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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. ¹)	(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 Interim and Final Orders (I) Approving Debtors’ Proposed Adequate Assurance of Payment for Future Utility Services, (II) Prohibiting Utility Companies From Altering, Refusing, or Discontinuing Services, (III) Approving Debtors’ Proposed Procedures for Resolving Additional Adequate Assurance Requests, and (IV) Granting Related Relief* [Docket No. 8] (the “*Motion*”) with the United States Bankruptcy Court for the Eastern District of Virginia (the “*Court*”) on March 13, 2024. The undersigned certifies that the Debtors served the Motion on all necessary parties on March 13, 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

¹ 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. The location of the Debtors’ corporate headquarters is: 7272 Wisconsin Avenue, Suite 1800, Bethesda, MD 20814.



Management Procedures, all objections to the approval of the relief requested in the Motion were due on or before April 4, 2024.

PLEASE TAKE FURTHER NOTICE that in connection with the Motion, the Debtors have made certain revisions to the proposed form of order that was attached to the Motion and are hereby filing a revised proposed *Final Order (I) Approving Debtors' Proposed Adequate Assurance of Payment for Future Utility Services, (II) Prohibiting Utility Companies From Altering, Refusing, or Discontinuing Services, (III) Approving Debtors' Proposed Procedures for Resolving Additional Adequate Assurance Requests, and (IV) 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 original proposed form of order 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: April 10, 2024

/s/ Adolyn C. Wyatt

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Proposed Co-Counsel for the Debtors and Debtors in Possession

Exhibit A

Revised Proposed Order

proposed adequate assurance of payment for future Utility Services, (ii) prohibiting utility companies from altering, refusing, or discontinuing services, and (iii) approving the Debtors' proposed procedures for resolving adequate assurance requests, 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 reviewed the Motion and the First Day Declarations; 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 Adequate Assurance Deposit, together with the Debtors' ability to pay for future utility services in the ordinary course of business subject to the Adequate Assurance Procedures, shall constitute adequate assurance of payment as required by section 366 of the Bankruptcy Code.

2. Absent compliance with the procedures set forth in the Motion and this Final Order, the Utility Companies are prohibited from altering, refusing, or discontinuing services on account of any unpaid prepetition charges, the commencement of these chapter 11 cases, or any perceived inadequacy of the Proposed Adequate Assurance.

3. The following Adequate Assurance Procedures are hereby approved:

- a. the Debtors shall serve a copy of this Final Order to each Utility Company on the Utility Services List within three business days after entry hereof;
- b. subject to paragraphs (c) – (f) herein, to the extent the Debtors have not already made such deposit following entry of the Interim Order, the Debtors will deposit the Adequate Assurance Deposit, in the aggregate amount of \$1,944,000 in the Adequate Assurance Account as soon after entry of this Final Order as is reasonably practicable;
- c. subject to the Adequate Assurance Procedures, each Utility Company shall be entitled to disbursement of the funds in the Adequate Assurance Account in the amount set forth for such Utility Company in the column labeled “Proposed Adequate Assurance” on the Utility Services List, as may be amended or modified in accordance with this Final Order, and such funds shall constitute adequate assurance for each Utility Company;
- d. if an amount relating to Utility Services provided postpetition by a Utility Company is unpaid and remains unpaid beyond any applicable grace period, such Utility Company may request a disbursement from the Adequate Assurance Account by filing a notice with the Court demanding payment and giving notice to: (a) the Debtors, 7272 Wisconsin Avenue, Suite 1800, Bethesda, MD 20814, Attn: Jason E. Paral; (b) proposed co-counsel to the Debtors, Kutak Rock LLP, 901 East Byrd Street, Suite 1000, Richmond, Virginia 23219-4071, Attn: Peter J. Barrett and Jeremy S. Williams; (c) proposed co-counsel to the Debtors, Vinson & Elkins LLP, The Grace Building, 1114 Avenue of the Americas, 32nd Floor, New York, New York 10036-7708, Attn: David S. Meyer and Jessica C. Peet, and 2001 Ross Avenue, Suite 3900, Dallas, Texas 75201, Attn: Matthew J. Pyeatt and Trevor G. Spears; (d) counsel to an ad hoc group of holders of certain of the Debtors’ funded indebtedness, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY 10017, Attn: David Schiff and Hailey W. Klabo; (e) the Office of the United States Trustee for the Eastern District of Virginia; and (f) proposed counsel to the official committee of unsecured creditors appointed in the chapter 11 cases (the “*Committee*”), Akin Gump Strauss Hauer & Feld LLP, 2001 K Street N.W., Washington, DC 20006, Attn: Scott L. Alberino (salberino@akingump.com) and Alexander F. Antypas (aantypas@akingump.com) and One Bryant Park, New York, NY 10036,

