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

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| In re<br><br>FULCRUM BIOENERGY, INC., *et al.*,[1]<br><br>Debtors. | Chapter 11<br><br>Case No. 24-12008 (TMH)<br><br>(Jointly Administered)<br><br>**Objection Deadline:**<br>**January 10, 2025, at 4:00 p.m. (ET)**<br><br>**Hearing Date:**<br>**January 17, 2025, at 2:00 p.m. (ET)** |

**DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING THE SALE OF CERTAIN OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL ENCUMBRANCES; (II) APPROVING THE DEBTORS' ENTRY INTO THE ASSET PURCHASE AGREEMENT; (III) AUTHORIZING THE USE OF PROCEEDS AS CASH COLLATERAL; AND (IV) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the "Debtors") respectfully move (the "Motion") as follows:

## RELIEF REQUESTED

1. The Debtors seeks entry of an order, substantially in the form attached hereto as **Exhibit A** (the "Sale Order"): (i) authorizing the sale (the "Sale") of the Catalyst (as defined herein) free and clear of all liens, claims, interests and encumbrances (the "Encumbrances"); (ii) approving Debtor Fulcrum BioEnergy, Inc.'s ("Fulcrum Parent") entry into the Asset Purchase Agreement, by and between Johnson Matthey PLC (together with its successors and permitted assigns, "JM PLC" or the "Purchaser") and Fulcrum Parent, dated December 24, 2024 (the

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

"Catalyst APA"), attached hereto as **Exhibit B**; (iii) authorizing the use of sale proceeds as cash collateral; and (vi) granting related relief.

## JURISDICTION AND VENUE

2. The United States Bankruptcy Court for the District of Delaware (this "Court") has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and the Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. 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 the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

4. The statutory bases for the relief requested herein are sections 105, 363 and 365 of title 11 of the United States Code (the "Bankruptcy Code"); rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"); and rules 2002-1 and 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules").

## BACKGROUND

### I. General Background

5. On September 9, 2024 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in this Court. The Debtors continue to manage

their assets as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this case. The U.S. Trustee appointed a Committee of Unsecured Creditors [D.I. 74] (the "Committee") on September 19, 2024.

6. Additional details regarding the Debtors and the circumstances that led to the filing of these chapter 11 cases and the facts and circumstances supporting the relief requested herein is set forth in the *Declaration of Mark Smith, Restructuring Advisor to Fulcrum BioEnergy, Inc. in Support of the Chapter 11 Petitions and First Day Motions* [D.I. 9] (the "First Day Declaration").

## II. The Debtors' Sale Process[2]

7. The Debtors executed a robust post-petition marketing strategy, including contacting both strategic and financial purchasers, the broad distribution of sale materials, and the strategic publication of notice of the sale. As a result of the comprehensive marketing approach, the Debtors' investment banker, Development Specialists, Inc. ("DSI"), received thirty-five (35) signed non-disclosure agreements ("NDA"). The Committee's investment banker, Layer 7 Capital, brought further potentially interested parties into the process, resulting in two (2) additional signed NDAs, totaling thirty-seven (37) NDAs. The interested parties represented a broad list of strategic and financial investors that had the financial wherewithal to consummate a transaction within the timeline proposed in the Bidding Procedures Motion. These efforts included (i) eleven (11) site visits by interested parties and further engagement via email and phone calls during the weeks leading up to the Bid Deadline; (ii) establishing a data room whereby interested parties could

[2] Defined terms used in this section but not otherwise defined shall have the meanings ascribed to them in *Notice of Revised Proposed Sale Orders (I) Approving the Sale of the Debtors' Biorefinery and Feedstock Assets Free and Clear of Claims, Liens, and Encumbrances, (II) Approving the Assumption And Assignment of Designated Executory Contracts and Unexpired Leases, and (III) Granting Related Relief* [D.I. 244] (the "Sale Notice").

obtain crucial information regarding the Debtors' businesses; and (iii) facilitating the active parties to visit the Debtors' facilities.

8. The Debtors' efforts resulted in five (5) bids deemed to be Qualified Bids under the Bidding Procedures Order. *See* D.I. 153. At the conclusion of an auction held on November 7, 2024 for certain of the Debtors' assets, and following consultation with the Consultation Parties, the Debtors selected Switch Ltd. ("Switch") and Refuse, Inc. ("Refuse") as the successful bidders. Switch's prevailing bid consisted of a $55 million bid for the Biorefinery Assets. Refuse's prevailing bid consisted of a $3 million bid for the Debtors' Feedstock Assets. The sale transactions for these assets closed on November 19, 2024. None of the Qualified Bids and no bidders sought to acquire the FT Catalyst[3] and FT CANs[4] (the "Catalyst").

9. On November 13, 2024 (the "Sale Hearing"), the Court held a hearing to consider approval of the sales to Switch and Refuse. At the Sale Hearing, the Court approved the sales subject to the submission of revised sale orders under certification of counsel. On November 14, 2024, the Debtors filed revised sale orders under certification of counsel, and the Court entered the orders on the same day at D.I. 264 and 265.

## III. The Catalyst

10. The Debtors entered into that certain Master Catalyst Supply Agreement (the "Catalyst Agreement"), dated as of July 19, 2018, with Johnson Matthey Davy Technologies Limited, a company incorporated under the laws of England and Wales under company number

[3] "*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.

[4] "*FT CAN*" means a catalyst carrier device substantially as described in the Catalyst Agreement and any of the JM Davy 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.

635311 and having its main place of business at 10 Eastbourne Terrace, London W2 6LG England (together with its successors and permitted assigns, "JM Davy"). Pursuant to the Catalyst Agreement, JM Davy sold Fulcrum Parent FT CANs, which are filled with FT Catalyst.

11. Prior to the Petition Date, Fulcrum Parent possessed approximately 36,540 spare Catalyst CANs which are being stored at a leased warehouse facility in Sparks, Nevada, and as noted herein, none of the Qualified Bids sought to acquire the Catalyst. As a result, JM PLC expressed an interest in purchasing the spare Catalyst pursuant to section 363 of the Bankruptcy Code, and the Debtors have since engaged in good faith, arm's-lengths negotiations with JM PLC on the terms of a sale.

## IV. The Catalyst Purchase Agreement

12. The Debtors reached agreement with the Purchaser for the Sale of the Catalyst under section 363 of the Bankruptcy Code on the terms and conditions set forth in the Catalyst APA. Certain material terms of the Catalyst APA, and certain provisions of the Catalyst APA that are required to be highlighted pursuant to Local Rule 6004-1(b)(iv), are described below:[5]

| **Material Terms of the Catalyst APA[6]** | |
|---|---|
| **Seller** | Fulcrum BioEnergy, Inc. (the "Seller") |
| **Purchaser** | Johnson Matthey PLC (the "Purchaser") |
| **Purchase Price** (APA § 2.1) | $900,000.00 |
| **Acquired Assets** (APA § 1.1) | Upon the terms and subject to the conditions of this Agreement, Seller hereby sells, transfers, assigns, conveys and delivers to Purchaser, and Purchaser hereby purchases and |

[5] Any summary of the Catalyst APA contained herein is qualified in its entirety by the actual terms and conditions of the Catalyst APA. To the extent that there is any conflict between any summary contained herein and the actual terms and conditions of the Catalyst APA, the actual terms and conditions of the Catalyst APA shall control in all respects.

[6] Capitalized terms used in this table and not otherwise defined herein shall have the meanings ascribed to such terms in the Catalyst APA.

