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**IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE EASTERN DISTRICT OF VIRGINIA  
 ALEXANDRIA DIVISION**

In re:	)	
	)	Chapter 11
ENVIVA INC., <i>et al.</i> ,	)	
	)	Case No. 24-10453 (BFK)
Debtors. <sup>1</sup>	)	
	)	(Joint Administration Requested)

**MOTION OF DEBTORS FOR ENTRY OF INTERIM  
 AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS  
 TO (A) PAY CRITICAL VENDORS, FOREIGN VENDORS, LIEN  
 CLAIMANTS, AND 503(B)(9) CLAIMANTS AND (B) HONOR PREPETITION  
 PAYMENT ARRANGEMENTS; (II) CONFIRMING ADMINISTRATIVE EXPENSE  
 PRIORITY OF OUTSTANDING ORDERS; AND (III) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “*Debtors*”), file this *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Pay Critical Vendors, Foreign Vendors, Lien Claimants, and 503(b)(9) Claimants and*

<sup>1</sup> Due to the large number of Debtors in these chapter 11 cases, for which joint administration has been requested, a complete list of the Debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list may be obtained on the website of the Debtors’ proposed claims and noticing agent at [www.kcellc.net/enviva](http://www.kcellc.net/enviva). The location of the Debtors’ corporate headquarters is: 7272 Wisconsin Avenue, Suite 1800, Bethesda, MD 20814.



(B) Honor Prepetition Payment Arrangements; (II) Confirming Administrative Expense Priority of Outstanding Orders; and (III) Granting Related Relief (the “**Motion**”) and in support respectfully submit the following:

**JURISDICTION AND VENUE**

1. The United States Bankruptcy Court for the Eastern District of Virginia (the “**Court**”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated August 15, 1984. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy 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.

2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are sections 105(a), 363(b), 503(b), and 1107(a) of title 11 of the United States Code (the “**Bankruptcy Code**”), Bankruptcy Rules 6003 and 6004, and rules 6004-2 and 9013-1 of the Local Rules of the United States Bankruptcy Court for the Eastern District of Virginia (the “**Local Rules**”).

**BACKGROUND**

4. Enviva Inc. and its Debtor and non-Debtor subsidiaries (collectively, the “**Company**”) are the world’s largest producer of industrial wood pellets, a renewable and sustainable energy source produced by aggregating a natural resource—wood fiber—and processing it into a transportable form. The Company owns and operates ten industrial-scale wood pellet production plants located in Virginia, North Carolina, South Carolina, Georgia, Florida, and

Mississippi. The Company exports its wood pellets through owned and leased deep-water marine terminals to customers in the United Kingdom, the European Union, and Japan who purchase the wood pellets primarily through long-term, take-or-pay offtake contracts with the Company.

5. On the date hereof (the “*Petition Date*”), the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of this Motion, the Debtors filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). As of the Petition Date, no request for the appointment of a trustee or examiner has been made and no official committee of unsecured creditors has been appointed in these chapter 11 cases.

6. Additional information regarding the Debtors and these chapter 11 cases, including the Debtors’ business operations, capital structure, financial condition, and the reasons for and objectives of these chapter 11 cases, is set forth in the *Declaration of Glenn Nunziata in Support of Chapter 11 Petitions* (the “*Nunziata Declaration*”) and the *Declaration of Mark Rajceвич in Support of Chapter 11 Petitions and First-Day Motions* (the “*Rajceвич Declaration*,” and together with the Nunziata Declaration, the “*First Day Declarations*”), filed contemporaneously herewith and incorporated herein by reference.<sup>2</sup>

7. As set forth in the Nunziata Declaration, on March 12, 2024, the Debtors entered into that certain *Restructuring Support Agreement* with the ad hoc group of creditors (the “*Ad Hoc Group*”) party thereto, which represent approximately (a) 72% of the

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<sup>2</sup> Capitalized terms used but not immediately defined in this Motion shall have the meaning ascribed to them in the First Day Declarations or as later defined herein, as applicable.

aggregate outstanding principal amount of loans arising under the Senior Secured Credit Facility (including both term loans and revolving credit loans), (b) 95% of the aggregate outstanding principal amount of the 2026 Notes, (c) 78% of the aggregate outstanding principal amount of the Epes Green Bonds, and (d) 45% of the aggregate outstanding principal amount of Bond Green Bonds. As further set forth in the Nunziata Declaration, on March 12, 2024, the Debtors entered into that certain *Restructuring Support Agreement* with creditors holding approximately 92% of the aggregate outstanding principal amount of the Bond Green Bonds.

### **RELIEF REQUESTED**

8. By this Motion, the Debtors seek entry of an interim order (the “*Interim Order*”), substantially in the form attached hereto as **Exhibit A**, and subsequently a final order (the “*Final Order*”), substantially in the form attached hereto as **Exhibit B**, (a) authorizing the Debtors, in the ordinary course of business and based on their sound business judgment, to (i) pay prepetition amounts owed to Critical Vendors, Foreign Vendors, Lien Claimants, and 503(b)(9) Claimants (together with the Critical Vendors, Foreign Vendors, and the Lien Claimants, the “*Vendors*” and the Vendors’ prepetition claims sought for payment by this Motion, collectively, the “*Vendor Claims*”), and (ii) honor Prepetition Payment Arrangements; (b) confirming the administrative expense priority status and treatment of certain of the Debtors’ outstanding orders described herein; and (c) granting related relief. The Debtors respectfully request authority to pay Vendor Claims in an amount not to exceed \$63.3 million on an interim basis and in an amount not to exceed \$115.0 million on a final basis, and honor Prepetition Payment Arrangements in an amount not to exceed \$3.7 million on an interim basis and in an amount not to exceed \$13.1 million on a final basis, in each case as they become due in the ordinary course of business and only on such terms and conditions the Debtors deem appropriate, in their business judgment, to minimize any disruptions to the Debtors’ businesses. In addition, the

Debtors request that the Court schedule a final hearing within approximately 25 days of the commencement of these chapter 11 cases to consider approval of this Motion on a final basis.

### **VENDORS OVERVIEW**

9. The Debtors rely on continuing access to, and relationships with, the Vendors and customers, who provide supplies, services, and revenue that are essential to the Debtors' pellet manufacturing operations and their ability to maintain uninterrupted production and delivery of their products on a postpetition basis. The Debtors' pellet manufacturing process involves a complex and interdependent chain of equipment, materials, and services, including chippers, various types of wood hammermills, dryers, and pellet mills, all of which require regular maintenance, repair, replacement, and/or replenishment. Additionally, to deliver the pellets to their customers, the Debtors rely on various freight and shipping services, including rail, freight trucks, barges, and ocean-going vessels. The Vendors provide the Debtors with these vital goods and services, without which the Debtors would face significant operational disruptions, increased costs, and lost revenues. The Debtors have exercised their business judgment in identifying the Vendors based on various factors, such as the availability and quality of alternative sources, the impact of non-payment on the Debtors' operations and relationships, and the likelihood of vendor holdbacks or liens, as described in greater detail below. Any disruption in the Debtors' access to the goods and services provided by the Vendors would have significant and detrimental economic and operational impacts on the Debtors' businesses. Accordingly, the Debtors submit that paying the Vendors is necessary and appropriate to preserve the value of their estates and facilitate their successful reorganization. The Debtors are requesting authority to pay Vendor Claims and honor Prepetition Payment Arrangements in the amounts summarized below.

<b>Vendors<sup>3</sup></b>	<b>Estimated Interim Amount</b>	<b>Estimated Final Amount<sup>4</sup></b>
Critical Vendors	\$8.0 million	\$16.4 million
Foreign Vendors	\$5.0 million	\$7.2 million
Lien Claimants	\$43.1 million	\$84.2 million
503(b)(9) Claimants	\$7.2 million	\$7.2 million
Prepetition Payment Arrangements	\$3.7 million	\$13.1 million
	<b>\$67.0 million</b>	<b>\$128.1 million</b>

**A. Critical Vendors**

i. *The Debtors’ Determination of Critical Vendors*

10. In connection with the normal operation of their businesses, the Debtors purchase goods and/or services from certain vendors, suppliers, and service providers (the “*Critical Vendors*”) that are unaffiliated with the Debtors and whose continued provision of such goods and/or services is crucial to maintaining the Debtors’ ongoing business operations. The Critical Vendors are generally sole source or limited source suppliers or vendors which provide a material economic or operational advantage when compared to other available suppliers and vendors (to the extent any exist). Many of the Critical Vendors provide goods and/or services related to maintaining the specialized equipment used in the Debtors’ operating plants. Additionally, certain Critical Vendors provide corporate resources, such as cloud-based storage. Moreover, in many cases, the specialty equipment at the operating plants, such as hammermills and pellet mills, are

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<sup>3</sup> For the avoidance of doubt, the amounts proposed to be paid to each Vendor on account of its prepetition claims are only captured once. For example, if a Critical Vendor Claim (defined below) is subject to a valid lien or entitled to administrative expense priority status under section 503(b)(9) of the Bankruptcy Code, that claim will instead be categorized as a Lien Claim (defined below) or 503(b)(9) Claim (defined below), as appropriate. Additionally, amounts proposed to be paid to the Vendors do not include claims of creditors whose prepetition claims are addressed in any other first-day motion filed contemporaneously herewith.

<sup>4</sup> For the avoidance of doubt, estimated amounts of Critical Vendor Claims, Foreign Claims, Lien Claims, and 503(b)(9) Claims the Debtors seek authority to pay on a final basis are inclusive of estimated interim amounts for Critical Vendor Claims, Foreign Vendor Claims, Lien Claims, and 503(b)(9) Claims, respectively.

manufactured by certain Critical Vendors. As such, only the relevant Critical Vendor has the necessary expertise, knowledge, and specialty tooling to promptly service the equipment or provide any replacement parts. Additionally, certain Critical Vendors provide specialized chemicals and/or lubricants that are designed specifically for the Debtors' production process (*e.g.*, the chemicals used in the drying process), and are therefore necessary to ensure the Debtors' uninterrupted production on a postpetition basis.

11. Uninterrupted production is essential to preserving the Debtors' operational stability and their overall viability due to the lack of storage options for produced pellets in the Debtors' industry. Indeed, the Debtors' operations (like others in the industry) require real-time deliveries—the Debtors must quickly ship their product off to customers; they cannot store it in material quantities. Pellet storage is costly and burdensome due to several factors, including the exacting temperature and humidity control levels required to safely store them, which is compounded by the significant amount of physical space necessary to store commercial volumes. The corollary is that the Debtors' plants have insufficient stored pellets to service their customer requirements, and any interruption to production may render the Debtors unable to service their customers and, accordingly, in breach of their customer contracts. If such production interruption were to occur and cause a plant shutdown, the Debtors' wood and fiber suppliers also would have to divert their deliveries, which would be costly for the Debtors to address and may cause long-lasting damage to operations.