Attn: Jason P. Rubin (jrubin@akingump.com) (collectively, the “**Notice Parties**”). The Debtors shall honor such request within five (5) business days after the date the request is received by the Debtors, subject to the ability of the Debtors and any such requesting Utility Company to resolve any dispute regarding such request without further order of the Court. To the extent that a Utility Company receives a disbursement from the Adequate Assurance Account, the Debtors shall replenish the Adequate Assurance Account in the amount disbursed;

- e. the portion of the Adequate Assurance Deposit attributable to each Utility Company shall be removed from the Adequate Assurance Account by the Debtors automatically on the earlier of: (i) reconciliation and payment by the Debtors of the Utility Company’s final invoice in accordance with applicable nonbankruptcy law following the Debtors’ termination of Utility Services from such Utility Company; (ii) the confirmation of a chapter 11 plan in these chapter 11 cases; and (iii) the conclusion of these chapter 11 cases, if not applied earlier;
- f. any Utility Company desiring additional assurances of payment in the form of deposits, prepayments, or otherwise is required to file and serve a request for additional assurance (an “**Additional Assurance Request**”) on the Notice Parties;
- g. any Additional Assurance Request is required to: (i) be filed with the Court and served on the Notice Parties; (ii) set forth the location(s) for which Utility Services are provided, the account number(s) for such location(s), and the outstanding balance for each such account; (iii) summarize the Debtors’ payment history relevant to the affected account(s), including any security deposits or surety bonds; and (iv) explain why the Utility Company believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment under section 366 of the Bankruptcy Code or the basis for seeking the Additional Assurance Request, each as applicable;
- h. any Utility Company that does not timely file with the Court and serve an Additional Assurance Request is (i) deemed to have received “satisfactory” adequate assurance of payment in compliance with section 366 of the Bankruptcy Code and (ii) forbidden from altering, discontinuing, or refusing Utility Services to, or discriminating against, the Debtors on account of any unpaid prepetition charges or requiring additional assurance of payment (other than the Proposed Adequate Assurance);
- i. the Debtors may, in consultation with the Committee and the Ad Hoc Group and without further order from the Court, resolve any Additional Assurance Request by mutual agreement with a Utility Company, and the Debtors may, in connection with any such agreement, provide a Utility Company with additional adequate assurance of payment, including, but not limited to, cash

deposits, prepayments, or other forms of security if the Debtors believe that such adequate assurance is reasonable;

- j. pending resolution at the Determination Hearing (as defined below), the Utility Company filing such Additional Assurance Request shall be prohibited from altering, refusing, or discontinuing Utility Services to the Debtors on account of unpaid charges for prepetition services, the commencement of these chapter 11 cases, or on account of any objections to the Proposed Adequate Assurance; and
- k. if the Debtors and the Utility Company are not able to reach an alternative resolution within fourteen (14) days of receipt of the Additional Assurance Request, the Debtors will request a hearing before the Court at the next regularly scheduled omnibus hearing to determine the adequacy of assurances of payment with respect to a particular Utility Company (the “*Determination Hearing*”) pursuant to section 366(c)(3) of the Bankruptcy Code.

4. The Utility Companies are prohibited from requiring additional adequate assurance of payment other than pursuant to the Adequate Assurance Procedures.

5. All Utility Companies who do not file and serve an Adequate Assurance Request in accordance with the procedures set forth herein shall be: (a) deemed to have received adequate assurance of payment “satisfactory” to such Utility Company in compliance with section 366 of the Bankruptcy Code; and (b) prohibited from discontinuing, altering, or refusing services to, or discriminating against, the Debtors on account of any unpaid prepetition charges, or requiring additional assurance of payment other than the Proposed Adequate Assurance.

