwise) in any way relating to the Collateral, any of the DIP Documents or any other agreement to be executed or delivered in connection herewith or therewith, including any litigation, contest, dispute, suit, case, proceeding or action, and any appeal or review thereof, in connection with a case commenced by or against Borrower or any other Person that may be obligated to the DIP Lender by virtue of the DIP Documents, including any such litigation, contest, dispute, suit, proceeding or action arising in connection with any work-out or restructuring of the Term Loans during the pendency of one or more Events of Default;

(4) any attempt to enforce any remedies of the DIP Lender against any or all of the Borrower or any other Person that may be obligated to the DIP Lender by virtue of any of the DIP Documents, including any such attempt to enforce any such remedies in the course of any work-out or restructuring of the Term Loans during the pendency of one or more Events of Default;

(5) any work-out or restructuring of the Term Loans during the pendency of one or more Events of Default; and

(6) any efforts to (A) monitor the Term Loans or any of the other Obligations, (B) evaluate, observe or assess any of the Borrower or their respective affairs, (C) verify, protect, evaluate, assess, appraise, collect, sell, liquidate or otherwise Dispose of any of the Collateral and (D) monitor any sales;

all of which shall, subject to the Financing Orders, be payable within ten (10) Business Days of the Borrower's receipt of an invoice. Without limiting the generality of the foregoing, such expenses, costs, charges and fees may include: fees, costs and expenses of accountants, appraisers, investment bankers, management and other consultants and paralegals; court costs and expenses; photocopying and duplication expenses; court reporter fees, costs and expenses; long distance telephone charges; air express charges; and expenses for travel, lodging and food paid or incurred in connection with the performance of such legal or other advisory services. All expenses incurred by the DIP Lender shall receive super-priority administrative expense status per Section 364 of the Bankruptcy Code (subject to the Financing Orders). On or prior to the earlier of the Maturity Date and any prepayment of all the outstanding Term Loans, the Borrower shall pay, or caused to be paid, to Latham & Watkins LLP an amount (if any) equal to (A) the Budgeted Disbursement Amounts less (B) the Actual Disbursement Amounts without reduction of amounts set forth in the line items in the Approved Budget (including amounts that are identified in the Approved Budget for estate professionals or that have been placed into escrow for the Professional Fees Escrow Account (as defined in the Financing Orders)); *provided*, such amount shall not be in excess of the amount invoiced by Latham & Watkins and not yet paid.

(c) No failure or delay on the part of the DIP Lender or any other holder of this Note to exercise any right, power or privilege under this Note and no course of dealing between Borrower and the DIP Lender shall impair such right, power or privilege or operate as a waiver of any default or an acquiescence therein, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies expressly provided in this Note are cumulative to, and not exclusive of, any rights or remedies that the DIP Lender would otherwise have. No notice to or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances or constitute a waiver of the right of the DIP Lender to any other or further action in any circumstances without notice or demand.

(d) Borrower and any endorser of this Note hereby consent to renewals and extensions of time at or after the maturity hereof without notice, and hereby waive diligence, presentment, protest, demand and notice of every kind and, to the full extent permitted by law, the right to plead any statute of limitations as a defense to any demand hereunder.

(e) If any provision in or obligation under this Note shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

(f) **THIS NOTE AND THE RIGHTS AND OBLIGATIONS OF THE BORROWER AND THE DIP LENDER HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK (INCLUDING WITHOUT LIMITATION SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK), WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES AND, TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE.**

(g) Each party hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the Bankruptcy Court and, if the Bankruptcy Court does not have (or abstains from) jurisdiction, the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Note or any DIP Document, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court.

