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*Co-Counsel and 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:

ENVIVA INC., *et al.*,Debtors.<sup>1</sup>

## Chapter 11

Case No. 24-10453 (BFK)

(Jointly Administered)

**CERTIFICATION OF NO OBJECTION AND  
NOTICE OF FILING OF REVISED PROPOSED ORDER**

**PLEASE TAKE NOTICE** that the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) filed the *Motion of Debtors for Entry of an Order (I) Approving the Bond Green Bonds Settlement Under Federal Rule of Bankruptcy Procedure 9019 and (II) Granting Related Relief* [Docket No. 348] (the “**Motion**”) with the United States Bankruptcy Court for the Eastern District of Virginia (the “**Court**”) on April 18, 2024.

**PLEASE TAKE FURTHER NOTICE** that the undersigned certifies that the Debtors served the Motion on all necessary parties on April 18, 2024, in accordance with the “Procedures for Complex Chapter 11 Cases in the Eastern District of Virginia” (the “***Case Management Procedures***”), as adopted by Rule 1075-1 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Eastern District of Virginia. Pursuant to the Case Management

<sup>1</sup> Due to the large number of Debtors in these jointly administered chapter 11 cases, 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' 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.



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Procedures, all objections to the approval of the relief requested in the Motion were due on or before May 2, 2024.

**PLEASE TAKE FURTHER NOTICE** that, in response to certain informal comments from interested parties, the Debtors have incorporated such revisions to the proposed form of order and are hereby filing a revised proposed *Order (I) Approving the Bond Green Bonds Settlement Under Federal Rule of Bankruptcy Procedure 9019 and (II) Granting Related Relief* (the “***Revised Proposed Order***”), which is attached hereto as **Exhibit A**.

**PLEASE TAKE FURTHER NOTICE** that attached hereto as **Exhibit B** is a redline of the Revised Proposed Order as compared to the proposed form of order that was attached to the Motion.

**PLEASE TAKE FURTHER NOTICE** that the undersigned further certifies that the notice filed with the Motion includes a statement that the Motion may be granted and an order entered without a hearing unless a timely objection is made. The undersigned further certifies that he has caused a review of the Court’s docket in this case and no answer, objection, or other responsive pleading to the Motion appears thereon. Consequently, the Debtors are authorized to submit a final order granting the relief requested in the Motion to the Court for entry without further hearing or notice.

**PLEASE TAKE FURTHER NOTICE** that copies of the Motion, the Revised Proposed Order and all other documents filed in these chapter 11 cases are available free of charge by: (a) visiting the Debtors’ restructuring website at <https://www.kccllc.net/enviva> and/or (b) by calling (888) 249-2695 or (310) 751-2601 if calling from outside the U.S. or Canada. You may also obtain copies of any pleadings filed in these chapter 11 cases for a fee via PACER at: <http://www.vaeb.uscourts.gov> in accordance with the procedures and fees set forth therein.

*[Remainder of page intentionally left blank]*

Richmond, Virginia  
Dated: May 6, 2024

/s/ Jeremy S. Williams

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

**Exhibit A**

**Revised Proposed Order**



forth in the Motion; 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 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 any 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 FOUND, DETERMINED, AND CONCLUDED THAT:

1. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), and to any extent necessary under Bankruptcy Rule 9014 and Federal Rule of Civil Procedure 54(b), as made applicable by Bankruptcy Rule 7054, there is no just reason for delay in the implementation of this Order or entry of judgment as set forth herein.

2. The Bond Green Bonds Settlement<sup>3</sup> was proposed, negotiated, and entered into by the parties and each of their applicable members, officers, directors, employees, agents, attorneys,

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<sup>3</sup> All references to the “Bond Green Bonds Settlement” shall be deemed to include the modifications as set forth in this Order.

advisors, and representatives at arm's length, in good faith, and without collusion or fraud. Those negotiations took place over the course of several months. The terms and conditions set forth in the Bond Green Bonds Settlement are fair and reasonable under the circumstances and are not being entered into for the purpose of nor do they have the effect of hindering, delaying, or defrauding any of the Debtors or any of their creditors under any applicable law. The consideration to be exchanged by the parties under the Bond Green Bonds Settlement constitutes fair and reasonable consideration, reasonably equivalent value, and fair and adequate consideration.