6. The relief granted herein is for all Utility Companies providing Utility Services to the Debtors and is not limited to those parties or entities listed on the Utility Services List.

7. The Debtors are authorized, in their discretion and upon consultation with the Committee and the Ad Hoc Group, to amend the Utility Services List to add or delete any Utility Company and to change the amount of the Adequate Assurance Deposit in connection therewith, consistent with the terms of the Motion and this Final Order. Any such amended Utility Services List shall be filed with the Court.

8. The Debtors will cause a copy of this Final Order to be served on any Utility Company subsequently added to the Utility Services List. Any Utility Company subsequently added to the Utility Services List shall be bound by the Adequate Assurance Procedures. The relief granted herein is for all Utility Companies providing Utility Services to the Debtors and is not limited to those parties or entities listed on the Utility Services List.

9. The Debtors' service of the Motion upon the Utility Services List shall not constitute an admission or concession that each such entity is a "utility" within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve all rights and defenses with respect thereto.

10. Unless specifically provided herein, and notwithstanding any actions taken hereunder, nothing contained in the Motion or this Final Order is intended nor should it be construed to impair the Debtors' rights to contest the characterization of any entity as a "utility" within the meaning of section 366 of the Bankruptcy Code or to contest the assessment or the amount, basis, or validity of any Utility Services that may be alleged to be due, and the Debtors expressly reserve all rights with respect thereto.

11. Nothing in this Final Order or the Motion shall be deemed to vacate or modify any other restrictions on the termination of service by a Utility Company as provided by sections 362 and 365 of the Bankruptcy Code or other applicable law.

12. 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, including the Committee'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.

13. 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* [Docket No. 24] (collectively, such interim and final orders, 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 or any action taken or proposed to be taken hereunder, the terms of the DIP Order or the DIP Documents, as applicable, shall control.

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

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

16. 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.

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

18. 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

UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

/s/
Michael A. Condyles (VA 27807)
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/

Exhibit B

Redline

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Jessica C. Peet ([admitted 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. ¹)	(Joint Administration
)	Requested Jointly Administered)
)	

**FINAL ORDER (I) APPROVING
DEBTORS' PROPOSED ADEQUATE ASSURANCE
OF PAYMENT FOR FUTURE UTILITY SERVICES,
(II) PROHIBITING UTILITY COMPANIES FROM ALTERING,
REFUSING, OR DISCONTINUING SERVICES, (III) APPROVING
DEBTORS' PROPOSED PROCEDURES FOR RESOLVING ADDITIONAL
ADEQUATE ASSURANCE REQUESTS, AND (IV) GRANTING RELATED RELIEF**

¹ Due to the large number of Debtors in these [jointly administered](#) 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. The location of the Debtors' corporate headquarters is: 7272 Wisconsin Avenue, Suite 1800, Bethesda, MD 20814.

Upon the Motion² filed by the above-referenced debtors and debtors in possession (collectively, the “*Debtors*”) for entry of an order (the “*Final Order*”) (i) approving the Debtors’ proposed adequate assurance of payment for future Utility Services, (ii) prohibiting utility companies from altering, refusing, or discontinuing services, and (iii) approving the Debtors’ proposed procedures for resolving adequate assurance requests, 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 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:

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

1. The Adequate Assurance Deposit, together with the Debtors' ability to pay for future utility services in the ordinary course of business subject to the Adequate Assurance Procedures, shall constitute adequate assurance of payment as required by section 366 of the Bankruptcy Code.

2. Absent compliance with the procedures set forth in the Motion and this Final Order, the Utility Companies are prohibited from altering, refusing, or discontinuing services on account of any unpaid prepetition charges, the commencement of these chapter 11 cases, or any perceived inadequacy of the Proposed Adequate Assurance.