12. Due to their familiarity with the Debtors' operating equipment and infrastructure, the Critical Vendors are essential to the Debtors' ability to operate in the ordinary course on a postpetition basis, and the preservation of relationships with such Critical Vendors is necessary to prevent interruptions in the Debtors' production process. Disruption in the provision of goods and

services from the Critical Vendors, even for a short duration, could significantly impact the Debtors' operations and cause immediate and irreparable harm to the Debtors' businesses and their ability to operate during the course of these chapter 11 cases.

13. Accordingly, the Debtors, with the assistance of their advisors, have identified the universe and type of vendors they deem to be critical to their ongoing operations. Through this process, the Debtors and their advisors spent significant time reviewing and analyzing the Debtors' books and records, consulting operations management and purchasing personnel, reviewing contracts and supply agreements, and analyzing applicable laws and historical practices to identify certain critical business relationships and/or suppliers of goods and services, the loss of which could materially harm their businesses, reduce their enterprise value, and/or impair their going-concern viability. The Debtors considered a variety of factors, including, among other things:

- whether a vendor is a sole- or limited-source or high-volume supplier for goods or services critical to the Debtors' business operations;
- whether alternative vendors are available that can provide requisite volumes of similar goods or services on equal or better terms and, if so, whether the Debtors would be able to continue operating while transitioning business thereto;
- the degree to which projected replacement costs (including pricing, transition expenses, professional fees, and lost sales of future revenue) would exceed the amount of a vendor's prepetition claim;
- whether an agreement exists by which the Debtors could compel a vendor to continue performing on prepetition terms without paying such vendor's prepetition claim at the outset of these chapter 11 cases;
- whether certain specification or contract requirements prevent, directly or indirectly, the Debtors from obtaining goods or services from alternative sources;
- whether failure to pay all or part of a particular vendor's claim could cause the vendor to refuse to ship inventory or to provide critical services on a postpetition basis;

- whether failure to pay all or part of a particular vendor's claim would significantly harm such vendor's ability to remain in business, leading to fewer options in the market for the Debtors to choose from;
- whether failure to pay a particular vendor could result in contraction of trade terms as a matter of applicable non-bankruptcy law or regulation; and
- whether authorization for payment of a particular vendor is being sought under another motion of the Debtors for first day relief.

14. Following this analysis, the Debtors identified certain categories of Critical Vendors utilized in the ordinary course that would be difficult or impossible to replace or could only be replaced at substantially higher costs for the Debtors as they transition into chapter 11. The categories of Critical Vendors that the Debtors request authority to pay on an interim and final basis are described below (all such amounts, "*Critical Vendor Claims*").

1. Specialized Parts Suppliers

15. The Debtors have longstanding business relationships with certain suppliers (the "*Specialized Parts Suppliers*") of highly specialized equipment, parts, and supplies related to producing wood pellets—such as chippers, various types of hammermills, dryers, and pellet mills—that are essential to the Debtors' operations. Most of these items are available only from single-source or limited-source suppliers and are supplied to the Debtors on one-off purchase orders. Many of these items are not only industry-specific, but are also uniquely designed by the specific supplier for the Debtors' specific needs. The Debtors' suppliers customize certain equipment to meet the requirements of the Debtors' operating plants.

16. In many cases, the Debtors have worked with their suppliers of equipment, parts, and supplies for a number of years, and such suppliers have developed detailed knowledge of the Debtors' operating plants and infrastructure. If the Debtors are unable to pay these suppliers of specialized equipment and providers of specialized services, they will face significant difficulty locating adequate replacement vendors (if at all possible), and it would take such replacement

providers a significant amount of time to provide the same level of service the Debtors currently receive. This is especially true because the Debtors obtain a portion of such equipment on a one-off, purchase-order basis, for which no adequate replacements exist in the marketplace. The Debtors' only alternative—fabricating custom tooling—is equally unviable as it would take the Debtors a significant amount of time and resources to complete, and the Debtors' plants would likely have to shut down in the interim. Failure to pay these Specialized Parts Suppliers would thus cause significant harm to the Debtors' business. Therefore, it is essential that the Debtors maintain these crucial business relationships with suppliers of specialized equipment, parts, and supplies.

2. Repair and Maintenance Providers

17. The Debtors rely on certain Critical Vendors that provide repair and maintenance services to the Debtors' operating plants, which are necessary to ensure the uninterrupted production of pellets on a postpetition basis (the "***Repair and Maintenance Providers***"). Many of the Debtors' operating plants use specialized equipment at each stage of the production process, and the Debtors rely on the expertise of the Repair and Maintenance Providers and their familiarity with the Debtors' equipment (some of which are made by the Repair and Maintenance Providers). Without the Repair and Maintenance Providers, the Debtors' operations may quickly and unpredictably come to a halt due to, among other things, the inability to repair any of the Debtors' machinery, which would cause immediate and irreparable harm to the Debtors' estates.

3. Essential Service and Equipment Providers

18. Certain other Critical Vendors provide the Debtors with essential services, including (a) information and technology services such as enterprise resource planning software and logistics management software, (b) broker and management services for essential goods such as utilities, (c) equipment repair services, (d) certain laboratory services for testing and assessing the quality of the produced pellets, and (e) equipment and goods, including health and safety

equipment for the Debtors' employees (collectively, the "*Essential Service and Equipment Providers*"). The Essential Service and Equipment Providers are a necessary part of the Debtors' day-to-day operations and cannot be easily replaced. Without the Essential Service and Equipment Providers, the Debtors would face significant disruption to their businesses. Thus, the Essential Service and Equipment Providers are essential to the Debtors' continuing operations.

4. Lubricant and Chemical Providers

19. The Debtors' operations require that they receive daily deliveries of specialized lubricant and chemicals used in various stages of production (the "*Lubricant and Chemical Providers*"). The Debtors' suppliers customize certain lubricants and/or chemicals to meet the requirements of the Debtors' specialty equipment used in their operating plants. Even if the Debtors could identify alternative chemical and/or lubricant providers that could meet their daily needs, such providers would likely charge the Debtors significantly higher rates than what the Debtors currently pay.

20. The Debtors would incur burdensome costs and delays if forced to locate alternative suppliers of lubricant and/or chemicals. Any chemicals or lubricants provided by a substitute supplier would have to be extensively tested by the Debtors prior to use to, among other things, ensure that such lubricants would not damage the Debtors' valuable heavy machinery. Alternatively, the Debtors may have to make significant changes to their existing equipment, machinery, and/or infrastructure to accommodate the chemicals and/or lubricants available from such alternative suppliers. Thus, for all the reasons stated above, losing access to the Debtors' suppliers of specialty lubricants and/or chemicals would cause significant harm to the Debtors' business and could result in suspension of operations. It is therefore critical that the Debtors have the authority to pay these Critical Vendors to preserve their relationships with such suppliers and to avoid any disruption in supply of fuel, lubricant, and chemicals.

ii. *Critical Vendor Claims*

21. The Debtors submit that their estates would be immediately and irreparably harmed if they were to lose access to the goods and services provided by the Critical Vendors. The Debtors therefore seek authority to honor prepetition obligations to Critical Vendors and pay all or a portion of the Critical Vendor Claims, in the Debtors' discretion, on an interim basis in an amount not to exceed \$8.0 million, and on a final basis in an amount not to exceed \$16.4 million. The Debtors submit that the requested relief will allow them to preserve the value of their estates by paying the prepetition claims of certain counterparties that are critical to their businesses. Moreover, the relief requested herein is necessary because many of the Critical Vendors have no obligation to continue providing goods and services under relevant contracts, and, as a result, the Debtors would be unable to force those vendors to continue to perform under section 365 of the Bankruptcy Code. Additionally, the Debtors do not seek authorization to honor prepetition obligations arising under contracts, except where the Debtors determine, in their business judgment, such parties may inflict immediate and irreparable harm on the Debtors by their refusal to continue providing goods or services.

**B. Foreign Vendors**

22. The Debtors routinely utilize services from companies located in countries outside of the United States (the "*Foreign Vendors*"), including the use of various services related to the Company's delivery of wood pellets manufactured in the United States to their customers across Europe and Asia (*e.g.*, inspection and port-related services), and to facilitate purchasing wood pellets on the spot market from certain third-party pellet producers located primarily in Asia. Through these transactions, the Debtors incur obligations to Foreign Vendors (the "*Foreign Vendor Claims*") in the ordinary course of business.

23. Selling wood pellets to European and Asian customers represents a core part of the Debtors' operations as foreign-based sales are the primary source of the Debtors' revenues. And,

although the Debtors produce a majority of their wood pellets, the Debtors also from time to time purchase a portion of the wood pellets they supply from third parties on the spot market. While wood pellets obtained from third parties represented a smaller fraction of total wood pellets sold by the Debtors in 2023, they have represented a higher percentage in certain past years, and purchased wood pellets are essential to the Debtors' businesses. Therefore, utilizing the Foreign Vendors to procure certain wood pellets and to facilitate the distribution of all of the Debtors' wood pellets is critical to the Debtors' ability to successfully reorganize.

24. As implied by the term "Foreign Vendors," substantially all of the Foreign Vendors may lack meaningful, if any, contacts with the United States. Thus, Foreign Vendors could consider themselves beyond the jurisdiction of the Court and therefore disregard the automatic stay, notwithstanding its worldwide application. Lawsuits in foreign courts and efforts to exercise other remedies in foreign jurisdictions, including asserting liens by the Foreign Vendors, could result from a failure to make payment to such parties in the ordinary course. It would likely be unduly time-consuming and expensive, thereby compounding the loss and disruption in services, to seek to enforce an order of the Court in the creditor's home country in many instances.

25. Additionally, many Foreign Vendors provide the Debtors with services at below-market rates. Absent the continued relationships with such Foreign Vendors, the Debtors would be required to procure replacement services from third parties, who would likely charge market rates or higher. Therefore, maintaining the existing, long-standing relationships with the Foreign Vendors, including paying the Foreign Vendor Claims in the ordinary course, is in the best interests of the Debtors and their estates.

26. As of the Petition Date, the Debtors submit that approximately \$7.2 million in Foreign Vendor Claims has accrued and is outstanding, approximately \$5.0 million of which will become due and payable within the first twenty-one (21) days after the Petition Date.