3. The Bond Green Bonds Settlement (a) satisfies the standards applied by bankruptcy courts for the approval of a compromise and settlement pursuant to Bankruptcy Rule 9019, (b) is reasonable, fair, and equitable and supported by adequate consideration, and (c) is in the best interests of the Debtors, their estates, their creditors, and all other parties in interest. Performance under the Bond Green Bonds Settlement represents the reasonable exercise of sound and prudent business judgment by the Debtors.

4. Except where otherwise specified expressly, nothing in the Bond Green Bonds RSA, the Motion, or this Order constitutes an admission of any kind by the Debtors, the Bond Green Bonds Trustee, or the Bond Bondholders. For the avoidance of doubt, the Debtors shall have no liability to the Bond Green Bonds Trustee or the Bond Bondholders, respectively, for any tax consequences to such parties of the Bond Green Bonds Settlement.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is **GRANTED** as set forth herein.
2. Any and all objections to the Motion not previously withdrawn, waived, or settled and all reservations of rights with respect to the Motion are hereby overruled.
3. The Debtors are authorized to perform their obligations under the Bond Green Bonds Settlement, including, without limitation, any actions required to effect or permit the Bond

Construction Fund Distribution (as defined below) and allowance of the Allowed Claim (as defined below) and to exercise and deliver any and all such other instruments, documents, and agreements and take any and all actions necessary or appropriate to perform their obligations thereunder.

4. As soon as reasonably practical (and in any event no later than 30 days following entry of this Order), the Bond Green Bonds Trustee shall transfer all monies in the Construction Fund to the Settlement Fund (as defined below) held by the Bond Green Bonds Trustee for further reserve or distribution to the Bond Bondholders, as provided below (collectively, the “***Bond Construction Fund Distribution***”). All monies from the Construction Fund that are transferred to the Settlement Fund are not and shall not constitute property of the Debtors’ estates. Any distributions, purchases, or payments in connection with the Bond Construction Fund Distribution shall, in each case, be indefeasible, non-refundable, and not subject to challenge in any respect. Prior to or contemporaneously with the occurrence of the Bond Construction Fund Distribution, the Bond Green Bonds Trustee shall establish a separate settlement fund and any other funds, accounts, or subaccounts (collectively, the “***Settlement Fund***”) under the Bond Green Bonds Indenture that it deems reasonable and necessary in its sole discretion to implement the Bond Green Bonds Settlement and the terms of this Order.

5. Notwithstanding anything in the Bond Documents to the contrary, the Bond Green Bonds Trustee is authorized to use the monies in the Settlement Fund to make one or more *pro rata* distributions of unpaid principal, *plus* all accrued and unpaid interest through the Petition Date (without premium, as if all unpaid principal and accrued interest had been declared due and payable as of the Petition Date) to the Bond Bondholders on account of the then-outstanding Bond Green Bonds pursuant to and in accordance with Section 1005(b) of the Bond Green Bonds Indenture.



To facilitate such distribution(s), the Bond Green Bonds Trustee is further authorized to set and give notice of record dates and distribution dates as it sees fit in its sole discretion. All such distributions and payments shall be indefeasible, non-refundable, and not subject to challenge in any respect by any Bond Bondholder or any other person (as such term is defined in the Bankruptcy Code).

6. The Bond Green Bonds Trustee shall take commercially reasonable efforts to cause the Bond Construction Fund Distribution to occur on or prior to July 10, 2024. Solely to the extent that the Bond Green Bonds Trustee requests that the Debtors take any reasonable action in connection with the Bond Construction Fund Distribution, the Debtors shall take commercially reasonable efforts to comply with such reasonable requests.

