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**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF VIRGINIA**
(at Alexandria)

In re: ENVIVA INC., <i>et al.</i> Debtors. ¹		Chapter 11 Case No. 24-10453 (BFK) (Jointly Administered)
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**JOHN DEERE CONSTRUCTION AND FORESTRY
COMPANY’S LIMITED OBJECTION TO PLAN AND PLAN
SUPPLEMENT**

John Deere Construction and Forestry Company *a/k/a* John Deere Financial (“**JDF**”) and Deere Credit, Inc. (“**DCI**,” and together with JDF, “**Deere**”), by and through their undersigned counsel, hereby file this *Limited Objection* (the “**Objection**”) to the *Amended Joint Chapter 11 Plan of Reorganization of Enviva Inc. and Its Debtor Affiliates* [Doc. No. 1201] (the “**Amended Plan**”) and the *Notice of Filing of Plan Supplement for the Amended Joint Chapter 11 Plan of Reorganization of Enviva Inc. and Its Debtor Affiliates* [Doc. No. 1251] (the “**Supplement**,” and together with the Amended Plan, the “**Plan**”) and, in support thereof, state as follows:

¹ Due to the large number of Debtors in these chapter 11 cases being jointly administered, a complete list of the Debtor entities and the last four digits of their federal tax identification numbers is not provided herein.



I. Relevant Factual Background

A. The Debtors' Bankruptcy Filings and Relevant Pleadings

1. On March 12, 2024 (the “*Petition Date*”), Debtors, including Enviva Inc. (“*Enviva*”) and Enviva Pellets, LLC (“*Pellets*”), filed petitions under Chapter 11 of the United States Bankruptcy Code. The Court subsequently entered an Order consolidating the Debtors’ cases for administrative purposes. *See* Doc. No. 84.

2. On October 14, 2024, Debtors filed their Amended Plan [Doc. No. 1201]. The Amended Plan provides the following treatment for secured claims, including Deere’s filed Claims (discussed below):

Class 2 -- Other Secured Claim

“**Other Secured Claim**” means any Secured Claim other than a DIP Tranche A Claim, a DIP Tranche B Claim, a Senior Secured Credit Facility Claim, an NMTC Claim, or a Priority Tax Claim.

Treatment: Except to the extent that a Holder of an Allowed Other Secured Claim agrees to a less favorable treatment, in full and final satisfaction, compromise, settlement, release, and discharge of and in exchange for its Allowed Other Secured Claim, each such Holder shall receive, at the option of the Debtors or the Reorganized Debtors, as applicable, with the consent of the Majority Consenting 2026 Noteholders, either:

- i. payment in full in Cash of such Holder’s Allowed Other Secured Claim;
- ii. the collateral securing such Holder’s Allowed Other Secured Claim;
- iii. Reinstatement of such Holder’s Allowed Other Secured Claim; or
- iv. such other treatment rendering such Holder’s Allowed Other Secured Claim Unimpaired in accordance with section 1124 of the Bankruptcy Code.

See Doc. No. 1201, at Article III(B)(2).

3. On October 23, 2024, Debtors filed their Supplement. *See* Doc. No. 1251. Debtors attached to the Supplement a list of executory contracts and unexpired leases that Debtors propose to assume or reject, *see* Doc. No. 1251, at Ex. D, including those applicable to Deere, as follows:

Enviva Pellets, LLC	John Deere Financial Inc	11047 LEADBETTER ROAD, ASHLAND, VA 23005, UNITED STATES	Lease Agreement (Serial No. Ending 1120, 9041) Dated: 08/30/2023
Enviva Pellets, LLC	John Deere Financial Inc	11047 LEADBETTER ROAD, ASHLAND, VA 23005, UNITED STATES	Loan Contract - Security Agreement (Serial No. Ending 2772) Dated: 10/27/2021
Enviva Pellets, LLC	John Deere Financial Inc	11047 LEADBETTER ROAD, ASHLAND, VA 23005, UNITED STATES	Loan Contract - Security Agreement (Serial No. Ending 1174) Dated: 10/27/2021
Enviva Pellets, LLC	John Deere Financial Inc	11047 LEADBETTER ROAD, ASHLAND, VA 23005, UNITED STATES	Loan Contract - Security Agreement (Serial No. Ending 8197) Dated: 10/27/2021
Enviva Pellets, LLC	John Deere Financial Inc	11047 LEADBETTER ROAD, ASHLAND, VA 23005, UNITED STATES	Lease Agreement (Serial No. Ending 3770,3658, 6712) Dated: 04/20/2022