(h) **THE BORROWER AND, BY THEIR ACCEPTANCE OF THIS NOTE, THE DIP LENDER, AND ANY SUBSEQUENT HOLDER OF THIS NOTE, HEREBY IRREVOCABLY AGREE TO WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS NOTE OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS NOTE AND THE LENDER/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED**. The scope of this waiver is intended to be all-encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this transaction, including without limitation contract claims, tort claims, breach of duty claims and all other common law and statutory claims. The Borrower and, by their acceptance of this Note, the DIP Lender, and any subsequent holder of this Note, each (i) acknowledges that this waiver is a material inducement to enter into a business relationship, that each has already relied on this waiver in entering into this relationship, and that each will continue to rely on this waiver in their related future dealings and (ii) further warrants and represents that each has reviewed this waiver with its legal counsel and that each knowingly and voluntarily waives its jury trial rights following consultation with legal counsel. **THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING) THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS OF THIS NOTE**. In the event of litigation, this provision may be filed as a written consent a trial by the court.

(i) The Borrower shall not have the right to assign their obligations or liabilities under this Note without the prior written consent of the DIP Lender. The DIP Lender may, with the prior written consent of the Borrower if no Event of Default then exists (which consent of the Borrower shall not be required for any assignment to the DIP Lender, a Related Fund or an affiliate of the DIP Lender or which consent shall not be unreasonably conditioned, withheld or delayed), assign to one or more entitles all or any part of, or may grant participation's to one or more entities in or to all or any part of, the amounts outstanding hereunder, and to the extent of any such assignment or participation (unless otherwise stated therein) the assignee or participant shall have the same rights and benefits hereunder as it would have if it were a DIP Lender hereunder. An assigning DIP Lender shall notify the Borrower thereof.

(j) No provision of this Note may be amended or waived unless such amendment or waiver is in writing and is signed by the Borrower and the DIP Lender.

(k) This Note may be executed and delivered in any number of counterparts, and by

different parties hereto on separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute one and the same instrument. Execution of this Note via facsimile or electronic mail shall be effective, and signatures received via facsimile or electronic mail shall be binding upon the parties hereto and shall be effective as originals. The parties hereto irrevocably and unreservedly agree that this Note may be executed by way of electronic signatures and the parties agree that neither this Note, nor any part hereof, shall be challenged or denied any legal effect, validity and/or enforceability solely on the ground that it is in the form of an electronic record.

(l) This Note, the other DIP Documents, and all Liens created hereby or pursuant to the Collateral Documents or any other DIP Document shall be binding upon the Borrower and each other Loan Party, the estates of the Borrower, and any trustee or successor in interest of the Borrower and each other Loan Party in the Chapter 11 Case or any subsequent case commenced under Chapter 7 of the Bankruptcy Code, and shall not be subject to Section 365 of the Bankruptcy Code. This Note and the other DIP Documents and the Financing Orders shall be binding upon, and inure to the benefit of, the successors of the DIP Lender and each of its respective permitted assigns, transferees and endorsees. The Liens created by this Note, and the other DIP Documents shall be and remain valid and perfected in the event of the substantive consolidation or conversion of the Chapter 11 Case or any other bankruptcy case of any Loan Party to a case under chapter 7 of the Bankruptcy Code or in the event of dismissal of the Chapter 11 Case or the release of any Collateral from the jurisdiction of the Bankruptcy Court for any reason, without the necessity that the DIP Lender file financing statements or otherwise perfect its security interests or Liens under applicable law.

(m) In the event of any inconsistency between the terms and conditions of this Note and the Financing Orders, the provisions of the Financing Orders shall govern and control.

(n) THIS WRITTEN PROMISSORY NOTE REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES, AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

* * * * *

IN WITNESS WHEREOF, the Borrower has caused this Note to be executed and delivered by its duly authorized officer as of the day and year and at the place first above written.

FULCRUM SIERRA BIOFUELS, LLC, as Debtor and Debtor in Possession

By: _____
Name:
Title

DIP LENDER:

SWITCH, LTD.