7. The Bond Green Bonds Trustee is authorized (a) to reserve from the Settlement Fund such amounts it deems in its discretion necessary to fund trust administration costs, expenses, and indemnities, including, without limitation, the reasonable fees and expenses of the Bond Green Bonds Trustee and its advisors incurred in connection with the Bond Green Bonds Trustee's duties under the Bond Documents, including with respect to these chapter 11 cases (except to the extent that such amounts are paid by the Debtors subject to the Advisor Fee Thresholds (as defined below)) (such reserves, collectively, the "***Trust Administration Reserve***," and such costs, expenses, fees, and indemnities, collectively, the "***Trust Administration Expenses***"), and (b) using the amounts in the Settlement Fund other than the Trust Administration Reserve, to make one or more distributions to the Bond Bondholders who hold then-outstanding Bond Green Bonds pursuant to Section 1005(b) of the Bond Green Bonds Indenture on the terms provided in paragraph 5 above. Following satisfaction of all Trust Administration Expenses and the Bond Green Bonds Trustee's determination that there is no further need for the Trust Administration

Reserve, the Bond Green Bonds Trustee is authorized to use any remaining funds in the Trust Administration Reserve (if any) to make further distributions to Bond Green Bondholders pursuant to Section 1005(b) of the Bond Green Bonds Indenture. Any and all payments and distributions made by the Bond Green Bonds Trustee from the Settlement Fund (including from the Trust Administration Reserve) shall be indefeasible, non-refundable, and not subject to challenge in any respect.

8. The (a) outstanding principal amount of any Bond Green Bonds, together with any accrued and unpaid interest through the Petition Date, to the extent not redeemed or paid through the distribution(s) from the Settlement Fund described in the preceding paragraph and (b) reasonable and documented fees, expenses, indemnities, and similar charges incurred by or owed to the Bond Green Bonds Trustee and its advisors to the extent set forth in the Bond Documents (as set forth in any proof of claim filed by the Bond Green Bonds Trustee (as may be amended from time to time the “*Trustee Proof of Claim*”) and to the extent not paid in cash (x) by the Debtors at or prior to the effective date of a chapter 11 plan in these chapter 11 cases (including on account of the Advisor Fee Thresholds) or (y) from the Trust Administration Reserve) shall, in the aggregate, constitute an allowed claim of the Bond Green Bonds Trustee against each applicable Debtor (the “*Allowed Claim*”), which Allowed Claim shall (i) not be subject to avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether contractual, equitable, or otherwise), counterclaims, cross-claims, defenses, disallowance, impairment, or any other challenges under any applicable law or regulation by the Debtors or any party and (ii) be treated no worse than any other general unsecured claims against the applicable Debtors under a chapter 11 plan. The Bond Green Bonds Trustee shall, as applicable, file or amend the previously filed Trustee Proof of Claim as a condition to payment on account of the Allowed

Claim, including any fees, expenses, indemnities, and similar charges contemplated by clause (b) of the preceding sentence.

9. Notwithstanding anything to the contrary in the forgoing Paragraph 8, the Official Committee of Unsecured Creditors may assert a Challenge during the Challenge Period (each as defined in the Final DIP Order)<sup>4</sup> as to the extent that Allowed Claim may be asserted against any particular Debtor or Debtor's estate, *provided*, that no such Challenge shall affect the amount of the Allowed Claim as set forth herein or the Bond Construction Fund Distribution contemplated herein nor any use or application of the monies in the Settlement Fund contemplated herein.