**C. Lien Claimants**

27. The Debtors routinely engage a number of third parties that may be able to assert and perfect liens, including maritime possessory liens, mechanics' liens, construction liens, materialmen's liens, transportation and freight liens, and other similar liens, against the Debtors' property if the Debtors fail to pay for the goods or services rendered (such parties, collectively, the "*Lien Claimants*"). Additionally, the Debtors have endeavored to identify and limit the universe of potential Lien Claimants with respect to current ongoing construction projects. In the ordinary course of business, the Debtors routinely require lien waivers by their construction contractors in connection with their invoicing process. The Debtors thus are able to mitigate the amount of liens filed against the Debtors' properties and, by extension, reduce the number of, and amounts owed to, the Lien Claimants.

28. The Debtors routinely use various vessel chartering services to facilitate the Company's delivery of wood pellets to its Asian and European customers. The Debtors' pellets are loaded onto ocean-going vessels owned by the vessel owners (the "*Vessel Owners*") at the Debtors' owned or leased deep-water marine terminals, and are then transported to customers overseas. The Vessel Owner maintains possession of the pellets while in transit and, pursuant to applicable maritime law, many of the Vessel Owners would be considered Lien Claimants as they may be able to assert possessory liens over the product being shipped in order to secure the related payment obligations. If payments remain outstanding to Vessel Owners, they may assert such liens and refuse to discharge the Debtors' product until such payment obligations are satisfied.

29. Additionally, other Lien Claimants provide goods and services for the Debtors that are vital in the maintenance and operation of their operating plants. Without such Lien Claimants and their equipment and servicing of such equipment, the Debtors would not be able to continue their operations. Moreover, these Lien Claimants may hold or assert liens against the Debtors' property under applicable law for prepetition work performed for the Debtors. Pursuant to section 362(b)(3) of the Bankruptcy Code, the act of perfecting any such liens, to the extent consistent with section 546(b) of the Bankruptcy Code, or to the extent the act is accomplished within the 30-day period set forth in section 547(e)(2)(A) of the Bankruptcy Code, is expressly excluded from the automatic stay. Absent payment of any outstanding prepetition amounts, the Debtors believe that Lien Claimants may refuse or attempt to refuse to provide any services for or honor obligations under their existing arrangements with the Debtors on a going-forward basis.

30. The Lien Claimants also include (a) common carriers, trucking and rail transport companies, freight terminal operators, distributors, logistics management companies, transloading and other third-party transport service providers (collectively, the "*Shippers*") that ship, transport, and otherwise facilitate the movement of the Debtors' wood pellets, goods, operating supplies, parts, components, materials, equipment, or other property (collectively, the "*Materials*") among the Debtors' facilities and to their customers, (b) the warehousemen, bailees, storage facilities, and other storage providers (collectively, the "*Warehousemen*") to whom Materials are delivered through established distribution networks to store Materials in transit or machinery for repair, and (c) contractors, mechanics, wood pellet testing laboratories, and other service providers (collectively, the "*Service Providers*") that repair, maintain, equip, test, and otherwise service necessary equipment and machinery for the Debtors. The Shippers, Warehousemen, and Service Providers may possess Materials that belong to the Debtors, and the failure to pay any of the foregoing may result in such

Shippers, Warehousemen, and Service Providers asserting liens against the Debtors' property, attempting to take possession of the Debtors' property, or preventing the Debtors from accessing the Materials. The Debtors require ready access to the Materials as the Materials are essential to the Debtors' production process or are finished product the Debtors must deliver to customers.

31. Lien Claimants may, as a result, refuse to deliver or release Materials and other goods in their possession or control before the Debtors satisfy any outstanding prepetition amounts owed (collectively, the "*Lien Claimants Claims*") and any Lien Claimant's liens are released. If the Debtors are unable to timely pay the Lien Claimants Claims, they risk being unable to safely maintain their business operations as they transition into chapter 11, which would cause immediate and irreparable harm to the Debtors' estates.

32. As of the Petition Date, the Debtors submit that approximately \$84.2 million in Lien Claims has accrued and is outstanding, approximately \$43.1 million of which will become due and payable within the first twenty-one (21) days after the Petition Date.

i. *Shippers and Warehousemen*

33. The Debtors seek to pay certain of the prepetition shipping and warehousing charges with respect to wood pellets and other Materials in transit. The services provided by the Shippers and Warehousemen are essential to the Debtors' day-to-day operations in that they are necessary for the Debtors to transport wood pellets from production facilities to dock/rail terminals, and from these terminals to international customers. There are numerous shipments en route to and from various locations across the country and internationally at any given time. Therefore, many of the Shippers and Warehousemen currently possess Materials that are vital to the Debtors' operations.

34. Further, if shipping and warehousing charges are not paid, Shippers and Warehousemen may refuse to perform additional services for the Debtors. In such event, the

Debtors would incur significant additional expenses, such as premium replacement shipping and warehousing costs, that would likely exceed the amount of unpaid prepetition shipping and warehousing charges that the Debtors request the authority to pay hereunder. In many cases, the Shippers and Warehousemen are irreplaceable and represent the only means to transport and store the Debtors' Goods. The Debtors' businesses depend critically on their relationships with several trucking and rail transport companies for which there are no adequate or available substitutes in the market. The Debtors also rely heavily on operators of key dock and rail terminals, many of which represent the only practicable method of transporting the Debtors' Materials to terminals or to customers in certain markets. If the Debtors were unable to promptly locate suitable replacements for these and similar Shippers and Warehousemen, the Debtors' operations would likely be significantly impaired and could halt altogether.

35. Under certain state laws and relevant maritime law, to the extent the Debtors have not paid for such services, certain Shippers and Warehousemen may have a lien on the goods in its possession, which secures the charges or expenses incurred in connection with the transportation or storage of the goods. In addition, pursuant to section 363(e) of the Bankruptcy Code, the Shippers and Warehousemen, as bailees, may be entitled to adequate protection for any valid possessory lien.<sup>5</sup> Because of the commencement of these chapter 11 cases, certain Shippers and Warehousemen may refuse to deliver or release Goods or other property in their possession or control pending receipt of payment for their prepetition services, which would disrupt the Debtors' operations.

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<sup>5</sup> For example, section 7-307 of the Uniform Commercial Code provides, in pertinent part, that a "carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier's receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law." U.C.C. § 7-307(a) (2003).

36. The Debtors believe that a disruption in their chain of shipping and storage arrangements leading from the production facilities to their customers due to nonpayment of shipping and warehouse charges could cause substantial delays and great expense to the Debtors' estates. Accordingly, because the Debtors are dependent on these Shippers and Warehousemen, it is essential that the commencement of these cases not give any Shippers or Warehousemen reason or excuse to cease performing their obligations to the Debtors.

ii. *Service Providers*

37. The Debtors also seek to pay the prepetition charges of the Service Providers. In order to ensure safe and orderly working conditions at their production facilities, the Debtors must repair or replace machine parts and make on-the-spot repairs to machinery on little or no notice. Any disruption in the flow of such parts or services would immediately affect on-time delivery of wood pellets, which is essential to the Debtors' efficient operations given the limited storage capacity of wood pellets generally in the industry. Further, any disruption in the flow of parts or services would cause the Debtors immediate and substantial economic harm and erode their valuable customer base.

38. Much of the equipment and machinery used by the Debtors is highly customized and industry specific, and the available pool of experienced service providers is therefore limited. The Debtors employ a number of skilled professionals and perform much of their repair work in-house, but they rely on third-party Service Providers to supplement this work and to perform other work that the Debtors cannot have done in-house. Accordingly, in many cases, the Debtors have service agreements, as is customary in the industry, with third-party maintenance Service Providers to provide maintenance services at various production facilities. The Debtors have, over the years, nurtured and developed their relationships with these Service Providers and have come

to rely on the high-quality and priority service they receive. It is essential to the continuity of the Debtors' operations that they maintain their relationships with these Service Providers.

39. Additionally, although the Debtors may compel certain Service Providers to continue performing under their executory contracts, the Debtors nevertheless request authority to pay these Service Providers pursuant to this Motion because even a short interruption in services while the Debtors seek to compel performance could temporarily halt the Debtors' operations causing significant down-stream consequences and adversely affect the Debtors' ability to deliver product to its customers on a timely basis; and the Debtors likely will assume the executory contracts with such Service Providers in any case, and accordingly would have to pay associated cure costs prior to confirmation of any chapter 11 plan. Accordingly, paying these Service Providers pursuant to this Motion is essential to the continued operation of the Debtors, and failure to pay these Service Providers will likely cause significant and irreparable harm to the Debtors and their estates.

40. Pursuant to applicable nonbankruptcy law, certain Service Providers may have a right to assert and perfect trade and/or mechanics' liens over the Debtors' properties, as well as essential parts, machinery, and other equipment on account of unpaid goods or services, notwithstanding the automatic stay under section 362 of the Bankruptcy Code. Pursuant to section 362(b)(3) of the Bankruptcy Code, the act of perfecting any such liens, to the extent consistent with section 546(b) of the Bankruptcy Code, or to the extent the act is accomplished within the 30-day period set forth in section 547(e)(2)(A) of the Bankruptcy Code, is expressly excluded from the automatic stay. Absent payment of any outstanding prepetition amounts, the Debtors believe that Service Providers may refuse or attempt to refuse to provide services for or honor obligations under their existing arrangements with the Debtors on a going-forward basis.

41. In sum, because the Debtors are dependent on many third-party Shippers, Warehousemen, and Service Providers, it is essential that the commencement of these cases not give any third-party Shippers, Warehousemen, or Service Providers reason or excuse to cease performing services or to retain products, equipment, or other Materials.

**D. 503(b)(9) Claimants**

42. The Debtors may have received certain goods or materials from certain vendors (collectively, the “**503(b)(9) Claimants**”) in the ordinary course of business within twenty (20) days before the Petition Date. Amounts owed to such parties may be entitled to administrative priority under section 503(b)(9) of the Bankruptcy Code (such amounts, “**503(b)(9) Claims**”). To the extent such goods are supplied on an order-by-order basis, a 503(b)(9) Claimant could refuse to accept new orders without payment of its prepetition claims. The Debtors also believe certain 503(b)(9) Claimants may attempt to reduce the Debtors’ existing trade credit or demand payment in cash on delivery, either of which would negatively impact the Debtors’ liquidity. Further, 503(b)(9) Claims must be paid in full for the Debtors to confirm a chapter 11 plan. Consequently, payment of such claims as requested by this Motion only provides such parties with what they would be entitled to receive under a chapter 11 plan, and the Bankruptcy Code does not prohibit a debtor from paying such claims prior to confirmation.

43. One such category of 503(b)(9) Claimants is the Debtors’ suppliers of wood and wood shavings, which deliver product to the Debtors’ plants on a daily basis. The deliveries are weighed at each plant upon delivery and are invoiced at agreed-upon prices based upon the weight. These suppliers are paid each Thursday for the deliveries received from the prior Friday to Thursday period. The wood and wood shavings provided by the suppliers are in high demand and can be easily diverted to other customers and, if the Debtors do not pay such suppliers each Thursday in the ordinary course, the Debtors believe the suppliers will stop providing the product to the Debtors.

