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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: ) Chapter 11  
)  
ENVIVA INC., *et al.*, ) Case No. 24-10453 (BFK)  
)  
Debtors.<sup>1</sup> ) (Jointly Administered)  
\_\_\_\_\_)

**FIRST OMNIBUS MOTION OF DEBTORS FOR ENTRY OF AN  
ORDER (I) AUTHORIZING THE DEBTORS TO REJECT CERTAIN  
EXECUTORY CONTRACTS AND (II) GRANTING RELATED RELIEF**

**THIS MOTION SEEKS TO REJECT CERTAIN UNEXPIRED EXECUTORY CONTRACTS AND/OR LEASES. PARTIES RECEIVING THIS MOTION SHOULD REVIEW THE MOTION TO SEE IF THEIR NAME(S) AND/OR CONTRACT(S) AND/OR LEASE(S) ARE SET FORTH IN THE MOTION AND/OR SCHEDULE 1 TO EXHIBIT A ATTACHED THERETO TO DETERMINE WHETHER THE MOTION AFFECTS THEIR CONTRACT(S)/LEASE(S).**

<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.



The above-captioned debtors and debtors in possession (collectively, the “**Debtors**”), file this *First Omnibus Motion of Debtors for Entry of an Order (I) Authorizing the Debtors to Reject Certain Executory Contracts and (II) 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) and 365(a) of title 11 of the United States Code (the “**Bankruptcy Code**”), Bankruptcy Rules 6006 and 9014, and rules 6007-1 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 through long-term, take-or-pay offtake contracts with the Company.

5. On March 12, 2024 (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. On March 14, 2024, the Court entered an order authorizing the procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). *See* Docket No. 84. On March 25, 2024, the Office of the United States Trustee appointed an official committee of unsecured creditors (the “*Committee*”). *See Appointment of Unsecured Creditors Committee* [Docket No. 172]. No request for the appointment of a trustee or examiner has been made 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* [Docket No. 27] (the “*First Day Declaration*”) which was filed on the Petition Date, and the *Declaration of Mark Rajcevich in Support of the Motion of Debtors for Entry of an Order (I) Authorizing the Debtors to Reject Certain Executory Contracts and (II) Granting*

*Related Relief* (the “**Rajcevich Declaration**”), filed contemporaneously herewith. The First Day Declaration and the Rajcevich Declaration are incorporated herein by reference.<sup>2</sup>

### **RELIEF REQUESTED**

7. By this Motion, the Debtors seek entry of an order (the “**Order**”), substantially in the form attached hereto as **Exhibit A**, (a) authorizing the Debtors to reject those certain executory contracts and unexpired leases listed on **Schedule 1** to Exhibit A (collectively, the “**Rejected Contracts**” and each, a “**Rejected Contract**”), effective as of the entry of the Order, and (b) granting related relief.

### **CONTRACTS TO BE REJECTED**

8. Since the Petition Date, the Debtors have worked with their advisors to evaluate and initially identify certain executory contracts and/or unexpired leases that are burdensome to the Debtors’ estates. As a result of such ongoing analysis, the Debtors have identified the Rejected Contracts, which are, among other things, economically unfavorable to the Debtors and/or no longer necessary for the Debtors’ continued operations. As such, the Debtors have determined, in their sound business judgment, that the Rejected Contracts are no longer of value to the Debtors going forward and are burdensome to the Debtors’ estates and should, therefore, be rejected effective as of the entry of the Order.