By: _____
Name:
Title:

Schedule I

Deliver (which delivery may be made by electronic communication (including email)) to the DIP Lender, each of the financial statements, reports, or other items set forth below at the following times in form reasonably satisfactory to the DIP Lender:

Every other Thursday commencing with the second Thursday after the date hereof	(a) a certificate which shall include such detail as is reasonably satisfactory to the DIP Lender (i) certifying that the Loan Parties are in compliance with the covenants contained in Section 15(j) and (ii) certifying that no Default or Event of Default has occurred or, if such a Default or Event of Default has occurred, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto, and attaching thereto the Approved Budget Variance Report which shall be prepared by the Borrower as of the last day of the most recent Variance Testing Date,
Every other Thursday commencing with the second Thursday after the date hereof	(b) a revised proposed budget (it being understood that upon written approval of such proposed budget by the DIP Lender (and not before such written approval), in its sole discretion, such proposed budget shall become the "Approved Budget" and provided that until such time as such proposed budget becomes the Approved Budget, the prior Approved Budget shall continue to be the Approved Budget) and timing changes with respect to any periods that were included in a previously delivered report and which shall be in form and substance acceptable to the DIP Lender and DIP Lender,
promptly, to the extent reasonably feasible,	(c) copies of all material pleadings, motions, applications or financial information filed by any Loan Party with the Bankruptcy Court; provided that any such documents that are publicly available shall be deemed to have been delivered,
promptly, but in any event within five (5) Business Days after the Borrower has knowledge of any event or condition that constitutes a Default,	(d) notice of such event or condition and a statement of the curative action that the Borrower proposes to take with respect thereto, and
upon the reasonable request of the DIP Lender,	(e) any other information relating to the business, financial, legal or corporate affairs of the Loan Parties and their Subsidiaries.

Schedule II

Those certain property taxes for fiscal year 2024-2025 payable to the Storey County Treasurer for each of parcel number 005-071-49 and parcel 004-111-37.

EXHIBIT A

(Approved Budget)

EXHIBIT B

(Borrowing Request)

Switch, Ltd., as DIP Lender
7135 S. Decatur Blvd
Las Vegas, NV 89118
Attn: Lynnel Reyes, Associate General Counsel
Email:Policy@switch.com

[ ], 2024

Ladies and Gentlemen:

Reference is made to the Debtor in Possession Secured Term Promissory Note, dated on or about September ____, 2024 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "DIP Note"), by and among Fulcrum Sierra BioFuels, LLC, a Delaware limited liability company (the "Borrower") and Switch, Ltd., as DIP Lender (the "DIP Lender"). Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the DIP Note.

The Borrower hereby gives you notice pursuant to Section 1 of the DIP Note that the Borrower requests Term Loans under the DIP Note on the below the terms:

(A) Date of borrowing (which shall be a business day): _____, 2024

(B) Principal Amount of Term Loans: $_____

(C) Type of Term Loans: [Interim Order Term Loan] / [Final Order Term Loans]

The Borrower hereby represents that the applicable conditions set forth in Section 2(a) of the DIP Note have been, or will be satisfied, prior to the date of borrowing.

Fulcrum Sierra BioFuels, LLC, as Borrower

By: _____
Name:
Title:

EXHIBIT B

(Initial Budget)

Fulcrum Sierra BioFuels, LLC
Detailed Debtor-in-Possession Budget
September 10, 2024

