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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.[1]	)	(Jointly Administered)

DEBTORS' MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION OF THE AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION OF ENVIVA INC. AND ITS DEBTOR AFFILIATES

[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 https://www.veritaglobal.net/enviva. The location of the Debtors' corporate headquarters is: 7500 Old Georgetown Road, Suite 1400 Bethesda, MD 20814.

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The above-captioned debtors and debtors in possession (collectively, the "Debtors") submit this memorandum of law in support of an order confirming the *Amended Joint Chapter 11 Plan of Reorganization of Enviva Inc. and Its Debtor Affiliates* [Docket No. 1201] (as modified, amended, or supplemented from time to time, the "Plan").[2]

In further support of Confirmation of the Plan, prior to or substantially contemporaneously with the filing of this brief, the Debtors also filed the following documents:

(a) *Affidavit of Publication of the Notice of Hearing to Consider Confirmation of the Chapter 11 Plan filed by the Debtors and Related Voting and Objection Deadlines in USA Today and the Washington Post* [Docket No. 1259] (the "Affidavit of Publication");

(b) *Certificate of Service of Darlene S. Calderon re: Solicitation Materials Served on or Before October 10, 2024* [Docket No. 1260] (the "Solicitation Affidavit");

(c) *Certificate of Service of Ronaldo Lizarraga Angulo re: 1) Notice of Rejection of Executory Contract or Unexpired Lease; and 2) Notice of Cure of Assumed Executory Contract or Unexpired Lease* [Docket No. 1261] (the "First Certificate of Service for the Cure and Rejection Notices");

(d) *Certificate of Service of Stanley Y. Martinez re: 1) Notice of Rejection of Executory Contract or Unexpired Lease; and 2) Notice of Cure of*

[2] Capitalized terms (a) used in the preliminary statement hereof have the meanings ascribed to them in the remainder of this brief and (b) used but not otherwise defined herein have the meanings ascribed to them in the Plan or the *Disclosure Statement for the Amended Joint Chapter 11 Plan of Reorganization of Enviva Inc. and its Debtor Affiliates* [Docket No. 1202] (the "Disclosure Statement"), as applicable. All references to an Article refer to the applicable article of the Plan unless otherwise specified herein. All section references refer to the applicable section of the Bankruptcy Code unless otherwise specified herein.

Assumed Executory Contract or Unexpired Lease] [Docket No. 1338] (the "Second Certificate of Service for the Cure and Rejection Notices");

(e) *Declaration of James Lee With Respect to the Tabulation of Votes on the Amended Joint Chapter 11 Plan of Reorganization of Enviva Inc. and Its Debtor Affiliates* (the "Voting Declaration"), filed contemporaneously herewith; and

(f) *Declaration of Glenn Nunziata in Support of the Amended Joint Chapter 11 Plan of Reorganization of Enviva Inc. and Its Debtor Affiliates* (the "Confirmation Declaration"), filed contemporaneously herewith.

In support of confirmation of the Plan, the Debtors respectfully state as follows:

PRELIMINARY STATEMENT

1. The Debtors' reorganization has been marked by consistent and material progress. The Debtors now stand poised to confirm a plan of reorganization that will, among other things, deleverage their balance sheet by approximately $1.4 billion, raise over $1.3 billion of new money, and position the Reorganized Debtors for long-term success. Both prior to and throughout these Chapter 11 Cases, the Debtors engaged in hard-fought, good-faith negotiations—which ultimately culminated in a global consensus among key stakeholders, including the Committee, the Ad Hoc Group, and the RWE Committee—on a comprehensive and value-maximizing restructuring embodied in the Plan. The result of these efforts is a Plan that has near-unanimous support. The Debtors are now seeking Confirmation of the Plan to implement the terms of the restructuring transactions contemplated therein.

2. As set forth below and in the Confirmation Declaration, the Plan provides the best actionable restructuring transactions available to the Debtors' Estates, maximizes value for the benefit of all stakeholders, reflects a balanced compromise of the complex issues

presented in these Chapter 11 Cases, and positions the Reorganized Debtors for continued success as the world's largest producer by annual tonnage of industrial wood pellets.

3. The Plan provides for a comprehensive restructuring of the Debtors' balance sheets. Specifically, the Plan provides for, among other things: (a) capitalizing the Reorganized Debtors with approximately $1.05 billion in new debt commitments pursuant to a first lien senior secured Exit Facility through an alternative financing obtained as part of a best-efforts exit financing process; (b) a fully backstopped new money investment through a Rights Offering of (i) $250 million, plus (ii) the principal amount of any DIP Tranche A Claims under the DIP Facility to the extent the Holders of such Claims do not elect to participate in the DIP Tranche A Equity Participation; (c) a reduction in the Debtors' pre-petition and post-petition funded debt obligations through the distribution of rights to purchase equity interests in Reorganized Enviva Inc. to Holders of DIP Tranche A Claims and Holders of Bond General Unsecured Claims; and (d) the establishment and funding of a Litigation Trust, which is supported by the Committee and the RWE Committee. Following consummation of the Plan, the Debtors will have no secured debt maturities until 2029 and will reduce their annual interest burden by approximately $70 million. Beyond right-sizing the Debtors' capital structure, the Plan also sets forth the terms of a global and integrated compromise and settlement that addresses actual and potential disputes related to the Plan and Confirmation of the Plan among and between the Debtors, the Ad Hoc Group, the Committee, and the RWE Committee, which secured meaningful recoveries for Holders of General Unsecured Claims. In addition, confirmation and consummation of the Plan will allow the Debtors to continue to operate in the ordinary course and preserve over a thousand jobs for the Debtors' employees.