### **BASIS FOR RELIEF REQUESTED**

#### **A. Rejection of the Rejected Contracts Is an Appropriate Exercise of the Debtors’ Business Judgment.**

9. Section 365(a) of the Bankruptcy Code provides that a debtor may, with court approval, assume or reject an executory contract or unexpired lease. 11 U.S.C. § 365(a). In

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<sup>2</sup> Capitalized terms used but not otherwise defined in this Motion shall have the meaning set forth in the First Day Declaration or the Rajcevich Declaration, as applicable.

determining whether to approve a debtor's request to assume or reject an executory contract or unexpired lease, courts generally defer to the debtor's business judgment. *Lubrizol Enters., Inc. v. Richmond Metal Finishers, Inc.*, 756 F.2d 1043, 1046 (4th Cir. 1985); *In re Alpha Natural Resources, Inc.*, 555 B.R. 520, 529–30 (Bankr. E.D. Va. 2016) (“[A] court should not second-guess a debtor's business judgment concerning the assumption or rejection of an executory contract or unexpired lease unless there is a showing of bad faith or gross abuse of discretion.”); *see also In re NLRB v. Bildisco & Bildisco (In re Bildisco)*, 465 U.S. 513, 523 (1984) (stating that the traditional standard applied by courts to authorize the rejection of an executory contract is that of “business judgment”).

10. In applying the business judgment standard, courts have held that rejection of an executory contract or an unexpired lease is appropriate where such rejection would benefit the debtor's estate. *See In re Shangra-La, Inc.*, 167 F.3d 843, 849 (4th Cir. 1999) (“[T]he authority to reject an executory contract is vital to the basic purpose of a Chapter 11 reorganization, because rejection can release the debtor's estate from burdensome obligations that can impede a successful reorganization.”) (quoting *NLRB v. Bildisco & Bildisco*, 465 U.S. at 528) (alteration in original). Upon finding that a debtor exercised sound business judgment in determining that rejection of certain contracts or leases is in the best interests of its creditors and all parties in interest, a court should approve the rejection under section 365(a) of the Bankruptcy Code. *See In re Wheeling-Pittsburgh Steel Corp.*, 72 B.R. 845, 849 (Bankr. W.D. Pa. 1987) (“Accordingly, the court should not interfere with or second guess the debtor's sound business judgment unless and until evidence is presented that establishes that the debtor's decision was one taken in bad faith or in gross abuse of its retained business discretion.”) (citing *Lubrizol*, 756 F.2d. at 1047); *see also In re Extraction*

*Oil & Gas*, 622 B.R. 608, 615 (Bankr. D. Del. 2020) (“Courts generally will not second-guess a debtor’s business judgment concerning the rejection of an executory contract or lease.”).

11. As noted in the Rajceovich Declaration, the Debtors are conducting an extensive analysis of all of their executory contracts and unexpired leases. In this process, the Debtors have initially identified the Rejected Contracts as executory contracts and/or unexpired leases that impose obligations on the Debtors and their estates that constitute an unnecessary drain on the Debtors’ resources compared to any potential benefits associated with continued performance. Promptly rejecting such contracts further benefits the Debtors by allowing the Debtors to allocate resources more efficiently, which is crucial to their ability to continue the operational restructuring contemplated by these chapter 11 cases. Accordingly, now that the Debtors have determined that the Rejected Contracts will not be part of their long-term business plan, the Debtors should be entitled to reject such contracts as soon as possible to maximize value for the Debtors’ estates. Rejecting the Rejected Contracts will relieve the Debtors of unnecessary burdens and strains and, thus, is in the best interest of the Debtors’ estates and stakeholders and, therefore, constitutes an exercise of the Debtors’ sound business judgment.

12. Courts in this district have authorized the relief requested herein. *See, e.g., In re Nordic Aviation Capital Designated Activity Company*, No. 21-33693 (KRH) (Bankr. E.D. Va. Apr. 6, 2022) (authorizing the debtors to reject certain unexpired aircraft leases); *In re Ascena Retail Group, Inc.*, No. 20-33113 (KRH) (Bankr. E.D. Va. Oct. 27, 2020) (authorizing the debtors to reject certain executory contracts); *In re Gemstone Solutions Group, Inc.*, No. 19-30258 (KLP) (Bankr. E.D. Va. Feb. 4, 2020) (same); *In re Alpha Natural Resources, Inc.*, No. 15-33896 (KRH) (Bankr. E.D. Va. Sept. 3, 2015) (same).