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| | acquires from Seller, free and clear of any and all liens, claims, interests and encumbrances, to the fullest extent permitted by the Bankruptcy Code and an order of the Bankruptcy Court approving the sale, in a form reasonably acceptable to Purchaser (a "Sale Order") authorizing and approving the transactions described in this Agreement, all right, title and interest of Seller in and to the Purchased CANS. |
| **Sale to Insider**<br>(L.R. 6004-1(b)(iv)(A)) | The Purchaser is not an insider of the Debtors as defined in Bankruptcy Code section 101(31). |
| **Agreements with Management**<br>(L.R. 6004-1(b)(iv)(B)) | None. |
| **Releases**<br>(L.R. 6004-1(b)(iv)(C)) | None. |
| **Private Sale**<br>(L.R. 6004-1(b)(iv)(D)) | The Debtors are seeking approval of a private sale. |
| **Deposit**<br>(APA § 2.2; L.R. 6004-1(b)(iv)(F)) | Purchaser will deliver the full amount of the Purchase Price (the "Deposit") into escrow with Kurtzman Carson Consultants, LLC dba Verita Global (the "Escrow Agent"), pursuant to that certain Account Acknowledgment letter dated December 6, 2024, between the Escrow Agent and Seller, by wire transfer of immediately available funds no later than 5:00 p.m. prevailing Eastern Time on January 13, 2025 (the "Deposit Date").[7] |
| **Interim Arrangements with Purchaser**<br>(L.R. 6004-1(b)(iv)(G)) | The Catalyst APA does not contemplate that the Debtors will enter into any interim agreements or arrangements with the Purchaser. |
| **Use of Proceeds**<br>(L.R. 6004- 1(b)(iv)(H)) | The Sale Order provides that the Debtors may use the Catalyst Sale proceeds as cash collateral.<br><br>The Catalyst APA does not otherwise contain any provision pursuant to which the Debtors propose to release sale proceeds on or after the closing without further Court order. |
| **Tax Exemption**<br>(L.R. 6004-1(b)(iv)(I)) | The Catalyst APA does not contain any provision seeking to have the sale declared exempt from taxes under section 1146(a) of the Bankruptcy Code. |

[7] The Purchaser transferred the Deposit into escrow on December 24, 2024.

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| **Preservation of Books and Records**<br>(L.R. 6004-1(b)(iv)(J)) | None. |
| **Sale of Avoidance Actions** (.R. 6004-1(b)(iv)(K)) | None. |
| **Successor Liability**<br>(APA §§ 10.2, 10.7; L.R. 6004-1(b)(iv)(L)) | This Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and the respective successors and permitted assigns of the Parties.<br><br>Nothing in this Agreement, express or implied, is intended to confer any right, benefit or remedy under or by reason of this Agreement on any person other than the Parties hereto and their respective successors and permitted assigns, nor is anything in this Agreement intended to relieve or discharge any obligation of any third person to any Party hereto, or to give any third person any right to subrogation or action over or against any Party to this Agreement. It is the explicit intention of the parties hereto that no person (other than such Parties) and their respective successors and permitted assigns is or shall be entitled to bring any action to enforce any provision of this Agreement against any of such Parties, and the assumptions, indemnities, covenants, undertakings and agreements set forth in this Agreement shall be solely for the benefit of, and shall be enforceable only by, such Parties and their respective successors and permitted assigns. |
| **Sale Free and Clear**<br>(APA § 1.1); L.R. 6004-1(b)(iv)(M)) | Seller hereby sells, transfers, assigns, conveys and delivers to Purchaser, and Purchaser hereby purchases and acquires from Seller, free and clear of any and all liens, claims, interests and encumbrances, to the fullest extent permitted by the Bankruptcy Code and an order of the Bankruptcy Court approving the sale. |
| **Credit Bid**<br>(L.R. 6004- 1(b)(iv)(N))) | Credit bidding is inapplicable. |
| **Relief from Bankruptcy Rule 6004(h)**<br>(L.R. 6004-1(b)(iv)(O)) | The Debtors are requesting relief from the fourteen-day stay imposed by Bankruptcy Rule 6004(h). |

## V. Use of Proceeds as Cash Collateral

13. Fulcrum Parent is borrower, certain of Fulcrum Parent's subsidiaries are guarantors, and PCL Administration LLC (the "Prepetition Agent") as administrative and

collateral agent for the lenders (collectively, the "Prepetition Fulcrum Lenders," and with the Prepetition Agent, the "Prepetition Loan Secured Parties") under that certain Credit Agreement, dated June 23, 2023 (as amended, restated, supplemented, or otherwise modified from time to time, including by that certain First Amendment to Credit Agreement and Waiver dated September 29, 2023 and that certain Assignment and Assumption Agreement and Second Amendment to Credit Agreement dated May 20, 2024, the "Prepetition Fulcrum Credit Agreement"), and Fulcrum Parent, certain of its subsidiaries, and the Prepetition Agent are party to related collateral security agreements, including that certain Guaranty and Security Agreement, dated as of June 23, 2023 (as amended, restated, supplemented, or otherwise modified from time to time, the "Guaranty and Security Agreement") and that certain Patent Security Agreement, dated as of June 23, 2023 (as amended, restated, supplemented, or otherwise modified from time to time, the "Patent Security Agreement" and with the Guaranty and Security Agreement, the "Security Agreements").

14. The proceeds of the Sale of the Catalyst (the "Catalyst Proceeds") constitute cash collateral of the Prepetition Agent within the meaning of Bankruptcy Code section 363(a) (the "Cash Collateral"). Fulcrum Parent has a need to use the Cash Collateral in order to, among other things, pay the costs of administering its chapter 11 case. As a condition to the sale of certain collateral and other assets to the Prepetition Agent (as described more fully in the *Notice of Hearing on Credit Bid of PCL Administration LLC for Certain of Debtor Fulcrum BioEnergy, Inc.'s Assets* [To Be Filed] and the Agent Transaction APA attached thereto as Exhibit A, together the "PCL Sale Documents")), the Prepetition Agent has, in connection with a sale order approving such sale (such order, the "Agent Sale Order"), agreed to authorize Fulcrum Parent to use the Cash Collateral to satisfy the costs and expenses of administering its chapter 11 case with any remaining Catalyst Proceeds to be distributed according to Fulcrum Parent's chapter 11 plan of liquidation.

Additionally, the Prepetition Agent and UMB Bank, N.A., as successor trustee (in such capacity, the "Biofuels Trustee"), for the bonds issued to Fulcrum Sierra BioFuels, LLC has waived any adequate protection lien or claim in, on, or related to the Catalyst Proceeds.[8]

## BASIS FOR RELIEF REQUESTED

### I. The Sale Reflects a Sound Exercise of the Debtors' Business Judgment.

15. Section 105(a) of the Bankruptcy Code provides: "[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Section 363(b)(1) of the Bankruptcy Code provides that "[t]he trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). In pertinent part, Bankruptcy Rule 6004 states that "[a]ll sales not in the ordinary course of business may be by private sale or by public auction." Fed. R. Bankr. P. 6004(f)(1).

16. Although section 363 of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale, or lease of property of the estate, bankruptcy courts routinely authorize sales of a debtor's assets if such sale is based upon the sound business judgment of the debtor. *See, e.g.*, *Meyers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991); *In re Trans World Airlines, Inc.*, No. 01-00056, 2001 Bankr. LEXIS 980, at *29 (Bankr. D. Del. Apr. 2, 2001); *In re Phoenix Steel Corp.*, 82 B.R. 334, 335-36 (Bankr. D. Del. 1987) (stating that judicial approval of

[8] The Prepetition Agent's and BioFuels Trustee's consent to the use of Cash Collateral and waiver of adequate protection liens and claims is subject to the entry of the Agent Sale Order.

a section 363 sale requires a showing that the proposed sale is fair and equitable, a good business reason exists for completing the sale, and the transaction is in good faith).

17. The Debtors submit that its decision to consummate the Sale with the Purchaser represents a reasonable exercise of the Debtors' business judgment, such that the Sale should be approved under sections 105(a) and 363(b) of the Bankruptcy Code. As noted herein, after a robust marketing effort and at the conclusion of the Auction, none of the Qualified Bids and no bidders sought to purchase the Catalyst. Under the circumstances, the Debtors believe that the Sale to the Purchaser is the highest, best, and only offer available for the Catalyst. Thus, the Sale of the Catalyst to the Purchaser through a private sale is appropriate.

## II. Notice of the Sale Hearing is Reasonable and Appropriate.

18. Bankruptcy Rule 2002(c)(1) states, in pertinent part, that the notice of a proposed use, sale or lease of property shall include the terms and conditions of any private sale and the deadline for filing objections and shall generally describe the property. The Debtors have provided adequate notice of the Sale to parties-in-interest through first class mail. *See* Fed. R. Bankr.P. 2002(c)(1) (notice must contain "the terms and conditions of any private sale and the time fixed for filing objections."); *see also Delaware & Hudson Ry.*, 124 B.R. at 18. The Debtors submit that the information contained herein satisfies these notice requirements.