3. The following Adequate Assurance Procedures are hereby approved:

- a. ~~a~~-the Debtors ~~will~~shall serve a copy of ~~the Motion, the Interim Order, and~~ this Final Order to each Utility Company on the Utility Services List within three business days after entry ~~of the respective order by the Court granting this Motion~~hereof;
- b. ~~b~~-subject to paragraphs (c) – (f) herein, to the extent the Debtors have not already made such deposit following entry of the Interim Order, the Debtors will deposit the Adequate Assurance Deposit, in the aggregate amount of \$1,944,000 in the Adequate Assurance Account as soon after entry of this Final Order as is reasonably practicable;
- c. ~~e~~-subject to the Adequate Assurance Procedures, each Utility Company shall be entitled to disbursement of the funds in the Adequate Assurance Account in the amount set forth for such Utility Company in the column labeled "Proposed Adequate Assurance" on the Utility Services List, as may be amended or modified in accordance with ~~the Interim and~~this Final ~~Orders granting this Motion~~Order, and such funds shall constitute adequate assurance for each Utility Company;
- d. ~~d~~-if an amount relating to Utility Services provided postpetition by a Utility Company is unpaid and remains unpaid beyond any applicable grace period, such Utility Company may request a disbursement from the Adequate Assurance Account by filing a notice with the Court demanding payment and giving notice to: (a) the Debtors, 7272 Wisconsin Avenue, Suite 1800, Bethesda, MD 20814, Attn: Jason E. Paral; (b) proposed co-counsel to the Debtors, Kutak Rock LLP, 901 East Byrd Street, Suite 1000, Richmond, Virginia 23219-4071, Attn: Peter J. Barrett and Jeremy S. Williams; (c) proposed co-counsel to the Debtors, Vinson & Elkins LLP, The Grace Building, 1114 Avenue of the Americas, 32nd Floor, New York, New York

10036-7708, Attn: David S. Meyer and Jessica C. Peet, and 2001 Ross Avenue, Suite 3900, Dallas, Texas 75201, Attn: Matthew J. Pyeatt and Trevor G. Spears; (d) counsel to an ad hoc group of holders of certain of the Debtors' funded indebtedness, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY 10017, Attn: David Schiff and Hailey W. Klabo; (e) the Office of the United States Trustee for the Eastern District of Virginia; and (f) proposed counsel to the official committee of unsecured creditors (~~if any~~)—appointed in ~~these~~the chapter 11 cases ~~and their counsel~~(the “Committee”), Akin Gump Strauss Hauer & Feld LLP, 2001 K Street N.W., Washington, DC 20006, Attn: Scott L. Alberino (salberino@akingump.com) and Alexander F. Antypas (aantypas@akingump.com) and One Bryant Park, New York, NY 10036, Attn: Jason P. Rubin (jrubin@akingump.com) (collectively, the “*Notice Parties*”). The Debtors shall honor such request within five (5) business days after the date the request is received by the Debtors, subject to the ability of the Debtors and any such requesting Utility Company to resolve any dispute regarding such request without further order of the Court. To the extent that a Utility Company receives a disbursement from the Adequate Assurance Account, the Debtors shall replenish the Adequate Assurance Account in the amount disbursed;

- e. ~~e~~-the portion of the Adequate Assurance Deposit attributable to each Utility Company shall be removed from the Adequate Assurance Account by the Debtors automatically on the earlier of: (i) reconciliation and payment by the Debtors of the Utility Company's final invoice in accordance with applicable nonbankruptcy law following the Debtors' termination of Utility Services from such Utility Company; (ii) the confirmation of a chapter 11 plan in these chapter 11 cases; and (iii) the conclusion of these chapter 11 cases, if not applied earlier;
- f. ~~f~~any Utility Company desiring additional assurances of payment in the form of deposits, prepayments, or otherwise is required to file and serve a request for additional assurance (an “*Additional Assurance Request*”) on the Notice Parties;
- g. ~~g~~any Additional Assurance Request is required to: (i) be filed with the Court and served on the Notice Parties; (ii) set forth the location(s) for which Utility Services are provided, the account number(s) for such location(s), and the outstanding balance for each such account; (iii) summarize the Debtors' payment history relevant to the affected account(s), including any security deposits or surety bonds; and (iv) explain why the Utility Company believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment under section 366 of the Bankruptcy Code or the basis for seeking the Additional Assurance Request, each as applicable;
- h. ~~h~~any Utility Company that does not timely file with the Court and serve an Additional Assurance Request is (i) deemed to have received “satisfactory” adequate assurance of payment in compliance with section 366 of the