**RESERVATION OF RIGHTS**

13. 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, or (f) 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.

**COMPLIANCE WITH BANKRUPTCY RULE 6006(f)**

14. Bankruptcy Rule 6006(f) establishes requirements for a motion to reject multiple contracts that are not between the same parties. It requires, in relevant part, that such a motion:

- a. state in a conspicuous place that parties receiving the omnibus motion should locate their names and their contracts or leases listed in the motion;
- b. list parties alphabetically and identify the corresponding contract or lease;
- c. be numbered consecutively with other omnibus motions to assume, assign, or reject executory contracts or unexpired leases; and
- d. be limited to no more than 100 executory contracts or unexpired leases.

Fed. R. Bankr. P. 6006(f). The Debtors have satisfied these requirements.

**NOTICE**

15. 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; (m) all applicable government agencies or other parties to the extent required by the Bankruptcy Rules or the Local Rules; (n) the Committee; and (o) the counterparties to the Rejected Contracts. In light of the nature of the relief requested in this Motion, the Debtors submit that no further notice is necessary.

**NO PRIOR REQUEST**

16. 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 Order, substantially in the form attached hereto as **Exhibit A**, and grant them such other and further relief to which the Debtors may be justly entitled.

Richmond, Virginia  
Dated: May 24, 2024

/s/ Jeremy S. Williams

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

**EXHIBIT A**

**Proposed Order**

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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:	)	Chapter 11
ENVIVA INC., <i>et al.</i> ,	)	Case No. 24-10453 (BFK)
Debtors. <sup>1</sup>	)	(Jointly Administered)

**FIRST OMNIBUS ORDER (I) AUTHORIZING THE DEBTORS TO  
 REJECT THE REJECTED CONTRACTS 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*”) (i) authorizing the Debtors to reject the Rejected Contracts and (ii) granting related relief, all as more fully set forth in the Motion, the First Day Declaration, and the Rajcevich Declaration; and the Court having

<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.

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

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, the First Day Declaration, and the Rajcevich Declaration; 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 Rejected Contracts, attached hereto as **Schedule 1**, including, to the extent applicable, any and all related exhibits, confirmations, agreements, amendments, or modifications thereto, are hereby rejected effective as of the entry of the Order.

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

3. Unless specifically provided herein, and notwithstanding any actions taken hereunder, nothing contained in the Motion or this 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.

4. 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/  
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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/

**Schedule 1**

**Rejected Contracts<sup>5</sup>**

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<sup>5</sup> For the avoidance of doubt, all contracts, agreements, or arraignments listed or otherwise referred to in this Schedule 1 are inclusive of any and all amendments, addenda, and exhibits to the same.

<b>Non-Debtor Counterparty</b>	<b>Debtor Counterparty</b>	<b>Description</b>	<b>Non-Debtor Counterparty Notice Address(es)</b>
HomeTrust Bank	Enviva Pellets, LLC	Equipment Lease Agreement, dated September 7, 2022	17065 Nat Bynum Lane Cornelius, NC 28031 USA
Ryder Integrated Logistics Inc.	Enviva Pellets, LLC	Master Transportation Agreement, dated June 22, 2020	Mike S. Mandell 11690 NW 105th Street Miami, FL 33178 USA
Tin Nhan Company	Enviva Inc.	FOB Master Biomass Fuel Supply Agreement, dated May 24, 2023	Lot A2, A3, Phu Tai Industrial Zone Tran Quang Dieu Ward Quy Nhon City, Binh Dinh Province, Vietnam
Tin Nhan Company	Enviva Inc.	FOB Biomass Fuel Supply Confirmation No. 1, dated May 24, 2023	Lot A2, A3, Phu Tai Industrial Zone Tran Quang Dieu Ward Quy Nhon City, Binh Dinh Province, Vietnam