## III. The Debtors May Sell the Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests.

19. In accordance with section 363(f) of the Bankruptcy Code, a debtor may sell property under section 363(b) "free and clear of any interest in such property of an entity other than the estate" if any one of the following conditions is satisfied: (1) such a sale is permitted under applicable nonbankruptcy law; (2) the party asserting such a lien, claim, or interest consents to such sale; (3) the interest is a lien and the purchase price for the property is greater than the

aggregate amount of all liens on the property; (4) the interest is the subject of a bona fide dispute; or (5) the party asserting the lien, claim, or interest could be compelled, in a legal or equitable proceeding, to accept a money satisfaction for such interest. 11 U.S.C. § 363(f).

20. The Debtors believe the Sale meets one or more of the foregoing conditions with respect to any entity that may assert an interest in the Catalyst. Furthermore, all creditors and other parties in interest known to the Debtors will be served with a copy of the Motion and will have the opportunity to object and be heard, including with respect to any asserted lien or other interest in the Catalyst[9]. To the extent any entity believes it holds a lien or other interest in the Catalyst and does not object to the Motion, or whose objections are otherwise resolved, such entity will be deemed to have consented to the relief sought in the Motion pursuant to section 363(f)(2). Moreover, to the extent any such lien or interest is valid and the holder does not consent, the Debtors believe that the holder of such lien or interest could be compelled to accept a money satisfaction of such interest, or the Debtors will otherwise be able to satisfy the requirements of section 363(f). Furthermore, bankruptcy courts have recognized the equitable power to authorize sales free and clear of interests that are not specifically covered by section 363(f). *See, e.g.*, *In re Trans World Airlines, Inc.*, 2001 WL 1820325, at *3, *6 (Bankr. D. Del. Mar. 27, 2001); *Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.)*, 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987). Accordingly, the Debtors request that the Sale be approved "free and clear," with any liens, claims, encumbrances, and interests to attach to the proceeds of the Sale with the same validity, extent, and priority, and subject to the same rights and defenses, as existed immediately prior to the Sale.

[9] The Debtors first priority lenders at Fulcrum Parent and Fulcrum Sierra BioFuels LLC have consented to the sale of the Catalyst.

## IV. The Purchaser should be Entitled to the Protections of Bankruptcy Code Section 363(m).

21. The Debtors additionally requests that the Court find that the Purchaser is entitled to the protections provided by section 363(m) of the Bankruptcy Code in connection with the Sale. Section 363(m) of the Bankruptcy Code provides, in pertinent part:

> The reversal or modification on appeal of an authorization under subsection (b) . . . of this section of a sale . . . of property does not affect the validity of a sale . . . under such authorization to an entity that purchased . . . such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale . . . were stayed pending appeal.

11 U.S.C. § 363(m). Section 363(m) of the Bankruptcy Code thus protects the purchaser of assets sold pursuant to section 363 from the risk that it will lose its interest in the Catalyst if the order allowing the sale is reversed on appeal.

22. Although the Bankruptcy Code does not define "good faith purchaser," the Third Circuit, construing section 363(m) of the Bankruptcy Code, has stated that "the phrase encompasses one who purchases in 'good faith' and for 'value.'" *In re Abbotts Dairies of Pa. Inc.*, 788 F.2d 143, 147 (3d Cir. 1986). To constitute lack of good faith, a party's conduct in connection with the sale must usually amount to "fraud, collusion between the purchaser and other bidders or the trustee or an attempt to take grossly unfair advantage of other bidders." *Id.* (citing *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978)); *see also In re Bedford Springs Hotel, Inc.*, 99 B.R. 302, 305 (Bankr. W.D. Pa. 1989); *In re Perona Bros., Inc.*, 186 B.R. 813, 839 (D.N.J. 1995). Due to the absence of a bright line test for good faith, the determination is based on the facts of each case, concentrating on the "integrity of [an actor's] conduct during the sale proceedings." *In re Pisces Leasing Corp.*, 66 B.R. 671, 673 (E.D.N.Y. 1986) (quoting *Rock Indus. Mach. Corp.*, 572 F.2d at 1198).

23. As required by section 363(m) of the Bankruptcy Code, the Debtors believe that the Purchaser has acted in good faith in negotiating the terms of the Sale. There is no evidence of fraud or collusion. The Purchaser is not an insider of the Debtors as that term is defined in section 101(31) of the Bankruptcy Code, and to the best of the Debtors' knowledge, all negotiations were conducted on an arm's-length, good faith basis. Accordingly, under the circumstances, the Purchaser should be afforded the benefits and protections that section 363(m) of the Bankruptcy Code provides to a good faith purchaser.

## V. The Court Should Authorize the Debtors to Use Cash Collateral

24. A debtor's use of property of the estate, including cash collateral, is governed by section 363 of the Bankruptcy Code, which provides, in pertinent part, as follows:

> If the business of the debtor is authorized to be operated under section . . . 1108 . . . of [the Bankruptcy Code] and unless the court orders otherwise, the [debtor] may . . . use property of the estate in the ordinary course of business without notice or a hearing.

25. 11 U.S.C. § 363(c)(1). A debtor may use cash collateral (a) with the consent of the secured party or (b) without the consent of the secured party if the court, after notice and a hearing, authorizes the debtor to use cash collateral in accordance with the provisions of section 363 of the Bankruptcy Code. See 11 U.S.C. § 363(c)(2). Section 363 of the Bankruptcy Code further provides that a debtor must "provide adequate protection" of the secured party's interest in the property against any diminution in value of such interest resulting from the debtor's use of the property. See 11 U.S.C. § 363(e).

26. Here, the Prepetition Agent has consented to the use of cash collateral, and the Prepetition Agent and the BioFuels Trustee have waived any adequate protection liens or claims in, on, or related to the Catalyst Proceeds. Therefore, the Court should authorize the debtors to use cash collateral.

## WAIVER OF BANKRUPTCY RULE 6004(h)

27. Under Bankruptcy Rule 6004(h), unless the court orders otherwise, all orders authorizing the sale of property pursuant to section 363 of the Bankruptcy Code are automatically stayed for fourteen days after entry of the order. Fed. R. Bankr. P. 6004(h). The purpose of Bankruptcy Rule 6004(h) is to provide sufficient time for an objecting party to appeal before the order is implemented. *See* Advisory Committee Notes to Fed. R. Bankr. P. 6004(h). Here, to maximize the value of the Debtors' estates, it is important that closing occur on an expedited basis. Accordingly, the Debtors hereby request that the Court waive the fourteen-day stay period under Bankruptcy Rule 6004(h).

## NOTICE

28. Notice of this Motion will be provided to: (i) the Office of the United States Trustee; (ii) the Committee; (iii) the Debtors' prepetition secured lenders; and (iv) all parties requesting notice pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Rule 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

*[Signature page to follow]*

## CONCLUSION

**WHEREFORE**, the Debtors respectfully request that the Court enter the Sale Order, and grant such other relief as is just and proper under the circumstances.

Dated: December 27, 2024
Wilmington, Delaware

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

*/s/ Clint M. Carlisle*

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*Counsel for the Debtors and Debtors in Possession*

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

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|---|---|
| In re: | Chapter 11 |
| FULCRUM BIOENERGY, INC., *et al.*, | Case No. 24-12008 (TMH) |
| Debtors.[1] | (Jointly Administered) |
| | **Objection Deadline:** **January 10, 2025, at 4:00 p.m. (ET)** |
| | **Hearing Date:** **January 17, 2025, at 2:00 p.m. (ET)** |

**NOTICE OF DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING THE SALE OF CERTAIN OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL ENCUMBRANCES; (II) APPROVING THE DEBTORS' ENTRY INTO THE ASSET PURCHASE AGREEMENT; (III) AUTHORIZING THE USE OF PROCEEDS AS CASH COLLATERAL; AND (IV) GRANTING RELATED RELIEF**

**PLEASE TAKE NOTICE** that on December 27, 2024, the above-captioned debtors and debtors in possession (the "Debtors") filed the *Debtors' Motion for Entry of an Order (I) Authorizing the Sale of Certain of the Debtors' Assets Free and Clear of all Encumbrances; (II) Approving the Debtors' Entry into the Asset Purchase Agreement; (III) Authorizing the Use of Proceeds as Cash Collateral; and (IV) Granting Related Relief* (the "Motion").