Expense	Description	09/13/24 1	09/20/24 2	09/27/24 3	10/04/24 4	10/11/24 5	10/18/24 6	10/25/24 7	11/01/24 8	11/08/24 9	DIP Budget Totals
Operations											
3rd Coast Energy Services	Sierra site security	$ 15,000	$ 15,000	$ 15,000	$ 15,000	$ 15,000	$ 15,000	$ 15,000	$ 15,000	$ -	$ 120,000
Franke Management	Sierra warehouse	-	17,500	-	-	-	-	17,500	-	-	35,000
NV Energy	Biorefinery & FPF utilities	25,000	-	-	-	25,000	-	-	-	-	50,000
Water Supply	Water Utilities		2,500			2,500	-				5,000
Sky Fiber	Biorefinery internet	1,900	-	-	-	1,900	-	-	-	-	3,800
Summit Fire & Security	Required annual fire water system inspection	16,950	-	-	-	-	-	-	-	-	16,950
Rubiconn	IT Service Provider	5,000	-	-	5,000	-	-	5,000	-	-	15,000
AT&T	Internet			1,326				1,326			2,652
Waste Management	Trash Services			4,000				4,000			8,000
Canyon General Imporvement District	Water Utilities	100				100					200
---		-	-	-	-	-	-	-	-	-	-
Sub-Total: Operations		**$ 63,950**	**$ 35,000**	**$ 20,326**	**$ 20,000**	**$ 44,500**	**$ 15,000**	**$ 42,826**	**$ 15,000**	**$ -**	**$ 256,602**
Contract Labor:											
Mark Smith	Chief Restructuring Officer	$ 40,150	$ 25,000	$ 25,000	$ 25,000	$ 47,350	$ 25,000	$ 25,000	$ 25,000	$ -	$ 237,500
Rick Barraza	Restructuring oversight, preparation and support	31,150	16,000	16,000	16,000	24,850	16,000	16,000	16,000	-	152,000
Michael Huie	Controller - Accounting financial stmts and support	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	-	96,000
Jeff Brorman	Sierra GM - site preservation	5,230	5,230	5,230	5,230	5,230	5,230	5,230	5,230	-	41,840
Lorra Hennig	AP Manager - Accounting support	5,600	5,600	5,600	5,600	5,600	5,600	5,600	5,600	-	44,800
Oscar Mora	Sierra Biorefinery Supervisor - site preservation	2,080	2,080	2,080	2,080	2,080	2,080	2,080	2,080	-	16,640
---	---	-	-	-	-	-	-	-	-	-	-
---	---	-	-	-	-	-	-	-	-	-	-
Sub-Total: Contract Labor		**$ 96,210**	**$ 65,910**	**$ 65,910**	**$ 65,910**	**$ 97,110**	**$ 65,910**	**$ 65,910**	**$ 65,910**	**$ -**	**$ 588,780**
Insurance:											
Property Insurance (Marsh)	3-month renewal of FPF property coverage	$ -	$ -	$ -	$ -	$ 150,000	$ -	$ -	$ -	$ -	$ 150,000
Builder's Risk (Marsh)	3-month renewal of biorefinery property coverage	-	-	-	-	300,000	-	-	-	-	300,000
Casualty (AFCO Credit Corp)	Casualty coverage through 11/01/24	-	-	43,519	-	-	-	-	-	-	43,519
Directors & Officers (Marsh)	Renew D&O, current coverage expires 9/15/24	1,275,000	-	-	-	-	-	-	-	-	1,275,000
---		-	-	-	-	-	-	-	-	-	-
Sub-Total: Insurance		**$ 1,275,000**	**$ -**	**$ 43,519**	**$ -**	**$ 450,000**	**$ -**	**$ -**	**$ -**	**$ -**	**$ 1,768,519**
Legal, Restructuring & Other											
Debtor Professionals											
Morris, Nichols, Arsht, & Tunnell LLP	Restructuring counsel	$ 125,000	$ 125,000	$ 125,000	$ 100,000	$ 100,000	$ 100,000	$ 50,000	$ 50,000	$ -	$ 775,000
DSI	Financial advisors & investment bankers	-	-	80,000	-	-	-	80,000	-	-	160,000
Verita	Claims agent	100,000	-	-	75,000	-	-	75,000	-	-	250,000
Unsecured Creditors Committee											
Legal	---	80,000	-	-	80,000	-	-	80,000	-	-	240,000
Financial Advisors	---	40,000	-	-	40,000	-	-	40,000	-	-	120,000
Switch Ltd. Professionals											
LW & RL Fees		400,000	-	-	-	-	-	-	-	-	400,000
US Trustee Fees	---	-	-	-	-	-	-	-	150,000	-	150,000
Independent Directors Fees	Carin Barth and Andrew Kidd		-	-	65,000	-	-	-	65,000	-	130,000
FDM - Utility Deposit		17,368									17,368
Sub-Total: Legal & Restructuring		**$ 762,368**	**$ 125,000**	**$ 205,000**	**$ 360,000**	**$ 100,000**	**$ 100,000**	**$ 325,000**	**$ 265,000**	**$ -**	**$ 2,242,368**
TOTALS		**$ 2,197,528**	**$ 225,910**	**$ 334,755**	**$ 445,910**	**$ 691,610**	**$ 180,910**	**$ 433,736**	**$ 345,910**	**$ -**	**$ 4,856,269**