4. In light of the many benefits provided by the Plan, it is not surprising that the Debtors have broad consensus and support for Confirmation of the Plan. Of nearly 290 creditors that voted on the Debtors' Plan, approximately 97.93% in number and 99.99% in amount voted to accept the Plan.[3] In addition, the Debtors received only four filed objections to Confirmation of the Plan—all but 1 of which have been resolved (each, an "Objection").[4] The Objections, resolutions, and the Debtors' responses are summarized in the chart annexed hereto as Exhibit A (the "Response Chart"). The lack of objections to, and substantial support for, the Plan attests to the fairness of the Plan and the good-faith efforts by which it was crafted.

5. For the reasons set forth herein and in the Confirmation Declaration, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code, and accordingly, should be confirmed. A proposed order confirming the Plan has been filed contemporaneously herewith.

BACKGROUND[5]

I. PROCEDURAL HISTORY

A. Negotiation of the Restructuring Support Agreements

6. Prior to the commencement of these Chapter 11 Cases, the Debtors entered into two separate restructuring support agreements, each with a group of key stakeholders.

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[3] *See* Voting Declaration.

[4] While the objections filed by Rockwell Automation Inc. [Docket No 1289] and John Deere [Docket No. 1290] are styled as limited plan objections, the substance of each objection relates to assumption and cure matters.

[5] The pertinent facts are set forth in the Plan, the Plan Supplement, the Disclosure Statement, the Confirmation Declaration, the Voting Declaration, the record of these Chapter 11 Cases, and the testimony that will be adduced, proffered, or submitted at or in connection with the Confirmation Hearing. Such facts are incorporated herein as if fully set forth herein.

7. On March 12, 2024, after extensive, arm's-length negotiations, the Debtors entered into a restructuring support agreement (as amended, restated, amended and restated, supplemented, or otherwise modified form time to time, the "Restructuring Support Agreement") with members of the Ad Hoc Group holding at the time approximately 72% of the outstanding Senior Secured Credit Facility Loans, 95% of the outstanding 2026 Notes, 78% of the outstanding Epes Green Bonds, and 45% of the outstanding Bond Green Bonds. The Restructuring Support Agreement provided a framework for the Debtors' restructuring, including certain key elements such as:

(a) agreement by the Ad Hoc Group to vote in favor of the Plan;

(b) the Ad Hoc Group's support for the Debtors' renegotiation process for its long-term offtake contracts;

(c) agreement by the Debtors to negotiate and pursue a settlement with the Consenting Epes Green Bondholders;

(d) the Ad Hoc Group's provision of a $750 million first-lien exit facility, and a $250 million revolving credit facility, subject to the Debtors' ability to obtain alternative exit debt financing on superior terms; and

(e) the provision of an equity rights offering of (i) $250 million, plus (ii) amounts of the Tranche A DIP Facility that did not elect to participate in the DIP Tranche A Equity Participation.

8. On March 12, 2024, the Debtors also entered into a restructuring support agreement with a group of holders representing at the time approximately 92% of the outstanding Bond Green Bonds (the "Bond Green Bond Restructuring Support Agreement"). The Bond Green Bond Restructuring Support Agreement memorialized a settlement with holders of the

Bond Green Bonds whereby the holders of Bond Green Bonds agreed to a forbearance in respect of potential alleged defaults under the Bond MS Loan Agreement in exchange for the funds then held in the Construction Fund (as defined in the Bond Green Bond Restructuring Support Agreement) being transferred to a separate fund for partial redemption of the then-outstanding Bond Green Bonds.

B. Commencement of These Chapter 11 Cases and the Initial Plan

9. On March 12, 2024, and the following day, *i.e.,* the Petition Date, the Debtors filed voluntary petitions for relief under Chapter 11 of Title 11 the United States Code (the "Bankruptcy Code"), thus commencing these Chapter 11 Cases in the United States Bankruptcy Court for the Eastern District of Virginia (the "Court"). At the Debtors' first day hearing, the Debtors obtained the Court's authority, by way of various first day motions and the entry of related court orders, to continue operating their business in a manner substantially consistent with their prepetition practices. Thereafter, the Debtors and their advisors devoted considerable time and effort to formulating a going-concern plan of reorganization.

10. Over the weeks and months that followed the commencement of these Chapter 11 Cases, additional stakeholders elected to retain advisors, execute non-disclosure agreements, and become restricted to engage in negotiations with the Debtors. The Debtors continued expending substantial time and effort engaging with each stakeholder group on the terms of a plan in an effort to garner the broadest support possible amongst the various stakeholder groups.