44. As of the Petition Date, the Debtors submit that approximately \$7.2 million in 503(b)(9) Claims has accrued and is outstanding, all of which will become due and payable within the first twenty-one (21) days after the Petition Date.

**E. Prepetition Payment Arrangements**

45. The Debtors' wood pellet business depends on maintaining positive and stable relationships with their customers (the "*Customers*"), many of whom purchase pellets under long-term contracts that provide a steady source of revenue and cash flow for the Debtors. The Debtors' Customers rely on the timely and consistent delivery of pellets to meet their own operational and contractual obligations, and any disruption or delay in the supply of pellets could cause harm to their businesses and, in turn, their ability to continue to perform under the contracts.

46. Due to various factors, such as supply chain disruptions, equipment failures, or market conditions, the Debtors occasionally cancel or postpone contracted shipments under the multi-year contracts. When this occurs, the Debtors may negotiate a resolution or settlement with the affected Customer that allows the Debtor to compensate the Customer for the cancelled or postponed shipments over a period of time (the "*Deferred Payment Arrangements*"). Often, these Deferred Payment Arrangements are memorialized with a formal amendment to the relevant contract. Because the Deferred Payment Arrangements and the related contractual amendments were negotiated and agreed to prior to the Petition Date, the corresponding obligations may arguably constitute prepetition claims of the Customers against the Debtors, as they reflect a modification of the original contract terms that arose prior to the commencement of these chapter 11 cases. Additionally, prior to the Petition Date, certain Customers provided the Debtors with a prepayment (a "*Prepayment*"), which Prepayment would be reduced by the Debtors' subsequent wood pellet deliveries (the "*Prepayment Arrangements*," and together with the Deferred Payment Arrangements, the "*Prepetition Payment Arrangements*"). Although the Debtors believe

they are entitled to continue honoring the Prepetition Payment Arrangements in the ordinary course of business pursuant to the contractual terms of such arrangements, the Debtors request authority to continue to honor these Prepetition Payment Arrangements on a postpetition basis out of an abundance of caution to the extent the Prepetition Payment Arrangements may be considered a prepetition claim of the Customers against the Debtors.

47. The Debtors submit that honoring the Prepetition Payment Arrangements is essential to preserving the value of their business and their estates, as well as to ensuring the continued cooperation and support of their Customers. Moreover, the Prepetition Payment Arrangements that the Debtors seek authority to honor hereunder are arrangements entered into with Customers that the Debtors have identified as essential to their go-forward operations. If the Debtors fail to honor these Prepetition Payment Arrangements, they risk losing the trust and confidence of these critical Customers, who may seek to withhold payments on future shipments pursuant to potential setoff rights or pursue alternative sources of pellets altogether, either of which would jeopardize the Debtors' ability to operate, generate revenue, and fund their reorganization. Moreover, honoring the Prepetition Payment Arrangements is fair and equitable, as the Customers have already suffered a loss of pellets and have agreed to accept pellets at a later date and with revised pricing terms in exchange for the Debtors' performance.

48. Accordingly, the Debtors request that the Court authorize them, in their discretion, to honor the Prepetition Payment Arrangements held by their Customers arising from either negotiated Deferred Payment Arrangements on account of cancelled or delayed shipments, as set forth in the amendments to their contracts, or Prepayments, in the ordinary course of business and on the same terms and conditions as before the Petition Date. The Debtors estimate that the aggregate amount of these Prepetition Payment Arrangements that the Debtors would honor in the

ordinary course of business during these chapter 11 cases is approximately \$13.1 million, approximately \$3.7 million of which would be due payable during the first 21 days of these chapter 11 cases. The Debtors believe that honoring the Prepetition Payment Arrangements is in the best interests of their estates and is a sound exercise of their business judgment.

#### **PAYMENT OF UNDISPUTED OUTSTANDING ORDERS**

49. In the ordinary course of business, prior to the Petition Date, the Debtors may have ordered goods that will not be delivered until after the Petition Date (the “*Outstanding Orders*”). The suppliers that have supplied such goods (the “*Suppliers*”) may refuse to ship or otherwise transport such goods to the Debtors to avoid becoming general unsecured creditors of the Debtors unless and until the Debtors re-order such goods postpetition. Section 503(b) of the Bankruptcy Code provides administrative expense priority for goods attributable to prepetition orders which are subsequently delivered after the Petition Date. Therefore, to avoid any disruption to the Debtors’ businesses, the Debtors respectfully request entry of an order (a) granting administrative expense priority to the undisputed obligations arising from the Debtors’ receipt of Outstanding Orders and (b) authorizing the Debtors to pay for the Outstanding Orders in the ordinary course of business.

#### **POSTPETITION CONTINUATION OF CUSTOMARY TRADE TERMS**

50. In return for paying the Critical Vendor Claims and the Foreign Vendor Claims, the Debtors propose that they may, in their discretion, condition payment of any such Critical Vendor Claims and/or Foreign Vendor Claims upon an agreement to continue to supply goods or services to the Debtors on such creditor’s “Customary Trade Terms”<sup>6</sup> for the 12-month period prior to the Petition Date and on other such terms and conditions as are acceptable to the Debtors. However,

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<sup>6</sup> As used herein, “*Customary Trade Terms*” means, with respect to a Vendor, (a) the normal and customary trade terms, practices, and programs that were most favorable to the Debtors and in effect between such Vendor and the Debtors in the 12-month period prior to the Petition Date or (b) such other trade terms as agreed by the Debtors and such Vendor.

in certain circumstances, a Vendor may refuse to provide services to the Debtors on the creditor's Customary Trade Terms even after payment of its claim. To accommodate these circumstances, the Debtors seek approval to enter into other agreements, in the Debtors' discretion, with each such Vendor on a case-by-case basis.

51. The Debtors further propose that if a Critical Vendor and/or Foreign Vendor accepts payment for a Vendor Claim and thereafter refuses to continue to supply goods or services to the Debtors on the Customary Trade Terms for the applicable period, or on such terms as were individually agreed to between the Debtors and such creditor, then the Debtors may, in their discretion, assert and request that the Court order: (a) that the payment of such Vendor Claim is a voidable postpetition transfer pursuant to section 549(a) of the Bankruptcy Code that the Debtors may recover from such Vendor in cash, (b) in the event there exists an outstanding postpetition balance due from the Debtors to such creditor, the Debtors may recharacterize and apply any such payment made to such postpetition balance outstanding and require that the Vendor immediately return such payment(s) in respect of its Vendor Claim to the extent that the aggregate amount of such payment(s) exceeds the postpetition obligations then outstanding without giving effect to alleged setoff rights, recoupment rights, adjustments, or offsets of any type whatsoever, and (c) upon recovery recharacterization and reapplication of such payment by the Debtors, such creditor's Vendor Claim shall be reinstated as a prepetition claim in such an amount as to restore the Debtors and the applicable Vendor to their original positions, as if the agreement had never been entered into and the payment of the creditor's Vendor Claim had not been made, and the relevant Vendor shall be entitled to file a proof of claim on account of its alleged prepetition claim by the later of (x) 30 days following notice of reinstatement and (y) any general bar date to file proofs of Claim as may be established by order of the Court. In sum, the relief requested would,

in that event, return the parties to their positions immediately prior to the entry of the order approving the relief sought herein.

52. To ensure that Critical Vendors and/or Foreign Vendors transact business with the Debtors on Customary Trade Terms, the Debtors propose the following procedures, to be implemented in the Debtors' discretion, as a condition to paying any such Vendor: (a) that a letter or contract including provisions substantially in the form of the letter attached hereto as **Exhibit C** (a "***Vendor Agreement***") be delivered to, and executed by, the creditor along with a copy of the order granting the relief sought herein and (b) that payment of the creditor's Vendor Claim include a communication of the following statement:

By accepting this payment, the payee agrees to the terms of the Order of the United States Bankruptcy Court for the Eastern District of Virginia, dated [●], in the jointly administered chapter 11 cases of Enviva Inc., entitled "*[Interim] [Final] Order (I) Authorizing the Debtors to (A) Pay Critical Vendors, Foreign Vendors, Lien Claimants, and 503(b)(9) Claimants and (B) Honor Prepetition Payment Arrangements; (II) Confirming Administrative Expense Priority of Outstanding Orders; and (III) Granting Related Relief*" and submits to the jurisdiction of that Court for enforcement thereof.

53. The Debtors further request authority to require, in their discretion, as a further condition of receiving payment on a Vendor Claim, that a Vendor agree to take whatever action is necessary to remove any existing liens at such Vendor's sole cost and expense and waive any right to assert a trade lien on account of the paid Vendor Claim.

54. To the extent that an agreement relating to a Vendor Claim is deemed an executory contract within the meaning of section 365 of the Bankruptcy Code, the Debtors do not, at this time, seek to assume the same. Accordingly, if the Court authorizes the payments described above, such payments should not be deemed to constitute postpetition assumption, reaffirmation, or adoption of the programs, policies, or agreements as executory contracts pursuant to section 365 of the Bankruptcy Code, and the Debtors reserve all of their rights under the Bankruptcy Code in connection therewith.

**BASIS FOR RELIEF REQUESTED**

**A. The Debtors Should be Authorized to Pay the Critical Vendor Claims.**

55. Section 363 of the Bankruptcy Code provides, in relevant part, that “[t]he [debtor], 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). Under section 363(b), courts require only that the debtor “show that a sound business purpose” justifies the proposed use of property. *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *see also In re Phx. Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987) (requiring “good business reason” for use of property under section 363(b) of the Bankruptcy Code). The business judgment standard is “not a difficult standard to satisfy.” *In re AbitibiBowater, Inc.*, 418 B.R. 815, 831 (Bankr. D. Del. 2009). Moreover, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) (“Overcoming the presumptions of the business judgment rule on the merits is a near-Herculean task.”).