**PLEASE TAKE FURTHER NOTICE** that objections, if any, to the Motion must (a) be in writing; (b) be filed with the Clerk of the Bankruptcy Court, 824 Market Street, Wilmington, Delaware 19801, on or before **January 10, 2024, at 4:00 p.m. (ET)** (the "Objection Deadline"); and (c) be served so as to be received on or before the Objection Deadline by counsel to the Debtors, Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, 16th Floor, Wilmington, Delaware, 19801, Attn: Robert J. Dehney Sr. (rdehney@morrisnichols.com); Curtis S. Miller (cmiller@morrisnichols.com), Clint M. Carlisle (ccarlisle@morrisnichols.com), and Avery Jue Meng (ameng@morrisnichols.com).

[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.

**PLEASE TAKE FURTHER NOTICE** that a hearing on the Motion will take place on **January 17, 2025, at 2:00 p.m. (ET)** before the Honorable Thomas M. Horan, United States Bankruptcy Judge for the District of Delaware, at 824 Market Street, Wilmington, Delaware, 19801.

**PLEASE TAKE FURTHER NOTICE** that only objections made in writing and timely filed and received, in accordance with the procedures above, will be considered by the Bankruptcy Court at such hearing.

**IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.**

Dated: December 27, 2024
Wilmington, Delaware

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

*/s/ Clint M. Carlisle*

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# Exhibit A

## Sale Order

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

| | |
|---|---|
| In re<br><br>FULCRUM BIOENERGY, INC., *et al.*,<br><br>Debtors.[1] | Chapter 11<br><br>Case No. 24-12008 (TMH)<br><br>(Jointly Administered) |

**ORDER (I) AUTHORIZING THE SALE OF CERTAIN OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL ENCUMBRANCES; (II) APPROVING THE DEBTORS' ENTRY INTO THE ASSET PURCHASE AGREEMENT; (III) AUTHORIZING THE USE OF PROCEEDS AS CASH COLLATERAL; AND ((IV) GRANTING RELATED RELIEF**

Upon the motion (the "Motion")[2] of the Debtors seeking entry of an order (this "Order"): (i) authorizing the sale (the "Sale") of certain of the Debtors' assets free and clear of all Encumbrances; (ii) approving the Debtors' entry into the Catalyst APA; (iii) authorizing the use of proceeds as cash collateral; and (iv) granting related relief, all as more fully set forth in the Motion; and this Court having found it has jurisdiction over the relief requested in the Motion 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; and this being a core proceeding under 28 U.S.C. § 157(b); and venue being proper under 28 U.S.C. §§ 1408 and 1409; and due and sufficient notice of the Motion having been given under the circumstances; and it appearing that the relief requested by this Motion is in the best interests of the Debtors, their

[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.

[2] Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Motion or the Catalyst APA.

estates, and their creditors and other parties in interest; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Sale Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY FOUND AND DETERMINED THAT:**

A. The legal and factual bases set forth in the Motion and the Sale Hearing establish just and sufficient cause to grant the relief set forth herein.

B. On December 24, 2024, Debtor Fulcrum BioEnergy, Inc. ("Fulcrum Parent") and Johnson Matthey PLC, a company incorporated under the laws of England and Wales under company number 00033774 and having its main place of business at 10 Eastbourne Terrace, London W2 6LG England (together with its successors and permitted assigns, the "Purchaser") entered into that certain Asset Purchase Agreement (such agreement, together with all schedules and exhibits attached thereto, the "Catalyst APA" attached as **Exhibit B** to the Motion and the transactions contemplated therein, collectively, the "Sale Transaction").

C. **Jurisdiction and Venue.** This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

D. **Statutory Predicates.** The statutory predicates for the relief sought in the Motion are sections 105, 363 and 365 of title 11 of the United States Code ("Bankruptcy Code"), Rules 2002, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules"),

and Rules 2002-1, 6004-1, and 9013-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware ("Local Rules").

E. **Final Order**. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h), and to any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, this Court expressly finds that there is no just reason for delay in the implementation of this Order, and expressly directs entry of judgment as set forth herein.

F. **Notice.** Notice of the Motion, the time and place of the Sale Hearing and the time for filing objections to the Motion (the "Sale Notice") was reasonably calculated to provide all interested parties with timely and proper notice of the Sale and the Sale Hearing.

G. As evidenced by the certificates of service previously filed with the Court, proper, timely, adequate, and sufficient notice of the Motion, Sale Hearing, Sale and transactions contemplated thereby, has been provided, sections 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 9007 and 9008, and no other or further notice of the Motion or Sale Hearing is or shall be required. The disclosures made by the Debtors concerning the Motion and Sale Hearing were good, complete, and adequate.

H. **Corporate Authority.** Subject to the entry of this Order, the Debtors (i) have the requisite corporate power and authority to execute, deliver, and perform its obligations under the Catalyst APA and all other documents contemplated thereby, and has taken all requisite corporate or other organizational action and formalities necessary to authorize and approve the execution, delivery and performance of its obligations under the Catalyst APA and to consummate the Sale, including as required by its organizational documents, and upon execution thereof, the Catalyst APA and the related documents were or will be duly executed and delivered by the

Debtors and enforceable against the Debtors in accordance with their terms and, assuming due authorization, execution and delivery thereof by the other parties thereto, constituted or will constitute a valid and binding obligation of the Debtors. No government, regulatory, or other consents other than those expressly provided for in the Catalyst APA were required for the execution, delivery and performance by the Debtors of the Catalyst APA or the consummation of the Sale contemplated thereby. No consents or approvals of the Debtors' Board of Directors, other than those expressly provided for in the Catalyst APA or this Sale Order, are required for the Debtors to consummate the Sale.

I. The Catalyst APA was negotiated in good faith and at arm's-length. The Purchaser participated in good faith in these chapter 11 cases. The consideration to be paid by the Purchaser under the Catalyst APA was negotiated at arm's-length and constitutes (i) fair, adequate, and reasonable consideration for the Catalyst and (ii) reasonably equivalent value for the Catalyst. The terms and conditions set forth in the Catalyst APA are fair and reasonable under these circumstances and were not entered into for the purpose of, nor do they have the effect of, hindering, delaying, or defrauding the Debtors or their creditors under any applicable laws.

J. **Free and Clear.** The Catalyst is property of Fulcrum Parent's estate and title thereto is vested in Fulcrum Parent's estate within the meaning of section 541(a) of the Bankruptcy Code. Subject to sections 363(f) and 365(a) of the Bankruptcy Code, the transfer of the Catalyst to Purchaser, in accordance with the Catalyst APA will be, as of the closing date, a legal, valid, and effective transfer of the Catalyst, which transfer vests or will vest Purchaser with all right, title, and interest of Fulcrum Parent to the Catalyst free and clear of all Encumbrances. Purchaser would not have entered into the Catalyst APA and would not consummate the

transactions contemplated thereby if the Sale to Purchaser was not free and clear of all Encumbrances.

K. **Sale in Best Interests of the Debtors' Estate; Consideration**. Good and sufficient reasons for approval of the Catalyst APA and the transactions to be consummated in connection therewith have been articulated, and the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest. The Debtors have demonstrated both (a) good, sufficient and sound business purposes and justifications and (b) compelling circumstances for the Sale other than in the ordinary course of business, pursuant to section 363(b) of the Bankruptcy Code, outside of a plan of reorganization, in that, among other things, the immediate consummation of the Sale to Purchaser is necessary and appropriate to maximize the value of the Debtors' estate.

L. The total consideration provided by the Purchaser for the Catalyst as reflected in the Catalyst APA is the highest and otherwise best offer received by, and available to, the Debtors for the Catalyst. The offer of the Purchaser, upon the terms and conditions set forth in the Catalyst APA, including the total consideration to be realized by the Debtors thereunder, (i) is the highest and otherwise best offer received by Fulcrum Parent after an extensive marketing process, and (ii) is in the best interests of the Debtors, their creditors, their estates, and other parties in interest. Taking into consideration all relevant factors and circumstances, no other entity has submitted a higher or otherwise better offer to purchase the Catalyst from Fulcrum Parent, and the Sale Transaction is the best alternative for the Debtors.