4. The Debtors listed the cure amounts as \$0 for each of the aforementioned Deere contracts set forth on Exhibit D to the Supplement. *See id.*

B. Deere's Contracts and Unexpired Leases

5. Prior to the Debtors' bankruptcy filings, Deere entered into five (5) contracts and one (1) lease (collectively, the "**Deere Contracts**") with Enviva and/or Pellets, each as described below.

i. Loan Contract 1527 -- Claim Nos. 785 (Enviva) and 781 (Pellets)

6. Pursuant to that certain Loan Contract – Security Agreement, Loan 1527 ("**Contract 1527**"), executed on or about May 10, 2022 by Pellets and Enviva as co-borrowers, Deere financed Pellets and Enviva's acquisition of a: (1) 437E Knuckleboom Loader (Serial # 1T0437EDJNF413537); (2) 648L-II Grapple Skidder (Serial # 1DW648LBLNF713770); (3) 643L-II Wheel Feller Buncher (Serial # 1DW643LBHNF713658); (4) KE-48 Log Trailer (Serial # 1B9MC4824NF105125); (5) PTD-264-ULTRA Delimber (Serial # 26422016712); (6) DL-4400-LH Slasher (Serial # 4421126756); and (7) 24.5X32 PRIMEX Tires (the "**1527 Collateral**").

7. Deere timely filed Proof of Claims evidencing its rights against Pellets and Enviva under Contract 1527. *See* Claim Nos. 785 (Enviva) and 781 (Pellets). As evidenced by its filed claims and the documents attached thereto, Deere holds a first priority, perfected security interest in the 1527 Collateral and is an oversecured creditor. Claim Nos. 785 (Enviva) and 781 (Pellets) and the loan documents attached thereto are incorporated herein by reference.

ii. Loan Contract 6308 – Claim No. 809 (Pellets)

8. Pursuant to that certain Loan Contract – Security Agreement 6308 (“***Contract 6308***”), executed on or about October 27, 2021 by Pellets, Deere financed Pellets’ acquisition of a 643L-II Wheel Feller Buncher (Serial # 1DW643LBTMF712772) (the “***6308 Collateral***”).

9. Deere timely filed a Proof of Claim evidencing its rights against Pellets under Contract 6308. *See* Claim No. 809. As evidenced by its filed claim and the documents attached thereto, Deere holds a first priority, perfected security interest in the 6308 Collateral and is an oversecured creditor. Claim No. 809 and the loan documents attached thereto are incorporated herein by reference.

iii. Loan Contract 7615 – Claim No. 800 (Pellets)

10. Pursuant to that certain Loan Contract – Security Agreement 7615 (“***Contract 7615***”), executed on or about October 27, 2021 by Pellets, Deere financed Pellets’ acquisition of a 648L-II Grapple Skidder (Serial # 1DW648LBAMF711174) (the “***7615 Collateral***”).

11. Deere timely filed a Proof of Claim evidencing its rights against Pellets under Contract 7615. *See* Claim No. 800. As evidenced by its filed claim and the documents attached thereto, Deere holds a first priority, perfected security interest in the 7615 Collateral and is an oversecured creditor. Claim No. 800 and the loan documents attached thereto are incorporated herein by reference.

iv. Loan Contract 6756 – Claim No. 801 (Pellets)

12. Pursuant to that certain Loan Contract – Security Agreement 6756 (“***Contract 6756***”), executed on or about October 27, 2021 by Pellets, Deere financed Pellets’ acquisition of a 550K Crawler Dozer (Serial # 1T0550KKTKf358197) (the “***6756 Collateral***”).

13. Deere timely filed a Proof of Claim evidencing its rights against Pellets under

Contract 6756. *See* Claim No. 801. As evidenced by its filed claim and the documents attached thereto, Deere holds a first priority, perfected security interest in the 6756 Collateral and is an oversecured creditor. Claim No. 801 and the loan documents attached thereto are incorporated herein by reference.

v. Loan Contract 7795 – Claim No. Pellets

14. Pursuant to that certain Loan Contract – Security Agreement 7795 (“***Contract 7795***”) executed on or about October 27, 2021 by Pellets, Deere financed Pellets’ acquisition of a (1) 437E Knuckleboom Loader (Serial # 1T0437EDAMF408745); (2) DL-4400 Slasher (Serial # 4421066527-LH); (3) KE-48 Log Trailer (Serial # 1B9MC4821NF105020); and (4)PTD-264 Delimber (Serial #46421116601) (the “***7795 Collateral***”).