56. Further, federal courts have consistently permitted postpetition payment of certain prepetition obligations where necessary to preserve or enhance the value of a debtor’s estate for the benefit of all creditors. Section 105(a) of the Bankruptcy Code provides that a court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of” the Bankruptcy Code, pursuant to the “doctrine of necessity.” 11 U.S.C. § 105(a). The “doctrine of necessity” functions in a chapter 11 case as a mechanism by which the bankruptcy court may exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code and also supports the relief requested herein. *See In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (holding that a court may authorize

payment of prepetition claims if such payment is essential to continued operation of the debtor); *In re United Am., Inc.*, 327 B.R. 776, 781 (Bankr. E.D. Va. 2005) (recognizing the doctrine of necessity is employed by bankruptcy courts because, “[i]f the suppliers legitimately decline to have further dealings with the debtor, the reorganization effort will come to an end before it has had an opportunity to begin.”); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989) (authorizing the payment of prepetition employee wages and benefits while recognizing the judicial power to authorize a debtor “to pay pre-petition claims where such payment is essential to the continued operation of the debtor”); *see also In re Just for Feet, Inc.*, 242 B.R. 821, 824–25 (D. Del. 1999) (holding that Bankruptcy Code section 105(a) “provides a statutory basis for the payment of pre-petition claims” under the doctrine of necessity and noting that, among others, the Supreme Court accepts the authority of the bankruptcy court “to authorize payment of pre-petition claims when such payment is necessary for the debtor’s survival during chapter 11”). The rationale for the “doctrine of necessity” is consistent with the paramount goal of chapter 11—“facilitating the continued operation and rehabilitation of the debtor.” *In re Ionosphere Clubs*, 98 B.R. at 176. Accordingly, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, the Court is empowered to grant the relief requested herein.

57. The nature of the Debtors’ businesses and the extent of their operations make the continued receipt of goods and services from the Critical Vendors essential. The prompt payment of Critical Vendor Claims is crucial for the orderly and efficient operation of the Debtors’ businesses. Failure to pay for these essential goods and services would cause irreparable harm to the Debtors’ businesses.

58. Accordingly, the Debtors submit that the requested relief represents a sound exercise of the Debtors’ business judgment, is necessary to avoid immediate and irreparable harm,

and is justified under sections 363(b) and 105(a) of the Bankruptcy Code. Satisfaction of prepetition obligations owed to the Critical Vendors is vital to the Debtors' operations.

59. Courts in this and other jurisdictions have authorized similar relief in other chapter 11 cases. *See, e.g., In re Ascena Retail Group, Inc.*, No. 20-33113 (KRH) (Bankr. E.D. Va. Aug. 27, 2020) (authorizing payment of all prepetition and postpetition amounts owing to vendors); *In re Intelsat S.A.*, No. 20-32299 (KLP) (Bankr. E.D. Va. June 9, 2020) (same); *see also In re Pier 1 Imports, Inc.*, No. 20-30805 (KRH) (Bankr. E.D. Va. Mar. 17, 2020) (authorizing payment of certain prepetition vendor claims); *In re Toys "R" Us, Inc.*, No. 17-34665 (KLP) (Bankr. E.D. Va. Oct. 25, 2017) (same); *In re The Gymboree Corp.*, No. 17-32986 (KLP) (Bankr. E.D. Va. July 11, 2017) (same); *In re Penn Virginia Corp.*, No. 16-32395 (KLP) (Bankr. E.D. Va. June 9, 2016) (same).

60. To avoid the irreparable harm that would occur absent payment of the Critical Vendor Claims, the Debtors request authority to exercise their reasonable business judgment and pay such Critical Vendor Claims, in their discretion, in the ordinary course of business.

**B. The Foreign Vendors May Not Comply with the Automatic Stay.**

61. As discussed above, the Debtors routinely utilize Foreign Vendors to facilitate the delivery of wood pellets to their European and Asian customers. Many of these Foreign Vendors are located and operate entirely outside of the United States. These Foreign Vendors may, and many likely do, lack minimum contacts with the United States. Thus, there is significant risk that these suppliers may consider themselves to be beyond the jurisdiction of the Court and therefore disregard the automatic stay, and failure to make payment to such Foreign Vendors in the ordinary course could lead to a proliferation of lawsuits in foreign courts and efforts to exercise other detrimental remedies overseas. In many instances, it would be unduly time-consuming and expensive to seek to enforce an order of the Court in the creditor's home country.

**C. The Lien Claimants May Be Entitled to Assert Statutory Liens If They Are Not Paid.**

62. Importantly, the Lien Claimants which have performed prepetition work for the Debtors may hold or assert liens against the Debtors' property under applicable law (the "*Liens*"), which Liens and/or interests arising from the same (the "*Interests*") may be perfected notwithstanding the automatic stay established by section 362(a) of the Bankruptcy Code. *See, e.g.,* VA. CODE § 43-1 *et al.* Although the Liens and Interests of Lien Claimants may not presently be perfected, applicable state law may allow Lien Claimants to perfect such Liens in the future, which perfection will relate back to the creation of the relevant Liens and Interests. Section 546(b) of the Bankruptcy Code explicitly respects such relation back, and section 362(b)(3) exempts postpetition actions to perfect liens from the automatic stay otherwise established by section 362(a), so long as such perfection will relate back to before the petition date under the applicable law respected by section 546(b). As a result, pursuant to section 363(e) of the Bankruptcy Code, if the Lien Claimants are not paid, the Lien Claimants may be entitled to adequate protection as holders of possessory liens. Therefore, the Debtors seek authority to pay all or a portion of the Lien Claimants Claims as they determine, in their discretion, is necessary or appropriate to obtain the release of, or prevent the assertion of, Liens and Interests on estate property asserted by any Lien Claimant that is critical to the Debtors' ongoing business operations.

63. To avoid the irreparable harm that would occur absent payment of the Lien Claimants' Claims, the Debtors respectfully request authority to pay such Lien Claimants' Claims, in their discretion and as an exercise of their business judgment, in the ordinary course of business.

**D. Payment of 503(b)(9) Claims Is Warranted and Should Be Approved.**

64. Section 503(b)(9) of the Bankruptcy Code provides administrative priority for the "value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which goods have been sold to the debtor in the ordinary course of such

debtor's business." 11 U.S.C. § 503(b)(9). These claims must be paid in full for the Debtors to confirm a chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(A). Consequently, payment of such claims as requested by this Motion only provides such parties with what they would be entitled to receive under a chapter 11 plan.

65. Furthermore, the Bankruptcy Code does not prohibit a debtor from paying such claims prior to confirmation. Because these claims are administrative claims incurred in the ordinary course of business, the Debtors submit that they may be able to pay such claims in accordance with their business judgment pursuant to section 363(c)(1) of the Bankruptcy Code. *See, e.g., In re Dura Auto. Sys. Inc.*, No. 06-11202 (KJC) (Bankr. D. Del. Oct. 31, 2006) Hr'g Tr. 49:21–23 (“I think arguably the debtor could pay its 503(b)(9) claimants without court approval.”). Additionally, the Court has discretion on the timing of such payments. *See In re King*, 392 B.R. 62, 67–68 (Bankr. S.D.N.Y. 2008) (“The timing of distributions for administrative expense payments, other than at the close of the case, is within the discretion of the Court”); *In re Global Home Prods., LLC*, No. 06-10340 (KG), 2006 WL 3791955, at \*3 (Bankr. D. Del. Dec. 21, 2006) (agreeing with parties that “the timing of the payment of that administrative expense claim is left to the discretion of the Court”).

66. Timely obtaining goods is key to the Debtors' survival and necessary to preserve the value of their estates. If the Debtors did not pay the 503(b)(9) Claims at the outset of these chapter 11 cases—which merely potentially accelerates the timing of payment and not the ultimate treatment of such claims—the Debtors could be denied access to the goods necessary to maintain their business operations. Failure to honor these claims in the ordinary course of business may also cause the Debtors' vendor base to withhold support for the Debtors during the chapter 11 process. 503(b)(9) Claimants could accelerate or eliminate favorable trade terms. Such costs and

distractions could impair the Debtors' ability to stabilize their operations at this critical juncture to the detriment of all stakeholders.

**E. The Court Should Authorize Payment of Outstanding Orders and Confirm That Such Undisputed Claims Are Entitled to Administrative Expense Priority.**

67. Section 503(b)(1) of the Bankruptcy Code provides that actual, necessary costs to preserve the Debtors' estates are entitled to administrative expense priority. 11 U.S.C. § 503(b)(1)(A). Postpetition obligations arising from the postpetition delivery of goods and services, including goods ordered prepetition have been granted administrative expense priority because they benefit and preserve the debtors' estates. *See, e.g., In re John Clay & Co.*, 43 B.R. 797, 813 (Bankr. D. Utah 1984) (finding that postpetition delivery of a prepetition order was entitled to administrative priority under Section 503(b)(1)(A) of the Bankruptcy Code). Therefore, granting the relief requested herein does not prejudice any parties in interest because claimants entitled to payment for Outstanding Orders will not receive higher priority than they would receive if the relief requested herein was not granted.

68. If the Debtors do not receive such relief, however, they may be forced to spend significant time and effort substituting the Outstanding Orders with postpetition orders or otherwise provide such claimants with assurance that the claim will receive administrative priority. This potential disruption could have a significant negative impact on the Debtors' business operations, as the Debtors may not timely receive raw materials and goods necessary to operate, which could result in a cessation of operations, loss of revenue, and destruction of value of the Debtors' assets. Therefore, the Debtors respectfully request that the Court authorize them to pay the undisputed Outstanding Orders in the ordinary course of business and confirm the administrative expense priority of the Outstanding Orders.

**F. The Debtors' Banks Should Be Authorized to Honor Checks, Wire Transfers, and Electronic Fund Transfers.**

69. Subject to the Court's approval of the proposed debtor-in-possession financing facility, the Debtors have sufficient liquidity to pay the amounts described in this Motion in the ordinary course of business. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks, wire transfers, or electronic fund transfer requests as relating to an authorized payment in respect of the Vendor payments. Accordingly, the Debtors believe that there is minimal risk that checks, wire transfers, and electronic fund transfer requests that the Court has not authorized will be honored inadvertently. The Debtors respectfully request that the Court authorize and direct all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks, wire transfers, or electronic fund transfer requests in respect of the relief requested in this Motion. Further, the Debtors also seek authority to issue new postpetition checks, wire transfers, or electronic fund transfer requests to replace any prepetition checks, wire transfers, or funds transfers that may be dishonored or rejected as a result of the commencement of these chapter 11 cases.

**REQUEST FOR IMMEDIATE RELIEF**

70. Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the Petition Date "to the extent that relief is necessary to avoid immediate and irreparable harm." For the reasons discussed herein and in the First Day Declarations, authorizing the Debtors to pay Vendor Claims and confirming administrative expense priority of Outstanding Orders, as well as granting the other relief requested herein, is critical to enabling the Debtors to effectively transition to operating as chapter 11 debtors. Failure to receive such authorization and other relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors' operations and significantly impact the Debtors' ability to reorganize swiftly and efficiently. As such, the relief

requested is necessary in order for the Debtors to operate their businesses in the ordinary course and preserve the ongoing value of the Debtors' operations and maximize the value of their estates for the benefit of all stakeholders. Accordingly, the Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

**WAIVER OF BANKRUPTCY RULES 6004(a) AND 6004(h)**

71. 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).