11. In accordance with the terms of the Restructuring Support Agreement, on August 30, 2024 the Debtors filed the *Joint Chapter 11 Plan of Reorganization of Enviva Inc. and Its Debtor Affiliates* [Docket No. 1054] (the "Initial Plan"), the *Disclosure Statement for the Joint Chapter 11 Plan of Reorganization of Enviva Inc. and Its Debtor Affiliates* [Docket No.

1055], and the *Debtors' Motion for Entry of an Order (I) Approving (A) the Adequacy of the Disclosure Statement, (B) the Solicitation and Notice Procedures with Respect to Confirmation of the Plan, (C) the Forms of Ballots, Other Solicitation Materials, and Notices in Connection Therewith, (D) the Scheduling of Certain Dates with Respect Thereto, (E) the Rights Offering Procedures, (F) the Overbid Procedures, and (II) Granting Related Relief* [Docket No. 1057] (the "Disclosure Statement Motion").

C. Overbid Procedures, Backstop Motion, and Rights Offering

12. In accordance with agreements to resolve objections to 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 "Final DIP Order"), and consistent with the Debtors' fiduciary duty to maximize estate value, the Debtors committed to an overbid toggle mechanism that would obligate them to actively market offers for alternative transactions that met the Threshold Clearing Requirements. The material terms of the Overbid Process were approved on May 3, 2024 upon the Court's entry of the Final DIP Order.

13. The Disclosure Statement Motion sought, among other things, approval of the form and manner of the Overbid Procedures, which were integrated into the Initial Plan. Consistent with the terms of the Final DIP Order, the Overbid Procedures, as a toggle component of the plan set forth in the Restructuring Support Agreement (the "RSA Restructuring Plan"), set forth the process for the Debtors to solicit bids for a value-maximizing alternative transaction in parallel with, and as part of, the Debtors' pursuit of confirmation of the RSA Restructuring Plan. To be acceptable, the alternative transaction would need to meet certain requirements, including

the repayment in full of certain claims (including principal, interest, and other fees allowed under the applicable instruments).

14. The Overbid Procedures required the Debtors (in consultation with the Committee and the Ad Hoc Group) to make a determination, prior to the Transaction Election Deadline, of whether to exercise the toggle (*i.e.,* accept a qualified bid and toggle to the alternative transaction or determine that there was no qualified bid, decline to exercise the toggle, and continue with the RSA Restructuring Plan on the timeline set forth in the Initial Plan).

15. Pursuant to the Overbid Procedures, the Debtors, with the assistance of their advisors, actively marketed the Debtors' assets for sale. As set forth in the *Notice of Conclusion of the Overbid Process* [Docket No. 1275], filed on November 4, 2024, no Bids were received on or before the Bid Deadline (each as defined in the Overbid Procedures). As no Bids were received, there was ultimately no toggle election for the Debtors to evaluate. Accordingly, the Debtors concluded the Overbid Process.

16. On August 31, 2024, the Debtors filed the *Debtors' Motion for Entry of an Order (I) Authorizing the (A) Debtors' Entry Into, and Performance Under, the Backstop Commitment Agreement, (B) Debtors' Entry Into, and Performance Under, the Exit Facility Commitment Letter, and (C) the Payment and Allowance of Related Premiums, Fees and Expenses as Administrative Expense Claims or Superpriority Administrative Expense Claims, as Applicable; and (II) Granting Related Relief* [Docket No. 1058] (the "Backstop Motion"). Among other things, the Backstop Motion sought authority for the Debtors' entry into the (a) Exit Facility Commitment Letter pursuant to which the Exit Facility Lenders provided up to $1 billion of new capital commitments to distribute pursuant to the Initial Plan, and (b) the Rights Offering Backstop Agreement pursuant to which certain members of the Ad Hoc Group

would fully backstop the Rights Offering in exchange for the payment of certain fees, premiums, indemnities, and expenses. Relatedly, the Debtors sought approval of the Rights Offering Procedures pursuant to the Disclosure Statement Motion, which were approved pursuant to the Disclosure Statement Order (as defined below).

D. Amended Plan and Global Settlement

17. While the Initial Plan represented a significant step towards a restructuring of the Debtors' capital structure, the Debtors understood the need to, and continued to express their commitment to, continue working with all parties in interest to come to a global and consensual resolution on as many unresolved and contested plan issues as possible. To that end, the Debtors continued to engage in extensive, arms-length negotiations with the Ad Hoc Group, the Committee, and the RWE Committee, which ultimately resulted in a comprehensive settlement between the foregoing parties (the "Global Settlement"), as set forth in the Plan and the Global Settlement Stipulation (as defined below), resolving all contested matters with the Debtors' key stakeholders in these Chapter 11 Cases and clearing a path for the Debtors to emerge from chapter 11 without litigation or delay.

18. On October 4, 2024, the Debtors filed the *Amended Joint Chapter 11 Plan of Reorganization of Enviva Inc. and Its Debtor Affiliates* [Docket No. 1150], which incorporated the terms of the Global Settlement, and the *Disclosure Statement for the Amended Joint Chapter 11 Plan of Reorganization of Enviva Inc. and Its Debtor Affiliates* [Docket No. 1151]. On the same day, the Debtors filed the *Stipulation and Agreed Order* [Docket No. 1155], which in addition to the Plan, set out the terms of the Global Settlement.