10. Subject to the Advisor Fee Thresholds, the Debtors' payment of the Prepetition Fee Reimbursement is indefeasible, non-refundable, and not subject to challenge in any respect. The Debtors are authorized and directed to pay all reasonable and documented expenses of the Bond Green Bonds Trustee and its advisors, in each case, incurred through five (5) days after this Order becomes a final order, which payment shall be indefeasible, non-refundable, and not subject to challenge in any respect; *provided*, that, notwithstanding anything to the contrary herein or in any order approving the Epes Green Bonds Settlement, without limiting the Bond Green Bond Trustee's right to assert a charging lien on any Allowed Claim, the aggregate amount of all prepetition and postpetition payments made by the Debtors to the Green Bonds Trustee in respect of the Epes Green Bonds and the Bond Green Bonds (including, without limitation, any applicable payments included within the Prepetition Fee Reimbursement) or its advisors as reimbursement for fees and expenses shall not exceed, in the aggregate (a) \$1,952,770.45 payable to or in respect of the Green Bonds Trustee's financial advisors and (b) \$2,060,493.14 payable to or in respect of

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<sup>4</sup> The "**Final DIP Order**" means the *Final Order (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* [Docket No. 458].

the Green Bonds Trustee's legal advisors (clauses (a) – (b), collectively, the “***Advisor Fee Thresholds***”), it being understood that no more than an aggregate of \$1,297,229.54 of the fees and expenses payable under the Advisor Fee Thresholds (whether approved herein or in the order approving the Epes Green Bond Settlement) shall be paid by the Debtors on a postpetition basis. For the avoidance of doubt, the foregoing shall not reduce any Allowed Claim, except to the extent of any amounts actually paid to or on behalf of the Epes Green Bonds Trustee in respect of the expense reimbursement described in this paragraph 9. Such payments shall be made within 10 business days of the Debtors' receipt of an invoice therefor and payment of such fees shall be consistent with procedures applied to fees of any lenders of any debtor-in-possession financing to the Debtors, as set forth in the Final DIP Order, including compliance with any budget or cash flow forecast in connection therewith and any other terms and conditions thereof.

11. Until the amounts in the Construction Fund are transferred to the Settlement Fund and applied in accordance with the Bond Green Bonds Settlement and this Order, the Bond Green Bonds Trustee shall hold all amounts in the Construction Fund for the benefit of the Bond Bondholders, and the Debtors shall not assert any claim or right, title, or interest in respect of, submit any written requisitions for, otherwise seek the withdrawal of cash from, or take any action to alter the Bond Green Bonds Trustee's postpetition control of the Construction Fund.

12. If the Bond Green Bonds Settlement or the Bond Construction Fund Distribution is not effectuated for any reason in accordance with the terms of the Bond Green Bonds Settlement and this Order, then (a) each of the applicable Debtors, the Bond Green Bonds Trustee, and the Bond Bondholders shall be entitled to all of their respective rights and remedies under any agreements or other documents relating to the Bond Green Bonds Settlement or otherwise under applicable law and (b) none of the Debtors, the Bond Green Bonds Trustee, or the Bond

Bondholders shall assert that any statement contained in the Motion constitutes an admission for purposes of litigation by, between, or among such parties.

13. Nothing in this Order shall prevent payment or reimbursement by any Debtor of the reasonable fees and expenses of the Bond Green Bonds Trustee and its advisors pursuant to (a) solely in the event that the Bond Green Bonds Trustee serves as a member of the Official Committee of Unsecured Creditors, any Court order providing for the reimbursement of the fees and expenses of members of the Official Committee of Unsecured Creditors, and (b) any provision for such payment or repayment in a confirmed plan of reorganization, in each case to the extent not opposed by the Official Committee of Unsecured Creditors; *provided, however*, that the Debtors shall have no obligation to provide for such payment or repayment in any chapter 11 plan of reorganization.

14. Pursuant to Bankruptcy Rule 9019, the compromises and settlements described in the Motion and this Order are fair, reasonable, and appropriate.

15. To the extent there is any conflict between the terms of this Order, on the one hand, and the Bond Green Bonds RSA or the Bond Documents, on the other, the terms of this Order shall control.

16. Effective as of the entry of this Order, the Debtors' agreements and covenants contained in this Order and in the Bond Green Bonds Settlement shall be binding upon the Debtors, their estates, and any and all other parties in interest, including, without limitation, the Bond Green Bonds Trustee, the Bond Bondholders, any purchaser of the Debtors' assets, any statutory or non-statutory committees appointed or formed in these chapter 11 cases, and any other person or entity acting or seeking to act on behalf of the Debtors' estates, including any chapter 7 or chapter 11

trustee or examiner appointed or elected for any of the Debtors, in each case in all circumstances and for all purposes.