M. **The Good Faith of Purchaser and Sellers.** Purchaser is purchasing the Catalyst, in accordance with the Catalyst APA, in good faith and is a good faith buyer within the meaning of section 363(m) of the Bankruptcy Code, and is therefore entitled to all of the

protections afforded by such provision, and otherwise has proceeded in good faith in all respects in connection with the Debtors' chapter 11 cases. As demonstrated by (i) evidence proffered or adduced at the Sale Hearing and (ii) the representations of counsel made on the record at the Sale Hearing, appropriate marketing efforts were conducted and, among other things: (a) the Purchaser in no way coerced the chapter 11 filing by the Debtors; and (b) all payments to be made by Purchaser in connection with the Sale have been disclosed. Based on the record in these cases and at the Hearing on this Motion, neither the Debtors, nor Purchaser has engaged in any conduct that would cause or permit the Catalyst APA to be avoided under Bankruptcy Code section 363(n).

N. **No Merger.** Purchaser is not a mere continuation of the Debtors and there is no continuity of enterprise between the Debtors and Purchaser. Purchaser is not a mere continuation of the Debtors or their estates by any reason or any theory of law or equity, and the transactions contemplated under the Catalyst APA do not amount to a consolidation, merger or de facto merger of Purchaser and the Debtors.

O. **Not an Insider.** Prior to the closing date, the Purchaser was not an "insider" or "affiliate" of the Debtors, as those terms are defined in the Bankruptcy Code, and no common identity of incorporators, directors, or controlling stockholders existed between the Debtors and Purchaser.

P. **No Successor.** Purchaser is not, and shall not be considered or deemed, as result of any action taken in connection with the Sale transaction, to be a successor in interest of the Debtors or their estates for any purpose, including but not limited to under any federal, state, or local statute or common law, or revenue, pension, ERISA, tax, labor, employment, environmental, escheat or unclaimed property laws, or other law, rule, or regulation (including without limitation filing requirements under any such laws, rules or regulations), or under any

products liability law or doctrine with respect to the Debtors' liability under such law, rule, or regulation or doctrine or common law, or under any product warranty liability law or doctrine with respect to the Debtors' liability under such law, rule or regulation or doctrine. Except for the transfer of the Catalyst to Purchaser, the Sale Transaction will not subject Purchaser to any liability whatsoever with respect to the operation of the Debtors' business before the closing date or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, on any theory of law or equity.

**THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is GRANTED as set forth herein, and the proposed sale of Catalyst to the Purchaser upon the terms and conditions set forth in the Catalyst APA is hereby approved in all respects. For the avoidance of doubt, and as stated in the Catalyst APA, the Purchase Price shall be $900,000.00.

2. Any objections or reservation of rights filed or asserted in response to the Motion and the relief granted herein, to the extent not resolved as set forth herein or on the record at the Sale Hearing, are hereby overruled on the merits in their entirety with prejudice.

3. The Catalyst APA, and all other ancillary documents, and all of the terms and conditions thereof, are hereby approved in all respects.

4. Pursuant to sections 105 and 363(f) of the Bankruptcy Code, upon consummation of the Sale, the Catalyst shall be transferred to the Purchaser as set forth in the Catalyst APA. Upon such transfer, the Purchaser shall be vested with all right, title and interest of Fulcrum Parent in and to the Catalyst free and clear of any and all Encumbrances, which Encumbrances, if any, shall attach to the proceeds of the Sale, with the same validity, extent, and

priority, and subject to the same defenses (including, without limitation, any defenses under chapter 5 of the Bankruptcy Code), as had attached to such asset immediately prior to the sale.

5. Pursuant to sections 363(b) and 363(f) of the Bankruptcy Code, Fulcrum Parent is hereby authorized without the need of further approval from this Court to (a) execute any additional instruments or documents that may be reasonably necessary or appropriate to implement the Catalyst APA, *provided* that such additional documents do not materially change the Catalyst APA's terms adversely as to the Debtors' estates; (b) consummate the Sale in accordance with the terms and conditions of the Catalyst APA and the instruments to the Catalyst APA contemplated thereby; and (c) execute and deliver, perform under, consummate, implement, and close fully the transactions contemplated by the Catalyst APA, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Catalyst APA and the Sale. Purchaser shall not be required to seek or obtain relief from the automatic stay under section 362 of the Bankruptcy Code to enforce any of its remedies under the Catalyst APA or any other Sale-related document. The automatic stay imposed by section 362 of the Bankruptcy Code is modified solely to the extent necessary to implement the preceding sentence and the other provisions of this Order, *provided, however*, that this Court shall retain exclusive jurisdiction over any and all disputes with respect thereto.

6. This Order and terms and provisions of the Catalyst APA shall be binding in all respects upon the Debtors, their estates, all creditors of, and holders of equity interests in, the Debtors, any holders of encumbrances in, against, or on all or any portion of the Catalyst (whether known or unknown), Purchaser and all successors and assigns of Purchaser, the Catalyst. This Order and the Catalyst APA shall inure to the benefit of the Debtors, their estates and creditors, Purchaser, and the respective successors and assigns of each of the foregoing. The

Catalyst APA shall not be subject to rejection or avoidance by the Debtors, their estates, their creditors, their equity holders, or any trustee, examiner, or receiver.

7. Pursuant to sections 105(a), 363(b), 363(f), 365(b) and 365(f) of the Bankruptcy Code, Fulcrum Parent is authorized to transfer the Catalyst to Purchaser in accordance with the Catalyst APA and such transfer shall constitute a legal, valid, binding, and effective transfer of such Catalyst. Such transfer of the Catalyst in accordance with the Catalyst APA shall vest Purchaser with title in and to the Catalyst and, Purchaser shall take title to and possession of the Catalyst free and clear of all Encumbrances of any kind or nature whatsoever, including but not limited to successor or successor in interest liability, with all such Encumbrances to attach to the sale proceeds, if any, with the same validity, force and effect, and in the same order of priority, which such Encumbrance had prior to the Sale, subject to any rights, claims and defenses of the Debtors or their estates in connection therewith.

8. On the closing date, each of the Debtors' creditors is authorized to execute such documents and take all other actions as may be reasonably necessary to release its Encumbrances or other interests in the Catalyst, if any, as such Encumbrances may have been recorded or may otherwise exist.

9. If any person or entity which has filed statements or other documents or agreements evidencing Encumbrances on, against, or in, all or any portion of the Catalyst shall not have delivered to the Debtors prior to the closing date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens and easements, and any other documents necessary for the purpose of documenting the release of all Encumbrances of any kind or other interests which the person or entity has or may assert with respect to all or any portion of the Catalyst, the Debtors are hereby authorized, and Purchaser is

hereby authorized, to execute and file such statements, instruments, releases, and other documents on behalf of such person or entity with respect to the Catalyst.

10. Purchaser shall not have any liability or other obligation of the Debtors arising under or related to any of the Catalyst. Without limiting the generality of the foregoing, and as expressly permitted in the Catalyst APA, Purchaser shall not be liable for any Encumbrances including, but not limited to, any liability for any liabilities whether known or unknown as of the closing, now existing or hereafter arising, whether fixed or contingent, with respect to the Debtors or any obligations of the Debtors, including, but not limited to, liabilities on account of any taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to the operation of the Debtors' business prior to the closing date.

11. **Successor Liability.** Except as expressly permitted by this Order, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax and regulatory authorities, parties to executory contracts, customers, lenders, trade and other creditors, holding or asserting any claim of any kind or nature with respect to, arising under or out of, in connection with, or in any way relating to, the Debtors, any asset sold pursuant to this Order, the operation of the Debtors' business, shall be, and hereby are forever barred, estopped and permanently enjoined from asserting such claim against the Purchaser, its successors and assigns, or the Catalyst. The entry of this Order and consequent approval of the Catalyst APA shall mean that the Purchaser shall not be deemed to (i) be the successor of (under any state, territorial, or federal law) or successor employer to the Debtors and shall instead be, and be deemed to be, a new employer with respect to any and all federal or state unemployment laws; (ii) have, de facto, or otherwise, merged or consolidated with or into the Debtors; (iii) be a mere continuation or substantial continuation of the Debtors or the enterprise(s) of the Debtors; or (iv)

be liable for any acts or omissions of the Debtors in the conduct of their business or arising under or related to the Catalyst other than as set forth in the Catalyst APA and this Order. Without limiting the generality of the foregoing, the Purchaser shall not be liable for any liability against any Debtor, or any of its predecessors or affiliates, and the Purchaser shall have no successor or vicarious liability of any kind or character whatsoever with respect to the Catalyst. The Purchaser would not have acquired the Catalyst but for the foregoing protections against potential claims based upon "successor liability" theories.