19. As set forth in further detail in the Plan, the Global Settlement, among other things:

(a) increases the cash recovery available for Non-Bond General Unsecured Claims from $13 million to $41.94 million;

(b) establishes a Litigation Trust, transferring all of the Debtors' rights, title, and interest in and to all of the Litigation Trust Assets, including the Excluded Claims, for the benefit of Holders of Allowed General Unsecured Claims;

(c) releases all Avoidance Actions held by the Debtors against any Released Avoidance Action Parties; and

(d) provides for the payment of the professional fees and expenses of the individual members of the Committee up to a total cap of $1,000,000.

20. Pursuant to the Global Settlement, the Committee agreed to stay the DIP Appeal and hold such litigation in abeyance until the Effective Date (at which time, the Committee will cause the DIP Appeal to be dismissed with prejudice), and the Committee, along with the RWE Committee, agreed to support the Plan and the Restructuring contemplated therein.

21. At the hearing to approve the Disclosure Statement held on October 4, 2024, the Debtors, on behalf of themselves, the Ad Hoc Group, the Committee, and the RWE Committee, announced the terms of the Global Settlement, and on the same day, the Court entered the *Stipulation and Agreed Order* [Docket No. 1182] (the "Global Settlement Stipulation").

22. Also on October 4, 2024, in connection with the modifications to the Initial Plan, the Debtors filed the *Notice of Filing of Revised Proposed Order (I) Authorizing the (A) Debtors' Entry Into, and Performance Under, the Backstop Commitment Agreement,*

(B) Debtors' Entry Into, and Performance Under, the Exit Facility Commitment Letter, and (C) the Payment and Allowance of Related Premiums, Fees and Expenses as Administrative Expense Claims or Superpriority Administrative Expense Claims, as Applicable; and (II) Granting Related Relief [Docket No. 1153], providing notice and a copy of the revised proposed order approving the Backstop Motion and revised Rights Offering Procedures. On the same day, the Court entered the *Order (I) Authorizing the (A) Debtors' Entry Into, and Performance Under, the Backstop Commitment Agreement, (B) Debtors' Entry Into, and Performance Under the Exit Facility Commitment Letter, and (C) the Payment and Allowance of Related Premiums, Fees and Expenses as Administrative Expense Claims, and (II) Granting Related Relief* [Docket No. 1184] (the "Backstop Order").

E. Solicitation and Plan Supplement

23. On October 4, 2024, the Court entered the *Order (I) Approving (A) the Adequacy of the Disclosure Statement, (B) the Solicitation Procedures and Notice Procedures with Respect to Confirmation of the Plan, (C) the Forms of Ballots, Other Solicitation Materials, and Notices in Connection Therewith, (D) the Scheduling of Certain Dates with Respect Thereto, (E) the Rights Offering Procedures, (F) the Overbid Procedures, and (II) Granting Related Relief* [Docket No. 1183] (the "Disclosure Statement Order"). The Disclosure Statement Order, among other things, (a) approved the Disclosure Statement, (b) established solicitation and voting procedures with respect to the Plan (the "Voting Procedures") and approved the Solicitation Packages (as defined below) related thereto, (c) established notice and objection procedures with respect to Confirmation of the Plan, (d) set November 6, 2024, at 4:00 p.m. (Prevailing Eastern Time), as the deadline for (i) Holders of Claims entitled to vote on the Plan to submit their votes (the "Voting Deadline") and (ii) file objections to the Plan (the "Objection

Deadline"), and (e) scheduled the commencement of the Confirmation Hearing for November 13, 2024, at 10:30 a.m. (Prevailing Eastern Time).[6]

24. In accordance with the Disclosure Statement Order, on or about October 9, 2024, the Debtors caused their noticing and claims agent, Verita Global (f/k/a Kurtzman Carson Consultants LLC) (the "Noticing and Claims Agent"), to distribute copies of, among other things, the Disclosure Statement with all exhibits, including the Plan, the Voting Procedures, the applicable form of ballot with voting instructions and instructions to opt-in to the Third-Party Release (as defined below) (each, a "Ballot"), and the Committee Position Letter from the Committee for Holders of General Unsecured Claims, recommending such Holders to vote to accept the Plan (collectively, the "Solicitation Packages") to the Holders of: (a) Bond General Unsecured Claims in Class 5 and (b) Non-Bond General Unsecured Claims in Class 6 (collectively with the Holders of Bond General Unsecured Claims in Class 5, the "Voting Classes"). Under the Plan, the Debtors were not required to solicit votes from Holders of Class 1 (Other Priority Claims), Class 2 (Other Secured Claims), Class 3 (Senior Secured Credit Facility Claims), Class 4 (NMTC Claims), Class 7 (Intercompany Claims), Class 8 (Section 510(b) Claims), Class 9 (Intercompany Interests), and Class 10 (Existing Equity Interests) (collectively, the "Non-Voting Classes") because the Holders in the Non-Voting Classes were either Unimpaired under the Plan and deemed to accept the Plan, or Impaired under the Plan and deemed to reject the Plan. Instead, in accordance with the Disclosure Statement Order, the Debtors caused the Noticing and Claims Agent to distribute a notice of non-voting status (the "Notice of Non-Voting Status") to the members of the Non-Voting Classes, other than

[6] *See Notice of Hearing to Consider Confirmation of the Chapter 11 Plan Filed by the Debtors and Related Voting and Objection Deadlines* [Docket No. 1203].

the Holders in Classes 7, 9, and 10.[7] The Notice of Non-Voting Status also included a return form and instructions for recipient Holders to opt-in to the Third-Party Release at their election.