17. The Debtors, the Bond Green Bonds Trustee, and the Consenting Bond Bondholders are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion. To the fullest extent permitted by applicable law, the Debtors, the Bond Green Bonds Trustee, and the Consenting Bond Bondholders shall, as applicable, have no liability for entering into or performing under the Bond Green Bonds RSA, this Order, the Bond Green Bonds Settlement, and the agreements and instruments governing the Bond Green Bonds Settlement and any litigation seeking to impose such liability is hereby forever enjoined.

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

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

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

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

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UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

/s/ Jeremy S. Williams

Michael A. Condyles (VA 27807)

Peter J. Barrett (VA 46179)

Jeremy S. Williams (VA 77469)

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*Co-Counsel and 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/ Jeremy S. Williams

**Exhibit B**

**Redline**



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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>	)	(Jointly Administered)
	)	

**ORDER (I) APPROVING THE  
BOND GREEN BONDS SETTLEMENT UNDER FEDERAL RULE OF  
BANKRUPTCY PROCEDURE 9019 AND (II) 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 “***Order***”) (a) approving the Bond Green Bonds Settlement under Bankruptcy Rule 9019 and (b) granting related relief, all as more fully set forth in the Motion; and the Court having jurisdiction over the matters raised in the Motion

<sup>1</sup> Due to the large number of Debtors in these jointly administered chapter 11 cases, 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’ 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.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth 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 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 any 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 FOUND, DETERMINED, AND CONCLUDED THAT:

1. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), and to any extent necessary under Bankruptcy Rule 9014 and Federal Rule of Civil Procedure 54(b), as made applicable by Bankruptcy Rule 7054, there is no just reason for delay in the implementation of this Order or entry of judgment as set forth herein.

2. The Bond Green Bonds Settlement<sup>3</sup> was proposed, negotiated, and entered into by the parties and each of their applicable members, officers, directors, employees, agents, attorneys, advisors, and representatives at arm's length, in good faith, and without collusion or fraud. Those negotiations took place over the course of several months. The terms and

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<sup>3</sup> [All references to the "Bond Green Bonds Settlement" shall be deemed to include the modifications as set forth in this Order.](#)

conditions set forth in the Bond Green Bonds Settlement are fair and reasonable under the circumstances and are not being entered into for the purpose of nor do they have the effect of hindering, delaying, or defrauding any of the Debtors or any of their creditors under any applicable law. The consideration to be exchanged by the parties under the Bond Green Bonds Settlement constitutes fair and reasonable consideration, reasonably equivalent value, and fair and adequate consideration.

3. The Bond Green Bonds Settlement (a) satisfies the standards applied by bankruptcy courts for the approval of a compromise and settlement pursuant to Bankruptcy Rule 9019, (b) is reasonable, fair, and equitable and supported by adequate consideration, and (c) is in the best interests of the Debtors, their estates, their creditors, and all other parties in interest. Performance under the Bond Green Bonds Settlement represents the reasonable exercise of sound and prudent business judgment by the Debtors.

4. Except where otherwise specified expressly, nothing in the Bond Green Bonds RSA, the Motion, or this Order constitutes an admission of any kind by the Debtors, the Bond Green Bonds Trustee, or the Bond Bondholders. For the avoidance of doubt, the Debtors shall have no liability to the Bond Green Bonds Trustee or the Bond Bondholders, respectively, for any tax consequences to such parties of the Bond Green Bonds Settlement.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is **GRANTED** as set forth herein.
2. Any and all objections to the Motion not previously withdrawn, waived, or settled and all reservations of rights with respect to the Motion are hereby overruled.
3. The Debtors are authorized to perform their obligations under the Bond Green Bonds Settlement, including, without limitation, any actions required to effect or permit the

Bond Construction Fund Distribution (as defined below) and allowance of the Allowed Claim (as defined below) and to exercise and deliver any and all such other instruments, documents, and agreements and take any and all actions necessary or appropriate to perform their obligations thereunder.