15. Deere timely filed a Proof of Claim evidencing its rights against Pellets under Contract 7795. *See* Claim No. 798. As evidenced by its filed claim and the documents attached thereto, Deere holds a first priority, perfected security interest in the 7795 Collateral and is an oversecured creditor. Claim No. 798 and the loan documents attached thereto are incorporated herein by reference.

vi. Lease Agreement 2000 – Claim Nos. 790 (Enviva) and 745 (Pellets)

16. Pursuant to a Master Lease Agreement (“***Lease 2000***”) dated September 6, 2023, Pellets and Enviva, as co-lessees, leased from Deere a: (1) a Morbark 3400-XT Grinders; and (2) a 644 PTier Wheel Loader together with; (3) a Big Top Mobile Equipment Shelter (collectively, the “***Lease 2000 Equipment***”).

17. Deere timely filed a Proof of Claim evidencing its rights against Pellets and Enviva under Lease 2000. *See* Claim Nos. 790 (Enviva) and 745 (Pellets). Claim Nos. 790 and 745 and the loan documents attached thereto are incorporated herein by reference.

C. **Amounts Required for Cure and/or Treatment of Secured Claims Under the Plan**

18. Pellets and Enviva continue to make payments on the Deere Contracts post-petition.

19. Lease 2000 is in arrears in the amount of \$159,485.76 as of November 4, 2024.

This past due balance arises from Pellets' and/or Enviva's failure to maintain insurance over the Lease 2000 Collateral, thus requiring Deere to add insurance to the 2000 Lease in November 2023. Although Pellets and Enviva have been making their lease payments, they have not paid the additional amounts occasioned by Deere's placement of insurance. In addition, property taxes in the approximate amount of \$12,642.17 will come due on November 30, 2024. The pro-rated portion of such property taxes that have accrued through the date that the 2000 Lease is assumed must be paid to cure Lease 2000.²

20. Likewise, the Debtors have not been making the correct contractual payment for Contract 1527. Since December 2022 the correct monthly payment should be \$17,244.92; the Debtors, however, have only paid \$17,225.47 each month. If the Debtors choose to reinstate Contract 1527, they must pay the correct monthly payment going forward.

21. Lastly, to the extent that the Debtors seek to reinstate and/or leave unimpaired Deere's filed and oversecured claims in relation to Contract 1527, Contract 6308, Contract 7619, Contract 6756, or Contract 7795, then all outstanding attorney fees that have accrued under those contracts in relation to this case must be paid as of the date that such contracts are reinstated and/or left unimpaired. Alternatively, if the Debtors elect to pay out the secured portion of those claims in cash to Deere as set forth in the Plan's treatment of secured claims, then the cash payments must

² The Amended Plan states that it shall serve as a Motion to assume certain executory contracts. *See* Amended Plan, at §V. D(1). It further states that any order entered approving the Amended Plan will constitute an order approving the assumption, but that such assumption shall be deemed effective upon the occurrence of the Effective Date. *See id.*

include all accrued attorney fees up to the value of Deere's equity cushion in its collateral.

22. Prior to filing this Objection, Deere contacted counsel for the Debtors in an attempt to resolve any dispute concerning the Contracts. Debtors' counsel advised that the Debtors would reach out to Deere directly; however, as of the filing of this Objection, no one from the Debtors has in fact contacted Deere. This, coupled with the discrepancies related to the Deere Contracts set forth on Exhibit D to the Supplement (as discussed below), have prompted Deere to file its Objection.

II. Law and Analysis

23. As it relates to the cure of executory contracts and unexpired leases, Section 365(b) of the Bankruptcy Code provides the following:

(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—

(A) cures, or provides adequate assurance that the trustee will promptly cure . . .

11 U.S.C. § 365(b)(1)(A).

24. As it relates to the Plan's treatment of secured claims through reinstatement and/or rendering such secured claims unimpaired, Section 1123(b) provides that a plan "may . . . leave unimpaired any class of claims." 11 U.S.C. § 1123(b). Section 1124(1) explains that a claim is "unimpaired" when the plan "leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest." 11 U.S.C. § 1123(a)(1). 11 USC § 1124(a)(2) provides a pathway to a claim being deemed unimpaired, "notwithstanding any contractual provision . . . that entitles the holder of such claim or interest to demand or receive accelerated payment of such claim or interest after the occurrence of default." 11 U.S.C. § 1123(a)(2). In this regard, Section 1124(2) deems a claim unimpaired if an underlying plan

complies with subsections (A) through (E) thereunder, which includes the requirement to cure defaults, except for those of a kind specified in Section 365(b)(2). *See* 11 U.S.C. § 1124(2)(A).