25. In addition, the Debtors caused the Noticing and Claims Agent to serve a notice of the Confirmation Hearing and the Objection Deadline (the "Confirmation Hearing Notice") to (a) all parties in interest and (b) all Holders of Claims in the Voting Classes, in each case, on or about October 9, 2023.[8] Moreover, the Debtors caused the Noticing and Claims Agent to publish a substantially similar Confirmation Hearing Notice in the *Washington Post* and the national edition of *USA Today*, in both cases, on October 10, 2024.[9]

26. On October 23, 2024 and November 5, 2024, the Debtors filed with the Court the Plan Supplement,[10] which included, to the extent available, the Exit Facility Credit Agreement, the Stockholders Agreement, the Schedule of Assumed Executory Contracts and Unexpired Leases, the Schedule of Rejected Executory Contracts and Unexpired Leases, the Schedule of Retained Causes of Action, the Identity of the Initial Members of the New Board, the Restructuring Transactions Exhibit, the Identity of the Plan Administrator, and the Litigation Trust Agreement. As required under the Disclosure Statement Order, on October 23, 2024 and November 5, 2024, the Debtors caused the Noticing and Claims Agent to serve a Cure Notice or Rejection Notice (each as defined in the Disclosure Statement Order) to the applicable counterparties providing notice of (a) the Debtors' intention to assume or reject, as applicable, the applicable Executory Contracts and Unexpired Leases (each as defined in the Disclosure

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7 *See* Solicitation Affidavit.

8 *See* Solicitation Affidavit.

9 *See* Affidavit of Publication.

10 *See Notice of Filing Plan Supplement for the Amended Joint Chapter 11 Plan of Reorganization of Enviva Inc. and Its Debtor Affiliates* [Docket No. 1251]; *Notice of Filing First Amended Plan Supplement for the Amended Joint Chapter 11 Plan of Reorganization of Enviva Inc. and Its Debtor Affiliates* [Docket No. 1283] (collectively, and as modified, amended, or supplemented from time to time, the "Plan Supplement").

Statement Order), (b) the deadline to object to the proposed assumption or rejection, as applicable, and (c) if applicable, the date by which the applicable counterparties to rejected Executory Contracts and Unexpired Leases need to file a proof of claim.[11]

27. All parties in interest have sufficient notice of the requisite documentation prior to the Confirmation Hearing. Further, the Debtors expect to be in position to satisfy all conditions precedent to the Effective Date following the Court's entry of the Confirmation Order.

II. VOTING RESULTS

28. Contemporaneously herewith, the Debtors filed the Voting Declaration on behalf of the Noticing and Claims Agent. As set forth in the Voting Declaration, the Noticing and Claims Agent tabulated the Ballots received by the Voting Deadline from Holders of Claims in the Voting Classes.[12]

29. Based on the votes received and tabulated in accordance with the Voting Procedures approved by the Disclosure Statement Order, each Debtor has at least one accepting impaired Class of Claims, or, alternatively, no creditors in any Voting Class.[13] A summary per

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[11] *See* First Certificate of Service for the Cure and Rejection Notices; Second Certificate of Service for the Cure and Rejection Notices.

[12] *See* Voting Declaration at ¶ 13.

[13] As set forth in the Voting Declaration, certain Classes of Claims contained no Holders of Claims and are referred to as "empty." Pursuant to Article III.E of the Plan, these "empty" classes are eliminated for voting purposes to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code. With respect to two Debtors, Enviva Pellets Epes Holdings, LLC and Enviva MLP International Holdings, LLC, ballots were provided to two Holders of Non-Bond General Unsecured Claims against Enviva Pellets Epes Holdings, LLC in the aggregate amount of approximately $52,000 and one Holder of a Non-Bond General Unsecured Claim filed against Enviva MLP International Holdings, LLC in the amount of $500. Moreover, two of the three Non-Bond General Unsecured Claims at these Debtors have been paid in full in the ordinary course, and the remaining Claim will be satisfied in full upon the assumption of the applicable agreement on the Effective Date. None of these Holders returned ballots in favor of or against the Plan. Thus, the Debtors submit that Class 6 Non-Bond General Unsecured Claims with respect to Enviva Pellets Epes Holdings, LLC and Enviva MLP International Holdings, LLC are presumed to accept the Plan pursuant to Article III.F of the Plan, or in the alternative, these Classes have

Class of the aggregate voting results combining each Debtor's results is included in the table below:[14]

Class	Percentage of Voting Number Accepting	Percentage of Voting Amount Accepting	Percentage of Voting Number Rejecting	Percentage of Voting Amount Rejecting
Class 5 (Bond General Unsecured Claims)	98.26%	99.99%	1.74%	0.01%
Class 6 (Non-Bond General Unsecured Claims)	97.46%	99.99%	2.54%	0. 01%