4. As soon as reasonably practical (and in any event no later than 30 days following entry of this Order), the Bond Green Bonds Trustee shall transfer all monies in the Construction Fund to the Settlement Fund (as defined below) held by the Bond Green Bonds Trustee for further reserve or distribution to the Bond Bondholders, as provided below (collectively, the “***Bond Construction Fund Distribution***”). All monies from the Construction Fund that are transferred to the Settlement Fund are not and shall not constitute property of the Debtors’ estates. Any distributions, purchases, or payments in connection with the Bond Construction Fund Distribution shall, in each case, be indefeasible, non-refundable, and not subject to challenge in any respect. Prior to or contemporaneously with the occurrence of the Bond Construction Fund Distribution, the Bond Green Bonds Trustee shall establish a separate settlement fund and any other funds, accounts, or subaccounts (collectively, the “***Settlement Fund***”) under the Bond Green Bonds Indenture that it deems reasonable and necessary in its sole discretion to implement the Bond Green Bonds Settlement and the terms of this Order.

5. Notwithstanding anything in the Bond Documents to the contrary, the Bond Green Bonds Trustee is authorized to use the monies in the Settlement Fund to make one or more *pro rata* distributions of unpaid principal, *plus* all accrued and unpaid interest through the Petition Date (without premium, as if all unpaid principal and accrued interest had been declared due and payable as of the Petition Date) to the Bond Bondholders on account of the then-outstanding Bond Green Bonds pursuant to and in accordance with Section 1005(b) of the

Bond Green Bonds Indenture. To facilitate such distribution(s), the Bond Green Bonds Trustee is further authorized to set and give notice of record dates and distribution dates as it sees fit in its sole discretion. All such distributions and payments shall be indefeasible, non-refundable, and not subject to challenge in any respect by any Bond Bondholder or any other person (as such term is defined in the Bankruptcy Code).

6. The Bond Green Bonds Trustee shall take commercially reasonable efforts to cause the Bond Construction Fund Distribution to occur on or prior to July 10, 2024. Solely to the extent that the Bond Green Bonds Trustee requests that the Debtors take any reasonable action in connection with the Bond Construction Fund Distribution, the Debtors shall take commercially reasonable efforts to comply with such reasonable requests.

7. The Bond Green Bonds Trustee is authorized (a) to reserve from the Settlement Fund such amounts it deems in its discretion necessary to fund trust administration costs, expenses, and indemnities, including, without limitation, the reasonable fees and expenses of the Bond Green Bonds Trustee and its advisors incurred in connection with the Bond Green Bonds Trustee's duties under the Bond Documents, including with respect to these chapter 11 cases (except to the extent that such amounts are paid by the Debtors subject to the Advisor Fee Thresholds (as defined below)) (such reserves, collectively, the "***Trust Administration Reserve***," and such costs, expenses, fees, and indemnities, collectively, the "***Trust Administration Expenses***"), and (b) using the amounts in the Settlement Fund other than the Trust Administration Reserve, to make one or more distributions to the Bond Bondholders who hold then-outstanding Bond Green Bonds pursuant to Section 1005(b) of the Bond Green Bonds Indenture on the terms provided in paragraph 5 above. Following satisfaction of all Trust Administration Expenses and the Bond Green Bonds Trustee's determination that there is no

further need for the Trust Administration Reserve, the Bond Green Bonds Trustee is authorized to use any remaining funds in the Trust Administration Reserve (if any) to make further distributions to Bond Green Bondholders pursuant to Section 1005(b) of the Bond Green Bonds Indenture. Any and all payments and distributions made by the Bond Green Bonds Trustee from the Settlement Fund (including from the Trust Administration Reserve) shall be indefeasible, non-refundable, and not subject to challenge in any respect.