25. For the avoidance of doubt, Deere does not oppose Enviva and Pellets' assumption of the 2000 Lease or the Plan's proposed treatment for secured claims as to the remaining Deere Contracts. However, Deere objects to the Plan, as modified by the Supplement, for the following reasons:

26. First, as set forth above, Lease 2000 is included on the Supplement but with a \$0 cure amount listed. To the extent that the Pellets and Enviva seek to assume Lease 2000, they must first cure the outstanding amounts totaling \$159,485.76 as of November 4, 2024. In addition, Deere is entitled to receive the pro-rated amount of property taxes that have accrued through the date of assumption, and which will total \$12,642.17 as of November 30, 2024, as well as any other amounts coming due through the date of assumption.³

27. Second, Contract 1527 is missing from the Supplement. Given that Contract 1527 is not considered an executory contract, Deere does not believe that it belongs on the assumption list set forth on the Supplement. Rather, Contract 1527 would be governed by the treatment for secured claims set forth in the Plan. Deere generally does not object to the proposed treatment for secured claims under the Plan. However, to the extent that the Debtors intend to either reinstate Contract 1527 or render it unimpaired, then Pellets and Enviva should be required to make the correct monthly payments going forward in the amount of \$17,244.92, as well as pay all additional amounts which come due under Contract 1527 through the date of assumption.

28. Third, of the remaining Deere Contracts (*i.e.*, exclusive of Lease 2000 and Contract 1527), the Supplement includes Contract 6308, Contract 7619, and Contract 6756 but excludes

³ The Supplement also only lists Pellets as the counterparty to the 2000 Lease; however, as discussed above both Enviva and Pellets are co-lessees.

Contract 7795. Deere does not believe that Contract 6308, Contract 7619, and Contract 6756 should be on the Supplement in the first place; rather, they should be governed by the Plan provisions related to treatment of secured claims.

29. Fourth, to the extent that the Debtors seek to reinstate and/or leave unimpaired Deere's filed oversecured claims in relation to Contract 1527, Contract 6308, Contract 7619, Contract 6756, or Contract 7795, then all outstanding attorney fees that have accrued under those contracts in relation to this case must be paid. Alternatively, if the Debtors elect to pay out the secured portion of those claims in cash to Deere as set forth in the Plan, then the payments must include all accrued attorney fees up to the extent of Deere's equity cushion.

30. Lastly, Deere is unsure why the Supplement included the following description of a purported Deere lease: "Lease Agreement (Serial No. Ending 3370, 3658, 6712) Dated:04/20/2022." *see* Doc. No. 1251, at Ex. D. Deere does not recognize this purported lease with Pellets.

III. **Reservation of Rights**

31. Deere reserves the right to supplement this Objection to modify the amounts required to cure, reinstate, or leave unimpaired the Deere Contracts described herein, as well as to raise additional objections related to the Plan (including the Supplement), including at any subsequent hearings or proceedings that may affect Deere's contractual and/or leasehold interests, including hearings held pursuant to 11 USC §§ 363 and 365 of the Bankruptcy Code, and confirmation of the Plan. Deere is entitled to all amounts accruing through the date of assumption, or when such claims are reinstated/deemed unimpaired. Deere further reserves the right to provide any additional information or documents necessary to establish the amounts requested herein.

IV. **Conclusion**

32. Based on the foregoing, Deere respectfully requests that this Court: (1) sustain this Objection; (2) condition assumption of the 2000 Lease upon the Debtors' cure of all amounts owed thereunder; (3) condition the treatment of Deere's secured claim evidenced by the 1527 Contract upon the correct monthly payments being made thereunder; (3) require payment of Deere's attorney fees and costs under Contract 1527, Contract 6308, Contract 7619, Contract 6756, or Contract 7795 in light of Deere's oversecured status and/or as a condition to reinstatement/rendering such claims unimpaired; and (4) grant all other relief appropriate under the circumstances set forth above.

Dated: November 6, 2024

Respectfully submitted,

**BAKER, DONELSON, BEARMAN
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 6th day of November, 2024, a true and correct copy of the foregoing was served via this Court's CM/ECF e-filing system, on those parties registered to receive ECF notices by the Court.

/s/ J. David Folds

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