**RESERVATION OF RIGHTS**

72. Unless specifically provided herein, and notwithstanding any actions taken hereunder, nothing in this Motion is intended to be, nor should it be construed as (a) an implication or admission as to the validity or priority of any claim or lien against the Debtors, (b) an impairment or waiver of the Debtors' or any other party in interest's rights to contest or dispute any such claim or lien, (c) a promise or requirement to pay any prepetition claim, (d) an implication or admission that any particular claim is of a type specified or defined in this Motion or any proposed order, (e) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law, (f) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code, or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in this Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

**NOTICE**

73. Notice of this Motion has been provided by delivery to the following parties or their counsel, as applicable: (a) the Assistant United States Trustee for the Eastern District of Virginia; (b) the Debtors' 30 largest unsecured creditors (on a consolidated basis); (c) Davis Polk & Wardwell LLP as co-counsel to the Ad Hoc Group; (d) McGuireWoods LLP as co-counsel to the Ad Hoc Group; (e) McDermott Will & Emery LLP as counsel to the agent under the DIP Facility; (f) Cahill Gordon & Reindel LLP as counsel to the agent under the Senior Secured Credit Facility; (g) Kilpatrick Townsend & Stockton LLP as counsel to the indenture trustee under the 2026 Notes; (h) Kramer Levin Naftalis & Frankel LLP as counsel to the indenture trustees under the Bond Green Bonds and the Epes Green Bonds; (i) those persons who have formally appeared in these chapter 11 cases and requested service pursuant to Bankruptcy Rule 2002; (j) the United States Attorney's Office for the Eastern District of Virginia; (k) the Securities and Exchange Commission; (l) the Internal Revenue Service; and (m) all applicable government agencies or other parties to the extent required by the Bankruptcy Rules or the Local Rules (collectively, the "*Notice Parties*"). In light of the nature of the relief requested in this Motion, the Debtors submit that no further notice is necessary.

**NO PRIOR REQUEST**

74. No prior motion for the relief requested herein has been made to this Court or any other court.

The Debtors respectfully request that the Court enter the Interim Order and the Final Order, substantially in the forms attached hereto as **Exhibits A** and **B**, respectively, and grant them such other and further relief to which the Debtors may be justly entitled.

Richmond, Virginia  
Dated: March 12, 2024

/s/ Jeremy S. Williams

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*Proposed Co-Counsel for the Debtors and Debtors in Possession*

**EXHIBIT A**

**Proposed Interim Order**

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*Proposed Co-Counsel to the Debtors and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE EASTERN DISTRICT OF VIRGINIA  
 ALEXANDRIA DIVISION**

In re:	)	
	)	Chapter 11
	)	
ENVIVA INC., <i>et al.</i> ,	)	Case No. 24-10453 (BFK)
	)	
Debtors. <sup>1</sup>	)	(Joint Administration Requested)
	)	
	)	

**INTERIM ORDER (I) AUTHORIZING  
 THE DEBTORS TO (A) PAY CRITICAL VENDORS, FOREIGN VENDORS,  
 LIEN CLAIMANTS, AND 503(B)(9) CLAIMANTS AND (B) HONOR PREPETITION  
 PAYMENT ARRANGEMENTS; (II) CONFIRMING ADMINISTRATIVE EXPENSE  
 PRIORITY OF OUTSTANDING ORDERS; AND (III) GRANTING RELATED RELIEF**

Upon the Motion<sup>2</sup> filed by the above-referenced debtors and debtors in possession (collectively, the “*Debtors*”) for entry of an interim order (the “*Interim Order*”) (i) authorizing the Debtors to, in the ordinary course of business, based on their sound business judgment, (a) pay

<sup>1</sup> Due to the large number of Debtors in these chapter 11 cases, for which joint administration has been requested, a complete list of the Debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list may be obtained on the website of the Debtors’ proposed claims and noticing agent at [www.kccllc.net/enviva](http://www.kccllc.net/enviva). The location of the Debtors’ corporate headquarters is: 7272 Wisconsin Avenue, Suite 1800, Bethesda, MD 20814.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning set forth in the Motion.

prepetition amounts owed to Critical Vendors, Foreign Vendors, Lien Claimants, and 503(b)(9) Claimants and (b) honor Prepetition Payment Arrangements; (ii) confirming the administrative expense priority status and treatment of the Debtors' outstanding orders; and (iii) granting related relief, all as more fully set forth in the Motion and in the First Day Declarations; and the Court having jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated August 15, 1984; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having reviewed the Motion and the First Day Declarations; and the Court having found that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates, as contemplated by Bankruptcy Rule 6003; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors and their respective estates, creditors, and other parties in interest; and the Court having found that proper and adequate notice of the Motion and hearing thereon has been given and that no other or further notice is necessary; and the Court having found that good and sufficient cause exists for the granting of the relief requested in the Motion after having given due deliberation upon the Motion and all of the proceedings had before the Court in connection with the Motion, it is HEREBY ORDERED THAT:

1. The final hearing (the "***Final Hearing***") on the Motion shall be held on \_\_\_\_\_, 2024, at \_\_: \_\_ .m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 5:00 p.m., prevailing Eastern Time, on \_\_\_\_\_, 2024, and shall be served on the Notice Parties.

2. The Debtors are authorized, subject to this Interim Order, to pay the prepetition Vendor Claims described in the Motion as the Debtors determine to be necessary or appropriate, in an aggregate amount not to exceed \$63.3 million on an interim basis as set forth in the categories and amounts set forth in the Motion. In the event the Debtors expect to exceed the aggregate amounts in any category as detailed in the Motion during the interim period, the Debtors shall file a notice with the Court describing the category and overage amount prior to payment.

3. The Debtors are authorized, subject to this Interim Order, to honor the Prepetition Payment Arrangements described in the Motion as the Debtors determine to be necessary or appropriate, in an aggregate amount not to exceed \$3.7 million on an interim basis as set forth in the Motion.

4. The Debtors shall maintain a matrix summarizing amounts paid, subject to the terms and conditions of this Interim Order, including the following information: (a) the names of payee; (b) the amount of the payment; (c) the category or type of payment as further described and classified in the Motion; (d) the Debtor or Debtors that made the payment; and (e) the payment date (the “*Critical Vendor Matrix*”). The Debtors shall provide a copy of the Critical Vendor Matrix to the U.S. Trustee, counsel to the Ad Hoc Group, and any statutory committee appointed in these chapter 11 cases, (x) for the first four weeks following commencement of these chapter 11 cases, and, (y) thereafter, on a monthly basis; *provided* that such recipients shall keep the Critical Vendor Matrix strictly confidential and not disseminate it to other parties; *provided, further*, that the rights of any statutory committee to seek a revision regarding the reporting scheduled are expressly preserved.

5. As a condition to receiving any payment under this Interim Order, a Critical Vendor and/or a Foreign Vendor must maintain or apply, as applicable, Customary Trade Terms<sup>3</sup> during the pendency of these chapter 11 cases. Further, if such Vendor, after receiving a payment under this Interim Order, ceases to provide goods or services on Customary Trade Terms, the Debtors may assert and request that the Court order: (a) that the payment of such Vendor Claim is a voidable postpetition transfer pursuant to section 549(a) of the Bankruptcy Code that the Debtors may recover from such Vendor in cash, (b) in the event there exists an outstanding postpetition balance due from the Debtors to such creditor, the Debtors may recharacterize and apply any such payment made to such postpetition balance outstanding and require that the Vendor immediately return such payment(s) in respect of its Vendor Claim to the extent that the aggregate amount of such payment(s) exceeds the postpetition obligations then outstanding without giving effect to alleged setoff rights, recoupment rights, adjustments, or offsets of any type whatsoever, and (c) upon recovery recharacterization and reapplication of such payment by the Debtors, such creditor's Vendor Claim shall be reinstated as a prepetition claim in such an amount as to restore the Debtors and the applicable Vendor to their original positions, as if the agreement had never been entered into and the payment of the creditor's Vendor Claim had not been made, and the relevant Vendor shall be entitled to file a proof of claim on account of its alleged prepetition claim by the later of (x) 30 days following notice of reinstatement and (y) any general bar date to file proofs of Claim as may be established by order of the Court.

6. The form of Vendor Agreement, substantially in the form attached to the Motion as **Exhibit C**, is approved in its entirety. The Debtors are authorized to enter into Vendor Agreements

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<sup>3</sup> As used herein, "*Customary Trade Terms*" means, with respect to a Vendor, (a) the normal and customary trade terms, practices, and programs that were most favorable to the Debtors and in effect between such Vendor and the Debtors in the 12-month period prior to the Petition Date or (b) such other trade terms as agreed by the Debtors and such Vendor.

with Critical Vendors and Foreign Vendors, in their discretion, so long as such Vendor Agreements comply with the terms of this Interim Order.

7. The Debtors are authorized to negotiate, modify, or amend the form of the Vendor Agreement (provided that any such modification or amendment must require the Vendor to provide the Customary Trade Terms and otherwise comply with this Interim Order) and to settle all or some of the Vendor Claims for less than the face amount of such claims without further notice or hearing, each in the Debtors' reasonable business judgment.

8. The Debtors are authorized to require, as a further condition of receiving payment on a Vendor Claim, that a Vendor agree to take whatever action is necessary to remove any existing liens on the Debtors' property at such Vendor's sole cost and expense and waive any right to assert a trade lien on account of a paid Vendor Claim.

9. Any party that accepts payments from the Debtors on account of a Vendor Claim shall be deemed to have agreed to the terms and provisions of this Interim Order. Notwithstanding anything to the contrary herein, prior to making any payment pursuant to this Interim Order, the Debtors shall provide such Vendor with a copy of this Interim Order (unless previously provided to such Vendor).

10. If any party accepts payment on behalf of a Vendor Claim under this Interim Order, and such claim is determined by the Court after notice and hearing (a) in the case of a Lien Claim, not to give rise to a Lien or Interest or (b) in the case of a 503(b)(9) Claim, not to give rise to a claim entitled to priority under section 503(b)(9) of the Bankruptcy Code, the Debtors are authorized to avoid such payment as a postpetition transfer under section 549 of the Bankruptcy Code, and the party who had accepted such payment shall be required to immediately repay to the Debtors any payment made to such party on account of its asserted claim to the extent the aggregate

amount of such payments exceeds the postpetition obligations then outstanding, without the right of setoff, claims, or otherwise. Upon recovery of such payments by the Debtors, the obligations shall be reinstated as a prepetition claim in the amount so recovered.

11. All undisputed obligations arising from the Outstanding Orders shall receive administrative expense priority, and the Debtors are authorized to pay all undisputed obligations arising from the Outstanding Orders in their reasonable discretion and in the ordinary course of business consistent with the parties' prepetition customary practices.

12. Nothing herein shall impair or prejudice the Debtors' or any other party in interest's ability to contest the extent, perfection, priority, validity, or amount of any Vendor Claim.