8. The (a) outstanding principal amount of any Bond Green Bonds, together with any accrued and unpaid interest through the Petition Date, to the extent not redeemed or paid through the distribution(s) from the Settlement Fund described in the preceding paragraph and (b) reasonable and documented fees, expenses, indemnities, and similar charges incurred by or owed to the Bond Green Bonds Trustee and its advisors to the extent set forth in the Bond Documents (as set forth in any proof of claim filed by the Bond Green Bonds Trustee (as may be amended from time to time the “**Trustee Proof of Claim**”) and to the extent not paid in cash (x) by the Debtors at or prior to the effective date of a chapter 11 plan in these chapter 11 cases (including on account of the Advisor Fee Thresholds) or (y) from the Trust Administration Reserve) shall, in the aggregate, constitute an allowed claim of the Bond Green Bonds Trustee against each applicable Debtor (the “**Allowed Claim**”), which Allowed Claim shall (i) not be subject to avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether contractual, equitable, or otherwise), counterclaims, cross-claims, defenses, disallowance, impairment, or any other challenges under any applicable law or regulation by the Debtors or any party and (ii) be treated no worse than any other general unsecured claims against the applicable Debtors under a chapter 11 plan. The Bond Green Bonds Trustee shall, as applicable, file or amend the previously filed Trustee Proof of Claim as a condition to payment

on account of the Allowed Claim, including any fees, expenses, indemnities, and similar charges contemplated by clause (b) of the preceding sentence.

9. Notwithstanding anything to the contrary in the forgoing Paragraph 8, the Official Committee of Unsecured Creditors may assert a Challenge during the Challenge Period (each as defined in the Final DIP Order)<sup>4</sup> as to the extent that Allowed Claim may be asserted against any particular Debtor or Debtor's estate, *provided*, that no such Challenge shall affect the amount of the Allowed Claim as set forth herein or the Bond Construction Fund Distribution contemplated herein nor any use or application of the monies in the Settlement Fund contemplated herein.

10. ~~9.~~ Subject to the Advisor Fee Thresholds, the Debtors' payment of the Prepetition Fee Reimbursement is indefeasible, non-refundable, and not subject to challenge in any respect. The Debtors are authorized and directed to pay all reasonable and documented expenses of the Bond Green Bonds Trustee and its advisors, in each case, incurred through five (5) days after this Order becomes a final order, which payment shall be indefeasible, non-refundable, and not subject to challenge in any respect; *provided*, that, notwithstanding anything to the contrary herein or in any order approving the Epes Green Bonds Settlement, without limiting the Bond Green Bond Trustee's right to assert a charging lien on any Allowed Claim, the aggregate amount of all prepetition and postpetition payments made by the Debtors to the Green Bonds Trustee in respect of the Epes Green Bonds and the Bond Green Bonds (including, without limitation, any applicable payments included within the Prepetition Fee Reimbursement) or its advisors as reimbursement for fees and expenses shall not exceed, in the aggregate (a) ~~\$3,250,000~~ 1,952,770.45 payable to or in respect of the Green Bonds Trustee's financial advisors

<sup>4</sup> The "**Final DIP Order**" means the Final Order (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 [Docket No. 458].

and (b)(i) ~~\$2,500,000~~2,060,493.14 payable to or in respect of the Green Bonds Trustee's legal advisors, plus (ii) ~~\$400,000 payable to or in respect of the Bond Green Bonds Trustee's legal advisors~~ (clauses (a) – (b), collectively, the “*Advisor Fee Thresholds*”), it being understood that no more than an aggregate of \$1,297,229.54 of the fees and expenses payable under the Advisor Fee Thresholds (whether approved herein or in the order approving the Epes Green Bond Settlement) shall be paid by the Debtors on a postpetition basis. For the avoidance of doubt, the foregoing shall not reduce any Allowed Claim, except to the extent of any amounts actually paid to or on behalf of the Epes Green Bonds Trustee in respect of the expense reimbursement described in this paragraph 9. Such payments shall be made within 10 business days of the Debtors' receipt of an invoice therefor and payment of such fees shall be consistent with procedures applied to fees of any lenders of any debtor-in-possession financing to the Debtors, ~~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 [Docket No. 24]~~as set forth in the Final DIP Order, including compliance with any budget or cash flow forecast in connection therewith and any other terms and conditions thereof.