30. The Noticing and Claims Agent was also designated to tabulate which Holders of Claims and Interests elected to grant the Third-Party Release, either by submitting an opt-in form or by checking the appropriate opt-in box on their Ballot. Approximately 149 Holders of Claims and Interests validly elected to opt-in to the Third-Party Release.[15]

31. The Debtors refer the Court to the Plan, the Disclosure Statement, the Disclosure Statement Order, the Plan Supplement, the Confirmation Declaration, and the record of these Chapter 11 Cases for an overview of the Debtors' business and any other relevant facts that may bear on Confirmation of the Plan. The Confirmation Declaration and any testimony and other declarations that may be proffered or submitted in connection with the Confirmation Hearing are fully incorporated herein.

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effectively been rendered "empty" and can be eliminated pursuant to Article III.E of the Plan.

[14] *See* Voting Declaration.

[15] *See* Exhibit C to the Voting Declaration.

III. ALTERNATIVE EXIT FINANCING

32. The Plan contemplates that, on the Effective Date, the Reorganized Debtors will enter into the Exit Facility in accordance with terms of the Exit Facility Credit Agreement(s). However, the Plan also authorizes the Debtors to enter into any alternative exit debt financing that is secured as part of a best-efforts exit debt financing process, in accordance with and subject to Article IV.B.2.b of the Plan.

33. As part of the best-efforts exit debt financing process, the Debtors received, among other proposals and indications of interest, a proposal from a consortium of lenders (the "Alternative Exit Debt Financing Commitment Parties") to fund a first-lien, senior secured exit facility in an aggregate principal amount of $1.05 billion (the "Alternative Exit Debt Financing") comprising (i) exit term loans in an aggregate outstanding principal amount equal to $800 million and (ii) delayed draw term loans in an aggregate principal amount equal to $250 million.[16] The Alternative Exit Debt Financing will allow the Debtors to fund distributions under the Plan and to ensure that the Reorganized Debtors have sufficient cash post-emergence.[17]

34. After careful analysis and extensive negotiations conducted in good faith and at arm's-length, the Alternative Exit Debt Financing Commitment Parties and the Debtors agreed upon the terms of the Alternative Exit Debt Financing Commitment Letter, which was attached as Exhibit A to the *First Amended Plan Supplement for the Amended Joint Chapter 11 Plan of Reorganization of Enviva Inc. and Its Debtor Affiliates* [Docket No. 1283] (together with all exhibits and schedules thereto, the "Alternative Exit Debt Financing Commitment Letter"). To date, no objections to the Alternative Exit Debt Financing Commitment Letter or the terms

[16] *See* Confirmation Declaration at ¶ 16.

[17] *See* Confirmation Declaration at ¶ 64.

thereof have been received by the Debtors. The terms of the Alternative Exit Debt Financing Commitment Letter are fair and reasonable, and represent the best terms available to the Debtors.[18] Specifically, the Debtors, in their sound business judgment, believe that entering into the Alternative Exit Debt Financing, in lieu of moving forward with the closing of the committed Exit Facility from the Ad Hoc Group (such commitment, the "AHG Exit Facility"), is in the best interests of the Debtors and their Estates for a number of reasons, including, without limitation, the following:

(a) The Alternative Exit Debt Financing will provide the Debtors with substantially greater projected post-emergence liquidity relative to the AHG Exit Facility, as the terms of the Alternative Exit Debt Financing contemplate that 100% of the interest rate payments for the first twelve (12) months of the term can be paid-in-kind (vs. in cash). The positive impact on liquidity (potentially in excess of $75 million) will provide the Debtors with greater operational flexibility over the next twelve (12) months, a critical time for the Debtors' business as they approach the final phase of construction of the Epes plant, to be followed by an operational ramp-up period shortly thereafter;

(b) The Alternative Exit Debt Financing has superior pricing relative to the AHG Exit Facility at higher leverage thresholds; and

(c) The Alternative Exit Debt Financing does not include a ratings requirement, whereas the AHG Exit Facility requires the Debtors to obtain a credit rating within sixty (60) days after the Effective Date; thus, entering into the Alternative Exit Debt Financing would reduce the administrative burden and cost on the Debtors relative to the AHG Exit Facility.[19]

35. To obtain these benefits, the Debtors agreed to provide the Alternative Exit Debt Financing Commitment Parties customary and reasonable consideration for transactions of this type, including: (a) an upfront premium (the "Upfront Premium") of 2.50%

[18] *See* Confirmation Declaration at ¶ 84.