12. **Consideration.** The consideration provided by Purchaser under the Catalyst APA constitutes (i) reasonably equivalent value under the Bankruptcy Code, the Uniform Fraudulent Transfer Act, and the Uniform Voidable Transactions Act, (ii) fair consideration under the Uniform Fraudulent Conveyance Act, and (iii) reasonably equivalent value, fair consideration and fair value under any other applicable Laws of the United States, any state, territory or possession thereof, or the District of Columbia. The consideration provided by Purchaser for the Catalyst under the Catalyst APA is fair and reasonable and may not be avoided under section 363(n) of the Bankruptcy Code.

13. **Use of Proceeds as Cash Collateral.** In accordance with this Order and subject to the entry of the *Order (I) Approving the Sale of Certain of the Debtors' Assets Free and Clear of Claims, Liens, and Encumbrances, (II) Approving the Assumption and Assignment of Designated Executory Contracts and Unexpired Leases, and (III) Granting Related Relief* [D.I. •] (the "Agent Sale Order"), the Prepetition Agent has consented to the use of cash collateral, and the Prepetition Agent and the BioFuels Trustee have waived any adequate protection liens or claims in, on, or related to the Catalyst Proceeds. Therefore, the Catalyst Proceeds, which constitute the Prepetition Agent's cash collateral, may be used for the satisfaction of the costs and expenses of administering

Fulcrum Parent's chapter 11 case with any remaining Catalyst Proceeds to be distributed according to Fulcrum Parent's chapter 11 plan of liquidation.

14. **Good Faith.** The transactions contemplated by the Catalyst APA are undertaken by Purchaser without collusion and in "good faith," as that term is used in section 363(m) of the Bankruptcy Code and, accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale with Purchaser, unless such authorization is duly stayed pending such appeal. Purchaser is a good faith purchaser of the Catalyst and is entitled to all of the benefits and protections afforded by section 363(m) of the Bankruptcy Code.

15. **Failure to Specify Provisions**. The failure specifically to include any particular provisions of the Catalyst APA in this Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court that the Catalyst APA be authorized and approved in its entirety; *provided, however*, that this Order shall govern if there is any inconsistency between the Catalyst APA (including all ancillary documents executed in connection therewith) and this Order. Likewise, all of the provisions of this Order are non-severable and mutually dependent. To the extent that this Order is inconsistent with any prior order or pleading with respect to the Motion, the terms of this Order shall control.

16. **Non-Material Modifications**. The Catalyst APA and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto, in writing signed by such parties, and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment, or supplement does not have a material adverse effect on the Debtors' estates.

17. **No Stay of Order**. Notwithstanding the provisions of Bankruptcy Rules 6004(h) and 6006(d), this Order shall be effective and enforceable immediately upon its entry. Time is of the essence in closing the transactions referenced herein, and the Debtors and Purchaser are hereby authorized to close the Sale as soon as practicable.

18. **Calculation of Time**. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006.

19. **Further Assurances**. From time to time, as and when requested by any party, each party shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions as such other party may reasonably deem necessary or desirable to consummate the transactions contemplated by the Catalyst APA including such actions as may be necessary to vest, perfect, or confirm, of record or otherwise, in Purchaser its right, title and interest in and to the Catalyst.

# Exhibit B

## Catalyst APA

# ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT dated as of December 24th, 2024 (this "Agreement") is made and entered into by and between Fulcrum BioEnergy, Inc., a Delaware corporation ("Seller"), and Johnson Matthey PLC, a company incorporated under the laws of England and Wales ("Purchaser" and together with Seller, the "Parties, and each, individually, a "Party").

## RECITALS

A. Seller and Johnson Matthey Davy Technologies Limited ("JM Davy"), an affiliate of Purchaser, are parties to that certain Master Catalyst Supply Agreement dated as of July 19, 2018, by and between Seller and JM Davy, pursuant to which Seller purchased 36,540 Filled FT CANs presently in Seller's possession from JM Davy (the "Purchased CANS");

B. Seller and certain of its affiliated entities (the "Debtors") filed a voluntary petition for relief under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 1532 (the "Bankruptcy Code"), in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court," and such petition, the "Bankruptcy Case"); and

C. In connection with the Bankruptcy Case, Seller desires to sell the Purchased CANS to Purchaser, and Purchaser desires to acquire the Purchased CANS from Seller, on the terms hereinafter set forth.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants, herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

## 1. Sale and Purchase of Purchased CANS.

1.1. Sale and Purchase. Upon the terms and subject to the conditions of this Agreement, Seller hereby sells, transfers, assigns, conveys and delivers to Purchaser, and Purchaser hereby purchases and acquires from Seller, free and clear of any and all liens, claims, interests and encumbrances, to the fullest extent permitted by the Bankruptcy Code and an order of the Bankruptcy Court approving the sale, in a form reasonably acceptable to Purchaser (a "Sale Order") authorizing and approving the transactions described in this Agreement, all right, title and interest of Seller in and to the Purchased CANS. Pursuant to sections 105 and 363 of the Bankruptcy Code, the Sale Order, among other things, shall: (a) approve (i) the execution, delivery and performance by Seller of this Agreement, (ii) the sale of the Purchased CANS to Purchaser on the terms set forth in this Agreement, free and clear of all liens, claims, and encumbrances, and (iii) the performance by Seller of its obligations under this Agreement; (b) find that Purchaser is a "good faith" buyer within the meaning of section 363(m) of the Bankruptcy Code, find that Purchaser is not a successor to Seller or any of the other Debtors, and grant Purchaser the protections of section 363(m) of the Bankruptcy Code; (c) find that, other than as expressly set forth in this Agreement, Purchaser shall have no liability or responsibility for any liability or other obligation of Seller arising under or related to the Purchased CANS, including successor or vicarious liabilities of any kind or character, including any theory of antitrust, environmental,

successor, or transferee liability, labor law, de facto merger, or substantial continuity; (d) find that the consideration provided by Purchaser pursuant to this Agreement constitutes reasonably equivalent value and fair consideration for the Purchased CANS; (e) find that Purchaser and Seller did not engage in any conduct which would allow this Agreement to be set aside pursuant to section 363(n) of the Bankruptcy Code; and (f) order that, notwithstanding the provisions of the Federal Rules of Bankruptcy Procedures 6004(h) and 6006(d), the Sale Order is not stayed and is effective immediately upon entry.

1.2. Motion for Approval. Seller shall file a motion with the Bankruptcy Court requesting approval of this Agreement not later than two (2) Business Days after execution and delivery of this Agreement. Seller shall be responsible for payment of all costs associated with filing such motion.

## 2. Purchase Price.

2.1. Purchase Price. The purchase price for the Purchased CANS shall be Nine Hundred Thousand Dollars and no Cents USD ($900,000.00) (the "Purchase Price"). The Purchase Price shall be paid in accordance with Section 2.2.

2.2. Deposit.

(a) Purchaser will deliver the full amount of the Purchase Price (the "Deposit") into escrow with Kurtzman Carson Consultants, LLC dba Verita Global (the "Escrow Agent"), pursuant to that certain Account Acknowledgment letter dated December 6, 2024, between the Escrow Agent and Seller, by wire transfer of immediately available funds **no later than 5:00 p.m. prevailing Eastern Time on January 13, 2025** (the "Deposit Date"). Except as provided in Section 1, the Deposit shall not be subject to any lien, attachment, trustee process, or any other judicial process of any creditor of any of Seller or Purchaser. The Escrow Agent shall hold the Deposit pending disposition in accordance with Section 2.2(b), 2.2(c), or 2.2(d), as applicable. If Purchaser fails to wire the Deposit by the Deposit Date, such failure shall be considered an immediate and material event of default under this Agreement, and the Seller may seek specific performance from the Bankruptcy Court to compel the Buyer to pay the Deposit and to consummate the other transactions in this Agreement, including the purchase of the Purchased CANS by the Buyer. The foregoing is without limitation to the other rights of the Seller to pursue any and all remedies available to it (including specific performance) at law or in equity.