13. Nothing herein shall prejudice the Debtors' ability to seek a further order from this Court authorizing the Debtors to exceed the aggregate amounts of Vendor Claims as set forth in the Motion and herein or any party in interest's right to contest such relief.

14. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

15. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order.

16. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts that are authorized to be paid pursuant to this Interim Order.

17. Unless specifically provided herein, and notwithstanding any actions taken hereunder, nothing contained in the Motion or this Interim Order or any payment made pursuant to this Interim Order shall constitute, nor is it intended to constitute, an implication or admission as to the validity or priority of any claim or lien against the Debtors, a waiver of the Debtors', or any party in interest's, rights to subsequently dispute such claim or lien, a promise or requirement to pay any prepetition claim, an implication or admission that any particular claim is of a type specified or defined in the Motion or any proposed order, a waiver of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law, or the assumption or adoption of any agreement, contract, or lease under section 365 of the Bankruptcy Code. Any payment made pursuant to this Interim Order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' or any other party in interest's rights to subsequently dispute such claim.

18. Notwithstanding the relief granted in this Interim Order, all authorizations herein and all payments and actions pursuant hereto shall be subject to each interim and final order entered by the Court in respect of the *Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Superpriority Administrative Expense Claims, (III) Granting Adequate Protection to Prepetition Secured Parties, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief*, filed contemporaneously herewith (the "**DIP Order**"), including compliance with any budget or cash flow forecast in connection therewith and any other terms and conditions thereof. Nothing herein is intended to modify, alter, or waive, in any way, any terms, provisions, requirements, or restrictions of the DIP Order or the DIP Documents (as defined in the DIP Order). To the extent there is any inconsistency between the terms of the DIP Order or the

DIP Documents and the terms of this Interim Order or any action taken or proposed to be taken hereunder, the terms of the DIP Order or the DIP Documents, as applicable, shall control.

19. Nothing in this Interim Order authorizes the Debtors to accelerate payments to Vendors or otherwise pay Vendors on account of Vendor Claims that do not come due during the interim period.

20. Notwithstanding anything to the contrary, nothing in this Interim Order authorizes the Debtors to pay any claims that are addressed in any other order issued by this Court, including but not limited to prepetition employees' claims, and any prepetition claims of attorneys or other professionals required to be retained pursuant to applications under section 327 of the Bankruptcy Code.

21. Bankruptcy Rule 6003(b) has been satisfied.

22. The requirements of Bankruptcy Rule 6004(a) are waived.

23. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order shall be immediately effective and enforceable upon entry of this Interim Order.

24. The requirement under Local Rule 9013-1(F) to file a memorandum of law in connection with the Motion is waived.

25. The Court retains exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Interim Order.

Dated: \_\_\_\_\_  
Alexandria, Virginia

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UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

/s/  
Michael A. Condyles (VA 27807)  
Peter J. Barrett (VA 46179)  
Jeremy S. Williams (VA 77469)  
**KUTAK ROCK LLP**  
901 East Byrd Street, Suite 1000  
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Telephone: (804) 644-1700  
Facsimile: (804) 783-6192

- and -

David S. Meyer (*pro hac vice* pending)  
Jessica C. Peet (*pro hac vice* pending)  
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1114 Avenue of the Americas, 32nd Floor  
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Trevor G. Spears (*pro hac vice* pending)  
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Facsimile: (214) 220-7716

*Proposed Co-Counsel to the Debtors and Debtors in Possession*

**CERTIFICATION OF ENDORSEMENT UNDER LOCAL RULE 9022-1(C)**

Pursuant to Local Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/

**EXHIBIT B**

**Proposed Final Order**

David S. Meyer (*pro hac vice* pending)  
 Jessica C. Peet (*pro hac vice* pending)  
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*Proposed Co-Counsel to the Debtors and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE EASTERN DISTRICT OF VIRGINIA  
 ALEXANDRIA DIVISION**

In re:	)	
	)	Chapter 11
ENVIVA INC., <i>et al.</i> ,	)	
	)	Case No. 24-10453 (BFK)
Debtors. <sup>1</sup>	)	
	)	(Joint Administration Requested)
	)	
	)	

**FINAL ORDER (I) AUTHORIZING  
 THE DEBTORS TO (A) PAY CRITICAL VENDORS, FOREIGN VENDORS,  
 LIEN CLAIMANTS, AND 503(B)(9) CLAIMANTS AND (B) HONOR PREPETITION  
 PAYMENT ARRANGEMENTS; (II) CONFIRMING ADMINISTRATIVE EXPENSE  
 PRIORITY OF OUTSTANDING ORDERS; AND (III) GRANTING RELATED RELIEF**

Upon the Motion<sup>2</sup> filed by the above-referenced debtors and debtors in possession (collectively, the “*Debtors*”) for entry of an order (the “*Final Order*”) (i) authorizing the Debtors to, in the ordinary course of business, based on their sound business judgment, (a) pay prepetition

<sup>1</sup> Due to the large number of Debtors in these chapter 11 cases, for which joint administration has been requested, a complete list of the Debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list may be obtained on the website of the Debtors’ proposed claims and noticing agent at [www.kccllc.net/enviva](http://www.kccllc.net/enviva). The location of the Debtors’ corporate headquarters is: 7272 Wisconsin Avenue, Suite 1800, Bethesda, MD 20814.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning set forth in the Motion.

amounts owed to Critical Vendors, Foreign Vendors, Lien Claimants, and 503(b)(9) Claimants and (b) honor Prepetition Payment Arrangements; (ii) confirming the administrative expense priority status and treatment of the Debtors' outstanding orders; and (iii) granting related relief, all as more fully set forth in the Motion and in the First Day Declarations; and the Court having jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated August 15, 1984; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having entered the Interim Order; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors and their respective estates, creditors, and other parties in interest; and the Court having found that proper and adequate notice of the Motion and hearing thereon has been given and that no other or further notice is necessary; and the Court having found that good and sufficient cause exists for the granting of the relief requested in the Motion after having given due deliberation upon the Motion and all of the proceedings had before the Court in connection with the Motion, it is HEREBY ORDERED THAT:

1. The Debtors are authorized, subject to this Final Order, to pay the prepetition Vendor Claims described in the Motion as the Debtors determine to be necessary or appropriate, in an aggregate amount not to exceed \$115.0 million on a final basis as set forth in the categories and amounts set forth in the Motion. In the event the Debtors expect to exceed the aggregate amounts in any category as detailed in the Motion, the Debtors shall file a notice with the Court describing the category and overage amount prior to payment.

2. The Debtors are authorized, subject to this Final Order, to honor Prepetition Payment Arrangements described in the Motion as the Debtors determine to be necessary or appropriate, in an aggregate amount not to exceed \$13.1 million on a final basis as set forth in the Motion.

3. The Debtors shall maintain a matrix summarizing amounts paid, subject to the terms and conditions of this Interim Order, including the following information: (a) the names of payee; (b) the amount of the payment; (c) the category or type of payment as further described and classified in the Motion; (d) the Debtor or Debtors that made the payment; and (e) the payment date (the “*Critical Vendor Matrix*”). The Debtors shall provide a copy of the Critical Vendor Matrix to the U.S. Trustee, counsel to the Ad Hoc Group, and any statutory committee appointed in these chapter 11 cases, (x) for the first four weeks following commencement of these chapter 11 cases, on a weekly basis, and, (y) thereafter, on a monthly basis; *provided* that such recipients shall keep the Critical Vendor Matrix strictly confidential and not disseminate it to other parties; *provided, further*, that the rights of any statutory committee to seek a revision regarding the reporting scheduled are expressly preserved.

4. As a condition to receiving any payment under this Final Order, a Critical Vendor and/or Foreign Vendor must maintain or apply, as applicable, Customary Trade Terms<sup>3</sup> during the pendency of these chapter 11 cases. If such Vendor, after receiving a payment under this Final Order, ceases to provide goods or services on Customary Trade Terms, the Debtors may assert and request that the Court order: (a) that the payment of such Vendor Claim is a voidable postpetition transfer pursuant to section 549(a) of the Bankruptcy Code that the Debtors may recover from such

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<sup>3</sup> As used herein, “*Customary Trade Terms*” means, with respect to a Vendor, (a) the normal and customary trade terms, practices, and programs that were most favorable to the Debtors and in effect between such Vendor and the Debtors in the 12-month period prior to the Petition Date or (b) such other trade terms as agreed by the Debtors and such Vendor.

Vendor in cash, (b) in the event there exists an outstanding postpetition balance due from the Debtors to such creditor, the Debtors may recharacterize and apply any such payment made to such postpetition balance outstanding and require that the Vendor immediately return such payment(s) in respect of its Vendor Claim to the extent that the aggregate amount of such payment(s) exceeds the postpetition obligations then outstanding without giving effect to alleged setoff rights, recoupment rights, adjustments, or offsets of any type whatsoever, and (c) upon recovery recharacterization and reapplication of such payment by the Debtors, such creditor's Vendor Claim shall be reinstated as a prepetition claim in such an amount as to restore the Debtors and the applicable Vendor to their original positions, as if the agreement had never been entered into and the payment of the creditor's Vendor Claim had not been made, and the relevant Vendor shall be entitled to file a proof of claim on account of its alleged prepetition claim by the later of (x) 30 days following notice of reinstatement and (y) any general bar date to file proofs of Claim as may be established by order of the Court.

5. The form of Vendor Agreement, substantially in the form attached to the Motion as **Exhibit C**, is approved in its entirety. The Debtors are authorized to enter into Vendor Agreements with Critical Vendors and/or Foreign Vendors, in their discretion, so long as such Vendor Agreements comply with the terms of this Final Order.

6. The Debtors are authorized to negotiate, modify, or amend the form of a Vendor Agreement (provided that any such modification or amendment must require the Vendor to provide the Customary Trade Terms and otherwise comply with this Final Order) and to settle all or some of the Vendor Claims for less than the face amount of such claims without further notice or hearing, each in the Debtors' reasonable business judgment.

7. The Debtors are authorized to require, as a further condition of receiving payment on a Vendor Claim, that a Vendor agree to take whatever action is necessary to remove any existing liens on the Debtors' property at such Vendor's sole cost and expense and waive any right to assert a trade lien on account of a paid Vendor Claim.

8. Any party that accepts payments from the Debtors on account of a Vendor Claim shall be deemed to have agreed to the terms and provisions of this Final Order. Notwithstanding anything to the contrary herein, prior to making any payment pursuant to this Final Order, the Debtors shall provide such Vendor with a copy of this Final Order (unless previously provided to such Vendor).