[19] *See* Confirmation Declaration at ¶¶ 86-88.

of the committed financing, excluding any delayed draw term loans, in respect of the Alternative Exit Debt Financing, paid in kind; (b) reimbursement of the reasonable and documented fees and expenses incurred in connection with the Alternative Exit Debt Financing (the "Alternative Exit Debt Financing Expense Reimbursement"); and (c) indemnification by the Debtors, including the payment of contribution and reimbursement claims for certain losses, claims, damages, liabilities, costs, and expenses arising out of or in connection with the Alternative Exit Debt Financing and the transactions contemplated thereby (the "Alternative Exit Debt Financing Indemnification Obligations," and collectively with the Upfront Premium and the Alternative Exit Facility Expense Reimbursement, the "Alternative Exit Debt Financing Obligations").[20] As is contemplated by the Exit Debt Financing Commitment Letter and the Backstop Order, the Debtors will, on the Effective Date, pay the Exit Commitment Premium to the original Commitment Parties as compensation for the commitments provided, which ultimately had the effect of serving as a "stalking horse" for the Debtors to obtain even better financing terms.

36. The Alternative Exit Debt Financing will allow the Debtors to emerge as a going-concern enterprise poised for future growth for the benefit of their estates on the best financial terms available to the Debtors.[21] Approval, in connection with Plan confirmation, of the Debtors' entry into the Alternative Exit Debt Financing Commitment Letter, and the authority to satisfy the obligations thereunder, is therefore critical to the success of the Debtors' Restructuring. Accordingly, the Debtors believe that entry into the Alternative Exit Debt Financing Commitment Letter is in the best interests of their respective estates.[22]

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[20] The terms summarized herein are qualified in their entirety by reference to the provisions of the Alternative Exit Debt Financing Commitment Letter (as defined herein).

[21] *See* Confirmation Declaration at ¶¶ 89-91.

[22] *See* Confirmation Declaration at ¶¶ 85-92.

ARGUMENT

37. To confirm the Plan, the Court must find that the Debtors have satisfied the requirements of section 1129 of the Bankruptcy Code.[23] As described in detail below, the Plan complies with all relevant provisions of the Bankruptcy Code and all other applicable law.

I. THE PLAN SATISFIES EACH REQUIREMENT FOR CONFIRMATION UNDER SECTION 1129 OF THE BANKRUPTCY CODE AND SHOULD BE CONFIRMED

38. The Debtors must show by a preponderance of the evidence that the Plan satisfies section 1129 of the Bankruptcy Code to achieve Confirmation.[24] The Debtors submit the Plan satisfies the requirements of section 1129 of the Bankruptcy Code and complies with all other applications sections of the Bankruptcy Code, the Bankruptcy Rules, and the Bankruptcy Local Rules of the United States Bankruptcy Court for the Eastern District of Virginia. Accordingly, the Plan should be confirmed.[25]

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[23] *See, e.g., In re Smith,* 58 B.R. 652, 654 (Bankr. W.D. Va. 1985)*, aff'd sub nom*., *In re Architectural Design, Inc.*, 59 B.R. 1019 (Bankr. W.D. Va. 1986) ("Section 1129(a) of the Bankruptcy Code authorizes confirmation of a plan of reorganization if all of the requirements of the listed subsection are met.").

[24] *See, e.g.*, *Heartland Fed. Sav. & Loan Ass'n* v. *Briscoe Enters., Ltd. II,* (*In re Briscoe Enters., Ltd. II*), 994 F.2d 1160, 1165 (5th Cir. 1993) ("The . . . preponderance of the evidence is the debtor's appropriate standard of proof both under § 1129(a) and in a cramdown."); *In re Mohammad*, 596 B.R. 34, 39 (Bankr. E.D. Va. 2019) ("The proponent of a proposed plan bears the burden of proving essential elements of confirmation by a preponderance of the evidence." (citing *Heartland Fed. Sav. & Loan Ass'n* v. *Briscoe Enters., Ltd. II* (*In re Briscoe Enters., Ltd. II*), 994 F.2d 1160, 1165 (5th Cir. 1993)).

[25] Sections 1129(a)(14) through 1129(a)(16) of the Bankruptcy Code do not apply to the Debtors. Section 1129(a)(14) of the Bankruptcy Code relates to the payment of domestic support obligations to which the Debtors are not subject. *See* 11 U.S.C. § 1129(a)(14). Similarly, section 1129(a)(15) of the Bankruptcy Code applies only to "individuals" as that term is defined in the Bankruptcy Code, and not to companies such as the Debtors. Finally, section 1129(a)(16) of the Bankruptcy Code governs property transfers by entities that, unlike the Debtors, are something other than a "moneyed, business, or commercial corporation or trust."

A. Section 1129(a): The Plan Meets Each of the Applicable Requirements for Confirmation under Section 1129(a) of the Bankruptcy Code

i. Section 1129(a)(1): The Plan Complies with the Applicable Provisions of the Bankruptcy Code

39. Section 1129(a)(1) of the Bankruptcy Code requires a plan to comply with all applicable provisions of the Bankruptcy Code, including the rules governing the classification of claims and interests (section 1122) and the provisions dictating the contents of a plan (section 1123).[26] The Plan complies with all applicable provisions of the Bankruptcy Code (as required by section 1129(a)(1)), including sections 1122 and 1123 of the Bankruptcy Code.