(b) If this Agreement is terminated by Seller due to a breach of this Agreement by Purchaser, then within three (3) Business Days after the date of such termination Seller shall execute any instructions necessary to permit the Escrow Agent to return the Deposit to Purchaser. Seller shall retain all other rights and remedies which Seller may have against Purchaser at law or in equity or otherwise.

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

(d) Within two (2) Business Days after written confirmation by Seller to Purchaser that all of the Purchased CANS have been loaded for transport at the Seller's warehouse located at 690 Overmyer Road, Sparks, NV 89431 (the "Source Location"), Purchaser shall execute any instructions necessary to permit the Escrow Agent to deliver the Deposit to Seller.

(e) Seller shall be responsible for payment of any amounts due to the Escrow Agent in connection with holding the Deposit, return of the Deposit to Purchaser, or delivery of the Deposit to Seller.

(f) Wire instructions of the Escrow Agent, Purchaser, and Seller shall be set forth on Schedule 1 to this Agreement.

**3. Delivery.**

3.1. Documentation. Contemporaneously with the execution and delivery of this Agreement by the Parties, each Party shall deliver, or cause to be delivered, to the other Party such other endorsements, assignments, documents and instruments as are deemed reasonably necessary by such Party or its legal counsel in connection with the consummation of the transactions contemplated herein, each duly executed by the applicable Party as appropriate. Without limitation of the foregoing:

(a) Purchaser shall deliver to Seller, within one (1) Business Day after full execution of this Agreement, the name of the transport company (the "Carrier") the Purchaser intends to utilize for shipment. Seller shall deliver to Purchaser, within one (1) Business Day after full execution of this Agreement (i) a draft copy of a packing list and any other transport documents for which Seller is responsible, and (ii) Seller's invoice for the Purchased CANS.

(b) Seller shall deliver to Purchaser, promptly upon delivery of the Deposit to Seller pursuant to Section 2.2(c), a bill of sale for the Purchased CANS that will, upon entry of the Sale Order, vest title thereto in Seller in accordance with Section 4.3.

(c) Seller will be responsible for providing to Purchaser within seven (7) days after loading of the Purchased CANS (i) an original packing list including, without limitation, the description of the Purchased CANS, gross and net weights, dimensions and packing details of each package and/or container, and number of packages and/or containers, and (ii) all other original transport documents, indicating the Carrier's name, receipt of the goods described in the packing list, the date the goods were received for shipment, the Source Location, and the Destination.

3.2. Shipping Terms; Transportation and Insurance. The Purchased CANS will be delivered in accordance with FCA Origin (Nevada), INCOTERMS 2020. Seller will be responsible for loading the goods at the Source Location, in a secure manner to prevent load shifting while in transit. Purchaser's transport company Kuehne+Nagel ("KN") will clear the Purchased CANS for export and invoice Purchaser directly for related costs; *provided* that Seller provides the requisite power of attorney to KN in order to complete the clearing services. Purchaser shall arrange and pay for transportation and insurance of the Purchased CANS to the Purchaser's warehouse in the UK (the "Destination"). Purchaser will be responsible for custom clearance and payment of custom duty at the Destination. Purchaser shall have the right (but not the obligation) to observe loading of the Purchased CANS at the Source Location and to confirm that loading has

been completed, either in-person or with photographs taken by Seller clearly showing the Purchased CANS before and after loading, and showing that the Purchased CANS are ready to transport.

3.3. Packing. Seller will be responsible for delivering the Purchased CANS in packaging suitable for transport, in a secure manner to prevent load shifting while in transit, and storage. All packing cases, drums, pallets and materials (with the exception of sea containers) shall become the property of Purchaser.

**4. Representations, Warranties and Covenants of Seller.** As an inducement to Purchaser to enter into this Agreement and to consummate the transactions contemplated hereby, Seller represents and warrants to Purchaser and agrees as follows:

4.1. Organization, Qualification and Authority.

(a) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware.

(b) Subject to entry of the Sale Order, Seller has the limited liability company power and authority to enter into this Agreement and to carry out its obligations hereunder.

(c) The execution, delivery and performance by Seller of this Agreement, and the consummation by Seller of the transactions contemplated hereby, have been approved by all necessary limited liability company action on the part of Seller. This Agreement has been duly executed and delivered by Seller, and subject to entry of the Sale Order, constitutes the legal, valid and binding agreement of Seller, enforceable against it in accordance with its terms and conditions.

4.2. No Approvals; Conflict. Subject to entry of the Sale Order, the execution, delivery and performance by Seller of this Agreement and the consummation of the transactions contemplated hereby do not and will not require any consent, authorization or approval of or any filing or registration with any governmental authority or other person.

4.3. Title to Purchased CANS. Subject to entry of the Sale Order, Seller has good and marketable title to all of the Purchased CANS, free and clear of all liens, claims, interests and encumbrances and Seller hereby transfers to Purchaser good title to the Purchased CANS. For avoidance of doubt, Purchaser shall have the right to re-sell the Purchased CANS purchased hereunder to any third party.

**5. Representations, Warranties and Covenants of Purchaser.** As an inducement to Seller to enter into this Agreement and to consummate the transactions contemplated hereby, Purchaser hereby represents and warrants to Seller as follows:

5.1. Organization, Qualification and Authority.

(a) Purchaser is a corporation duly organized, validly existing and in good standing under the laws of England and Wales.

(b) Purchaser has the corporate power and authority to enter into this Agreement and to carry out its obligations hereunder.

(c) The execution, delivery and performance by Purchaser of this Agreement, and the consummation by Purchaser of the transactions contemplated hereby, have been approved by all necessary corporate action on the part of Purchaser. This Agreement has been duly executed and delivered by Purchaser and constitutes the legal, valid and binding agreement of it, enforceable against it in accordance with its terms and conditions.

5.2. No Approvals; Conflict. The execution, delivery and performance by Purchaser of this Agreement, and the consummation of the transactions contemplated hereby, do not and will not (a) require any consent, authorization or approval of or any filing or registration with any governmental authority or other person, or (b) result in a material breach of any obligation of Purchaser, or (c) violate or conflict with the constituent documents of Purchaser.

**6. As Is Where Is; Limitation of Liability.**

6.1. As Is Where Is. WITH RESPECT TO ALL ASSETS SOLD, ASSIGNED, TRANSFERRED AND CONVEYED PURSUANT HERETO, SUCH ASSETS ARE HEREBY SOLD, ASSIGNED, TRANSFERRED AND CONVEYED TO PURCHASER ON AN "AS IS", "WHERE IS", "WITH ALL FAULTS" BASIS, WITHOUT ANY REPRESENTATION, WARRANTY, GUARANTY, PROMISE, PROJECTION OR PREDICTION WHATSOEVER WITH RESPECT TO SUCH ASSETS, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW OR UNDER THE UNIFORM COMMERCIAL CODE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

6.2. Limitation of Liability. Notwithstanding any other provision of this Agreement, except with respect to liability arising out of gross negligence or willful misconduct of either Party, neither Party shall have any liability, under any circumstances to the other Party, for loss of profit, loss of production, loss of contracts, loss of sales, loss of product, business interruption, and/or any indirect, consequential, incidental, special, exemplary or punitive loss or damage whatsoever and howsoever arising which is suffered or incurred by the other Party and which is directly or indirectly connected with this Agreement, even if that Party is aware of the possibility thereof.

**7. Specific Performance.** The Parties hereto agree that irreparable harm would occur in the event any provision of this Agreement, including the provisions set forth in Section 2.2, was not performed in accordance with the terms hereof and that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in addition to any other remedy to which they are entitled at law or in equity.

**8. Termination.** Without prejudice to any other right or remedy available, each Party shall have the right to terminate this Agreement by giving written notice to the other Party, which notice shall be effective upon receipt, if the other Party should be in default of any of its material obligations under this Agreement and the default is incurable or, if such default can be cured, the defaulting Party fails to cure such default within thirty (30) days of receiving the said notice, or, if

the default is curable but cannot be cured within thirty (30) days, the defaulting Party fails to commence action to cure the default within such time and diligently to pursue such action. For the avoidance of doubt, Purchaser's default under section 2.2(a) of this Agreement shall be considered an immediate and material event of default, but shall be subject to cure.