9. If any party accepts payment on behalf of a Vendor Claim under this Final Order, and such claim is determined by the Court after notice and hearing (a) in the case of a Lien Claim, not to give rise to a Lien or Interest or (b) in the case of a 503(b)(9) Claim, not to give rise to a claim entitled to priority under section 503(b)(9) of the Bankruptcy Code, the Debtors are authorized to avoid such payment as a postpetition transfer under section 549 of the Bankruptcy Code, and the party who had accepted such payment shall be required to immediately repay to the Debtors any payment made to it on account of its asserted claim to the extent the aggregate amount of such payments exceeds the postpetition obligations then outstanding, without the right of setoff, claims, or otherwise. Upon recovery of such payments by the Debtors, the obligations shall be reinstated as a prepetition claim in the amount so recovered.

10. All undisputed obligations arising from the Outstanding Orders shall receive administrative expense priority, and the Debtors are authorized to pay all undisputed obligations arising from the Outstanding Orders in their reasonable discretion and in the ordinary course of business consistent with the parties' prepetition customary practices.

11. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Final Order in accordance with the Motion.

12. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.

13. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to any prepetition amounts that are authorized to be paid pursuant to this Final Order.

14. Unless specifically provided herein, and notwithstanding any actions taken hereunder, nothing contained in the Motion or this Final Order or any payment made pursuant to this Final Order shall constitute, nor is it intended to constitute, an implication or admission as to the validity or priority of any claim or lien against the Debtors, a waiver of the Debtors', or any party in interest's, rights to subsequently dispute such claim or lien, a promise or requirement to pay any prepetition claim, an implication or admission that any particular claim is of a type specified or defined in the Motion or any proposed order, a waiver of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law, or the assumption or adoption of any agreement, contract, or lease under section 365 of the Bankruptcy Code. Any payment made pursuant to this Final Order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' or any other party in interest's rights to subsequently dispute such claim.

15. Notwithstanding the relief granted in this Final Order, all authorizations herein and all payments and actions pursuant hereto shall be subject to each interim and final order entered by the Court in respect of the *Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Superpriority Administrative Expense Claims, (III) Granting Adequate Protection to Prepetition Secured Parties, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief*, filed contemporaneously herewith (the "**DIP Order**"), including compliance with any budget or cash flow forecast in connection therewith and any other terms and conditions thereof. Nothing herein is intended to modify, alter, or waive, in any way, any terms, provisions, requirements, or restrictions of the DIP Order or the DIP Documents (as defined in the DIP Order). To the extent there is any inconsistency between the terms of the DIP Order or the DIP Documents and the terms of this Final Order, the terms of the DIP Order or the DIP Documents, as applicable, shall control.

16. Notwithstanding anything to the contrary, nothing in this this Final Order authorizes the Debtors to pay any claims that are addressed in any other order issued by this Court, including but not limited to prepetition employees' claims, and any prepetition claims of attorneys or other professionals required to be retained pursuant to applications under section 327 of the Bankruptcy Code.

17. The requirements of Bankruptcy Rule 6004(a) are waived.

18. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order shall be immediately effective and enforceable upon entry of this Final Order.

19. The requirement under Local Rule 9013-1(F) to file a memorandum of law in connection with the Motion is waived.

20. The Court retains exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Final Order.

Dated: \_\_\_\_\_  
Alexandria, Virginia

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UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

/s/  
Michael A. Condyles (VA 27807)  
Peter J. Barrett (VA 46179)  
Jeremy S. Williams (VA 77469)  
**KUTAK ROCK LLP**  
901 East Byrd Street, Suite 1000  
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- and -

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Jessica C. Peet (*pro hac vice* pending)  
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Trevor G. Spears (*pro hac vice* pending)  
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*Proposed Co-Counsel to the Debtors and Debtors in Possession*

**CERTIFICATION OF ENDORSEMENT UNDER LOCAL RULE 9022-1(C)**

Pursuant to Local Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/

**EXHIBIT C**

**Vendor Agreement**

[Name of Applicable Debtor]  
\_\_\_\_\_, 2024

TO: [Vendor]  
[Name]  
[Address]

Dear Valued Supplier:

As you are aware, Enviva Inc. and certain of its affiliates and/or subsidiaries (collectively, the “*Company*”) each filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “*Bankruptcy Code*”) in the United States Bankruptcy Court for the Eastern District of Virginia (the “*Bankruptcy Cases*” and the “*Bankruptcy Court*,” respectively) on March 12, 2024 (the “*Petition Date*”). On the Petition Date, the Company requested the Bankruptcy Court’s authority to pay certain suppliers and service providers (collectively, “*Vendors*”) in recognition of the importance of the Company’s relationship with those Vendors and the Company’s desire that the Bankruptcy Cases have minimal effect on the Company’s business relationships with certain Vendors. On [\_\_\_\_], 2024, the Bankruptcy Court entered an [interim/final] order (the “*Order*”) authorizing the Company, under certain conditions, to pay prepetition claims of certain Vendors that agree to the terms below as well as agree to be bound by the terms of the Order. A copy of the Order is annexed hereto (collectively with this letter, the “*Letter Agreement*”).

To receive payment on prepetition claims pursuant to the Order, each selected Vendor must agree to continue to supply goods or services to the Company based on “Customary Trade Terms.” As used herein and in the Order, “Customary Trade Terms” are, with respect to a Vendor, (a) the normal and customary trade terms, practices, and programs that were most favorable to the Company and in effect between such Vendor and the Company in the twelve-month period prior to the Petition Date or (b) such other trade terms as agreed by the Company and such Vendor.

For purposes of administration of this program, the Company and you agree as follows:

1. The estimated balance of your aggregate prepetition claim(s) against the Debtors is \$[\_\_\_\_], a portion of which may be entitled to administrative expense priority pursuant to section 503(b)(9) of the Bankruptcy Code (the “*Agreed Vendor Claim*”).
2. The Company will provisionally pay you \$[\_\_\_\_] (the “*Payment*”) on account of the Agreed Vendor Claim (net of any setoffs, credits, or discounts, if applicable).
3. For the avoidance of doubt, the Company’s and your rights are reserved with respect to any claims you may have arising under section 503(b)(9) of the Bankruptcy Code.
4. Nothing herein waives the Company’s or your rights under section 365 of the Bankruptcy Code.
5. You will provide Customary Trade Terms as follows (if more space is required, continuation pages are attached):
  - a. \_\_\_\_\_  
\_\_\_\_\_
6. You agree that you will not require a lump-sum payment upon the confirmation or consummation of a plan of reorganization in these Bankruptcy Cases on account of any administrative expense claim you may assert, but instead agree that such claims will be paid in the ordinary course of business after confirmation of a plan under applicable Customary Trade Terms, if the plan provides for the ongoing operations of the Company.
7. You will hereafter extend to the Company all Customary Trade Terms and agree to abide by any purchase order terms and conditions between you and the Company as in effect before the Petition Date (the “*Current PO(s)*”).

Payment of your Agreed Vendor Claim in the manner set forth in the Order may only occur upon execution of this Letter Agreement by a duly authorized representative of your company and the return of this letter to the Company. Your execution and return of this Letter Agreement constitutes a legally binding agreement between you and the Company:

- a. that you will continue providing goods and/or services to the Company on Customary Trade Terms and, subject to the reservations contained in the Order;
- b. that, for a period lasting until the later of two (2) years from the Petition Date, or the date upon which the term(s) of your Current PO(s) expire, you will continue to supply the Company with goods and/or services pursuant to Customary Trade Terms, and the Company will pay for those goods and/or services in accordance with Customary Trade Terms;

- c. that the Customary Trade Terms cannot be modified, adjusted, or reduced in any way adverse to the Company;
- d. that you will continue to supply goods and/or provide services, as applicable, to any non-debtor affiliate of the Company with which you do business, on the terms set forth in the applicable contracts or purchase orders and will not cancel any contract, agreement, or arrangement pursuant to which you provide services to the Company for the duration of the Bankruptcy Cases;
- e. that you have reviewed the terms and provisions of the Order and consent to be bound by the same;
- f. that you will not separately seek payment for reclamation or other claims outside of the terms of the Order unless your participation in the vendor payment program authorized by the Order (the “**Vendor Payment Program**”) is terminated;
- g. that, in consideration for the Payment, you agree not to file or otherwise assert against the Company, their estates, or any other person or entity, or any of their respective assets or property (real or personal) any lien (regardless of the statute or other legal authority upon which the lien is asserted) on account of any remaining prepetition amounts allegedly owed to you by the Company arising from agreements entered into before the Petition Date. Furthermore, if you have taken steps to file or assert a lien before entering into this Letter Agreement, you agree to take all necessary steps to remove the lien as soon as possible at your sole cost and expense;
- h. that this Letter Agreement enumerates the entire understanding of you and the Company regarding the subject matter hereof and supersedes any and all prior oral or written agreements;
- i. that this Letter Agreement cannot be changed, modified, amended, or supplemented unless an amendment is executed by you and the Company;
- j. that if you fail to comply with the terms and provisions of this Letter Agreement, the Company may, in its discretion, assert and request that the Bankruptcy Court order: (a) that the payment of such Vendor Claim is a voidable postpetition transfer pursuant to section 549(a) of the Bankruptcy Code that the Company may recover from such Vendor in cash, (b) in the event there exists an outstanding postpetition balance due from the Debtors to the Vendor, the Debtors may recharacterize and apply any such payment made to such postpetition balance outstanding and require that the Vendor immediately return such payments in respect of its Vendor Claim to the extent that the aggregate amount of such payments exceeds the postpetition obligations then outstanding without giving effect to alleged setoff rights, recoupment rights, adjustments, or offsets of any type whatsoever, and (c) upon recovery or recharacterization and reapplication of such payment by the Company, such Vendor Claim shall be reinstated as a prepetition claim in such an amount as to restore the Company and the applicable Vendor to their original positions, as if this Letter Agreement had never been entered into and the payment of the Vendor

Claim had not been made, and the relevant Vendor shall be entitled to file a proof of claim on account of its alleged prepetition claim by the later of (x) 30 days following notice of reinstatement and (y) any general bar date to file proofs of Claim as may be established by order of the Bankruptcy Court; and

- k. that you will keep the existence and the terms of this Letter Agreement confidential and will not disclose it to any person or entity without the prior written consent of the Company, other than as required by law to any court or governmental authority.

The Company and you also hereby agree that any dispute with respect to this Letter Agreement, the Order, or your participation in the Vendor Payment Program shall be determined exclusively by the Bankruptcy Court and that all litigation arising out of or relating to this Letter Agreement, the Order, or your participation in the Vendor Payment Program or its subject matter must be commenced in the Bankruptcy Court.

If you have any questions about this Letter Agreement or our financial restructuring, do not hesitate to call.

Sincerely,  
[Name of Applicable Debtor]

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Agreed and Accepted by:  
[Vendor]

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_