Bankruptcy Code and (ii) forbidden from altering, discontinuing, or refusing Utility Services to, or discriminating against, the Debtors on account of any unpaid prepetition charges or requiring additional assurance of payment (other than the Proposed Adequate Assurance);

- i. ~~i~~ the Debtors may, in consultation with the Committee and the Ad Hoc Group and without further order from the Court, resolve any Additional Assurance Request by mutual agreement with a Utility Company, and the Debtors may, in connection with any such agreement, provide a Utility Company with additional adequate assurance of payment, including, but not limited to, cash deposits, prepayments, or other forms of security if the Debtors believe that such adequate assurance is reasonable;
- j. ~~j~~ pending resolution at the Determination Hearing (as defined below), the Utility Company filing such Additional Assurance Request shall be prohibited from altering, refusing, or discontinuing Utility Services to the Debtors on account of unpaid charges for prepetition services, the commencement of these chapter 11 cases, or on account of any objections to the Proposed Adequate Assurance; and
- k. ~~k~~ if the Debtors and the Utility Company are not able to reach an alternative resolution within fourteen (14) days of receipt of the Additional Assurance Request, the Debtors will request a hearing before the Court at the next regularly scheduled omnibus hearing to determine the adequacy of assurances of payment with respect to a particular Utility Company (the “**Determination Hearing**”) pursuant to section 366(c)(3) of the Bankruptcy Code.

4. The Utility Companies are prohibited from requiring additional adequate assurance of payment other than pursuant to the Adequate Assurance Procedures.

5. All Utility Companies who do not file and serve an Adequate Assurance Request in accordance with the procedures set forth herein shall be: (a) deemed to have received adequate assurance of payment “satisfactory” to such Utility Company in compliance with section 366 of the Bankruptcy Code; and (b) prohibited from discontinuing, altering, or refusing services to, or discriminating against, the Debtors on account of any unpaid prepetition charges, or requiring additional assurance of payment other than the Proposed Adequate Assurance.

6. The relief granted herein is for all Utility Companies providing Utility Services to the Debtors and is not limited to those parties or entities listed on the Utility Services List.

7. The Debtors are authorized, in their discretion and upon consultation with the Committee and the Ad Hoc Group, to amend the Utility Services List to add or delete any Utility Company and to change the amount of the Adequate Assurance Deposit in connection therewith, consistent with the terms of the Motion and this Final Order. Any such amended Utility Services List shall be filed with the Court.

8. The Debtors will cause a copy of this Final Order to be served on any Utility Company subsequently added to the Utility Services List. Any Utility Company subsequently added to the Utility Services List shall be bound by the Adequate Assurance Procedures. The relief granted herein is for all Utility Companies providing Utility Services to the Debtors and is not limited to those parties or entities listed on the Utility Services List.

9. The Debtors' service of the Motion upon the Utility Services List shall not constitute an admission or concession that each such entity is a "utility" within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve all rights and defenses with respect thereto.

10. Unless specifically provided herein, and notwithstanding any actions taken hereunder, nothing contained in the Motion or this Final Order is intended nor should it be construed to impair the Debtors' rights to contest the characterization of any entity as a "utility" within the meaning of section 366 of the Bankruptcy Code or to contest the assessment or the amount, basis, or validity of any Utility Services that may be alleged to be due, and the Debtors expressly reserve all rights with respect thereto.

11. Nothing in this Final Order or the Motion shall be deemed to vacate or modify any other restrictions on the termination of service by a Utility Company as provided by sections 362 and 365 of the Bankruptcy Code or other applicable law.

12. 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, [including the Committee'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.

13. 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~~ [\[Docket No. 24\]](#) (collectively, such interim and final orders, 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 or any action taken or proposed to be taken hereunder, the terms of the DIP Order or the DIP Documents, as applicable, shall control.

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

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

16. 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.

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

18. 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

UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

/s/
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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/ _____