11. ~~10.~~ Until the amounts in the Construction Fund are transferred to the Settlement Fund and applied in accordance with the Bond Green Bonds Settlement and this Order, the Bond Green Bonds Trustee shall hold all amounts in the Construction Fund for the benefit of the Bond Bondholders, and the Debtors shall not assert any claim or right, title, or interest in respect of,



submit any written requisitions for, otherwise seek the withdrawal of cash from, or take any action to alter the Bond Green Bonds Trustee's postpetition control of the Construction Fund.

12. ~~11.~~ If the Bond Green Bonds Settlement or the Bond Construction Fund Distribution is not effectuated for any reason in accordance with the terms of the Bond Green Bonds Settlement and this Order, then (a) each of the applicable Debtors, the Bond Green Bonds Trustee, and the Bond Bondholders shall be entitled to all of their respective rights and remedies under any agreements or other documents relating to the Bond Green Bonds Settlement or otherwise under applicable law and (b) none of the Debtors, the Bond Green Bonds Trustee, or the Bond Bondholders shall assert that any statement contained in the Motion constitutes an admission for purposes of litigation by, between, or among such parties.

13. Nothing in this Order shall prevent payment or reimbursement by any Debtor of the reasonable fees and expenses of the Bond Green Bonds Trustee and its advisors pursuant to (a) solely in the event that the Bond Green Bonds Trustee serves as a member of the Official Committee of Unsecured Creditors, any Court order providing for the reimbursement of the fees and expenses of members of the Official Committee of Unsecured Creditors, and (b) any provision for such payment or repayment in a confirmed plan of reorganization, in each case to the extent not opposed by the Official Committee of Unsecured Creditors; provided, however, that the Debtors shall have no obligation to provide for such payment or repayment in any chapter 11 plan of reorganization.

14. ~~12.~~ Pursuant to Bankruptcy Rule 9019, the compromises and settlements described in the Motion and this Order are fair, reasonable, and appropriate.

15. ~~13.~~ To the extent there is any conflict between the terms of this Order, on the one hand, and the Bond Green Bonds RSA or the Bond Documents, on the other, the terms of this Order shall control.

16. ~~14.~~ Effective as of the entry of this Order, the Debtors' agreements and covenants contained in this Order and in the Bond Green Bonds Settlement shall be binding upon the Debtors, their estates, and any and all other parties in interest, including, without limitation, the Bond Green Bonds Trustee, the Bond Bondholders, any purchaser of the Debtors' assets, any statutory or non-statutory committees appointed or formed in these chapter 11 cases, and any other person or entity acting or seeking to act on behalf of the Debtors' estates, including any chapter 7 or chapter 11 trustee or examiner appointed or elected for any of the Debtors, in each case in all circumstances and for all purposes.

17. ~~15.~~ The Debtors, the Bond Green Bonds Trustee, and the Consenting Bond Bondholders are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion. To the fullest extent permitted by applicable law, the Debtors, the Bond Green Bonds Trustee, and the Consenting Bond Bondholders shall, as applicable, have no liability for entering into or performing under the Bond Green Bonds RSA, this Order, the Bond Green Bonds Settlement, and the agreements and instruments governing the Bond Green Bonds Settlement and any litigation seeking to impose such liability is hereby forever enjoined.

18. ~~16.~~ The requirements of Bankruptcy Rule 6004(a) are waived.

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

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

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

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UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

/s/ [Jeremy S. Williams](#)

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Peter J. Barrett (VA 46179)

Jeremy S. Williams (VA 77469)

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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/ [Jeremy S. Williams](#)