**9. Compliance.**

9.1. Anti-Bribery Laws. Each Party represents and warrants that it shall not directly or indirectly, offer, pay, promise to pay or authorize the payment of, any monies or financial or other benefit to any person for the purpose of obtaining an improper advantage, or otherwise conduct itself in a manner contrary to any anti-corruption laws and in particular (but without prejudice to the generality of the foregoing) the UK Bribery Act 2010, the US Foreign Corrupt Practices Act 1977 or any other applicable anti-bribery law ("Anti-Bribery Laws").

9.2. Financial Crime Laws. Each Party represents and warrants that it shall comply with all applicable taxation, anti-money laundering and financial crime laws, regulations and rules ("Financial Crime Laws"); and (ii) it shall not commit an offense of cheating the public revenue or an offense consisting of being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of a tax by the Party or any other person.

9.3. Export Control and Trade Sanctions Rules. Each Party acknowledges that the Purchased CANS may be subject to export control and trade sanction laws, regulations, rules and licenses ("Export Control and Trade Sanctions Rules") and agrees to comply with the Export Control and Trade Sanctions Rules.

9.4. Anti-Slavery and Labor Laws. Each Party represents and warrants that it is fully aware of and shall comply with all applicable (i) anti-slavery and human trafficking laws, statutes, regulations, and codes from time to time in force, including the UK Modern Slavery Act 2015 ("Anti-Slavery Laws"); and (ii) international conventions (including the International Labor Organization Core Conventions, the United Nations Global Compact and the UN's Guiding Principles on Business and Human Rights) and applicable laws regarding working conditions and labor standards ("Labor Laws"); and that it has in place robust and reasonable internal procedures to ensure that it and its personnel comply with Anti-Slavery and Labor Laws.

9.5. Compliance Laws. Each Party confirms that it has not taken nor will take directly or indirectly, any action that would cause its officers, directors, employees and/or affiliates to be in breach or violation of Export Control and Trade Sanction Rules, Anti-Bribery Laws, Financial Crime Laws and/or Anti-Slavery Laws, and Labor Laws (collectively "Compliance Laws") and shall provide the other Party with such information and/or documentation (including identification documentation) as shall be required by the other Party to comply with such laws.

9.6. Notice of Breach. In circumstances where either Party determines, in good faith, that the other Party has breached this Section 9 it will be entitled, in addition to other rights, to terminate this Agreement by giving written notice with immediate effect.

**10. Miscellaneous.**

10.1. Transfer Taxes, Expenses, and Fees.

(a) Purchaser shall pay any transfer taxes imposed by any governmental authority as a result of the transaction described in this Agreement.

(b) Except as otherwise expressly provided in this Agreement, each Party shall pay its own costs and expenses incident to the preparation and negotiation of this Agreement, the consummation of the transactions contemplated hereby and its compliance with all its agreements and conditions contained herein or therein, including all legal and accounting fees and disbursements and all costs of obtaining necessary consents.

10.2. Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and the respective successors and permitted assigns of the Parties.

10.3. Assignment. Neither this Agreement nor any rights or obligations hereunder may be assigned by any Party hereto without the prior written consent of the other Party.

10.4. Notices. All notices, requests, demands or other communications required or permitted by this Agreement: (i) shall be in writing; (ii) shall be deemed to have been given, forwarded, made or delivered: (x) if delivered in person or by overnight courier service, when received, (y) if sent by facsimile transmission, when received, or (z) if sent by registered, certified or express mail, return receipt requested and postage prepaid, on the date of receipt; and (iii) shall be addressed as follows:

If to Seller:

Fulcrum BioEnergy, Inc.
P.O. Box 220
Pleasanton, CA 94566
Attention: Mark J. Smith
Richard D. Barraza
Email: msmith@fulcrum-bioenergy.com
rbarraza@fulcrum-bioenergy.com

With a copy to:

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

If to Purchaser:

Johnson Matthey PLC
10 Eastbourne Terrace
London W2 6LG
UK
Attention: Richard Pearson
Email: richard.pearson@matthey.com

With a copy to:

Saul Ewing LLP
1201 North Market Street
Suite 2300
Wilmington, DE 19801
Attention: Lucian Murley
Email: luke.murley@saul.com

Each Party may designate by written notice a new or additional address to which any notice, request, demand or communication may thereafter be so given, served or sent. Notices, requests, demands and other communications hereunder may be given by the attorney of any Party.

10.5. Entire Agreement; Amendment. This Agreement contains the entire understanding of the Parties with respect to the subject matter contained herein and supersedes all prior or concurrent oral or written agreements, offers, proposals and understandings between the Parties with respect to such subject matter. This Agreement may not be amended in any respect whatsoever except by a further agreement, in writing, fully executed by each of the Parties.

10.6. Headings. Section and Schedule headings contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement for any purpose and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

10.7. Limitation on Benefits. Nothing in this Agreement, express or implied, is intended to confer any right, benefit or remedy under or by reason of this Agreement on any person other than the Parties hereto and their respective successors and permitted assigns, nor is anything in this Agreement intended to relieve or discharge any obligation of any third person to any Party hereto, or to give any third person any right to subrogation or action over or against any Party to this Agreement. It is the explicit intention of the parties hereto that no person (other than such Parties) and their respective successors and permitted assigns is or shall be entitled to bring any action to enforce any provision of this Agreement against any of such Parties, and the assumptions, indemnities, covenants, undertakings and agreements set forth in this Agreement shall be solely for the benefit of, and shall be enforceable only by, such Parties and their respective successors and permitted assigns.

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

10.9. Jurisdiction; Exclusive Venue. Each of the Parties irrevocably agrees that any action that may be based upon, arising out of, or related to this Agreement or the negotiation, execution or performance of this Agreement and the transactions contemplated hereby brought by any other Party or its successors or assigns will be brought and determined only in (a) the Bankruptcy Court and any federal court to which an appeal from the Bankruptcy Court may be validly taken or (b) if the Bankruptcy Court is unwilling or unable to hear such action, in the Delaware Court of Chancery (or, if the Delaware Court of Chancery does not have subject matter jurisdiction, any state or federal court within the State of Delaware) ((a) and (b), the "Chosen Courts"), and each of the Parties hereby irrevocably submits to the exclusive jurisdiction of the Chosen Courts for itself and with respect to its property, generally and unconditionally, with regard to any such action arising out of or relating to this Agreement and the transactions contemplated hereby.

10.10. Partial Invalidity. Wherever possible, each provision hereof shall be interpreted in such manner as to be effective and valid under applicable law, but in case any provision contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision shall be ineffective to the extent, but only to the extent, of such invalidity, illegality or unenforceability without invalidating the remainder of such provision or any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein unless the deletion of such provision would result in such a material change as to cause completion of the transactions contemplated hereby to be unreasonable.

10.11. Counterparts. This Agreement may be executed in two or more separate counterparts, each of which when executed and delivered shall be deemed an original, but all such counterparts shall collectively constitute one and the same instrument.

10.12. No Waiver. The failure of either Party to insist upon the strict performance of any of the terms, conditions and provisions of this Agreement by the other Party will not be deemed to be a waiver of the right to enforce future compliance therewith nor prejudice the enforceability of the remaining provisions of this Agreement. No failure of nor delay in the exercise of any right will operate as a waiver of such right, and any waiver of, or promise not to enforce, any right under this Agreement shall not be enforceable unless evidenced in writing and signed by the Party making said waiver or promise. Any partial exercise of a right will not preclude its full exercise in the future.

[Signature page follows.]

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be duly executed on its behalf, as of the day and year first above written.

**FULCRUM BIOENERGY, INC.**

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

**JOHNSON MATTHEY PLC**

By: _____
Name:
Title:

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be duly executed on its behalf, as of the day and year first above written.

**FULCRUM BIOENERGY, INC.**

By: _____

Name:

Title:

**JOHNSON MATTHEY PLC**

By: DocuSigned by: _____ AACA7EA9398C44C...

Name: Paul Ticehurst

Title: Managing Director, HyCOgen and FT Liquids

**Schedule 1**

Wire Instructions

[Intentionally Omitted.]