1. Section 1122: The Plan's Classification Structure Is Proper

40. The Plan's classification of Claims and Interests complies with section 1122(a) of the Bankruptcy Code, which provides that "a plan may place a claim or interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class."[27]

41. As section 1122(a) of the Bankruptcy Code only provides that claims and interests must be "substantially" similar to be placed in the same class, plan proponents have broad discretion and "significant flexibility" in classifying claims and interests under section 1122(a), provided that there is a reasonable basis for the classification scheme,[28] and provided all

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[26] 11 U.S.C. §§ 1122, 1123, 1129(a)(1). *See also* H.R. Rep. No. 95-595, at 412 (1977); S. Rep. No. 95-989, at 126 (1978).

[27] 11 U.S.C. § 1122(a). *See Travelers Ins. Co.* v. *Bryson Props*., *XVIII* (*In re Bryson Props*., *XVIII*), 961 F.2d 496, 502 (4th Cir. 1992) ("Section 1122 [of the Bankruptcy Code] requires substantial similarity between claims that are placed in the same class.").

[28] *In re Whittaker Mem'l Hosp. Ass'n, Inc.*, 149 B.R. 812, 816 (Bankr. E.D. Va. 1993) (stating that, "[w]here the purpose is not devious, it is not fatal to bifurcate even unsecured creditors into classes," and citing cases where separate classification was found permissible so long as such classification was "reasonable," "not arbitrary," and where a "reasonable business or economic justification exist[ed]") (internal citations omitted).

claims or interests within a particular class are substantially similar.[29] Here, the Plan appropriately classifies Claims and Interests as follows:

Class	Claims and Interests	Status	Voting Rights
1	Other Priority Claims	Unimpaired	Not Entitled to Vote *(Presumed to Accept)*
2	Other Secured Claims	Unimpaired	Not Entitled to Vote *(Presumed to Accept)*
3	Senior Secured Credit Facility Claims	Unimpaired	Not Entitled to Vote *(Presumed to Accept)*
4	NMTC Claims	Unimpaired	Not Entitled to Vote *(Presumed to Accept)*
5	Bond General Unsecured Claims	Impaired	Entitled to Vote
6	Non-Bond General Unsecured Claims	Impaired	Entitled to Vote
7	Intercompany Claims	Unimpaired / Impaired	Not Entitled to Vote
8	Section 510(b) Claims	Impaired	Not Entitled to Vote *(Deemed to Reject)*
9	Intercompany Interests	Unimpaired / Impaired	Not Entitled to Vote
10	Existing Equity Interests	Impaired	Not Entitled to Vote *(Deemed to Reject)*

42. The Plan's classification of Claims and Interests is reasonable and complies with the Bankruptcy Code. The Claims and Interests described above are substantially similar to the other Claims or Interests in such Class as all Claims or Interests within each Class have the same or similar rights against the Debtors. The classification structure generally tracks the Debtors' prepetition corporate and capital structure, including the relative priority between secured and unsecured claims, and divides Claims and Interests into Classes based on the instruments giving rise to such Claims and Interests. Other aspects of the classification scheme

[29] *Supra* n. 24 ("[Section 1122] does not, however, require that all substantially similar claims be placed within the same class, and it grants some flexibility in classification of unsecured claims.").

are based upon valid business, legal, and factual distinctions that justify the separate classification of the Claims and Interests into the Classes created under the Plan. No unfair discrimination exists between or among holders of Claims and Interests. Accordingly, the Debtors submit that the Plan complies with section 1122 of the Bankruptcy Code, and no party has asserted otherwise.

2. Section 1123: The Plan Satisfies the Requirements of Section 1123 of the Bankruptcy Code

43. Section 1123 of the Bankruptcy Code sets forth both mandatory and optional provisions that a chapter 11 plan must and may include. For the reasons set forth below, the Plan (a) satisfies each of the mandatory requirements of section 1123(a) of the Bankruptcy Code, (b) includes several of the optional provisions permitted under section 1123(b) of the Bankruptcy Code, and (c) includes other provisions not inconsistent with other applicable provisions of the Bankruptcy Code within the meaning of section 1123(b)(6) of the Bankruptcy Code.

a. Section 1123(a): The Plan Satisfies the Mandatory Provisions of Section 1123(a) of the Bankruptcy Code

44. The Plan satisfies the seven mandatory requirements of section 1123(a) of the Bankruptcy Code:

(a) Section 1123(a)(1): Article III designates Classes of Claims and Interests as required by section 1123(a)(1) of the Bankruptcy Code.

(b) Section 1123(a)(2): Article III specifies the treatment of Unimpaired Classes of Claims and Interests as required by section 1123(a)(2) of the Bankruptcy Code.

(c) Section 1123(a)(3): Article III specifies the treatment of Impaired Classes of Claims and Interests as required by section 1123(a)(3) of the Bankruptcy Code.

(d) Section 1123(a)(4): Article III provides the same treatment for each Claim or Interest of a particular Class, unless the Holder of a particular Claim or Interest agrees to a less favorable treatment of such particular Claim or Interest as required by section 1123(a)(4) of the Bankruptcy Code. This applies to Holders within each Class.

(e) Section 1123(a)(5): Article IV, in conjunction with various other Plan provisions, provides adequate means for implementing the Plan as required by section 1123(a)(5) of the Bankruptcy Code. Further supporting that there are appropriate means to implement the Plan, the Debtors have had productive negotiations with the NMTC Parties and the Required Consenting 2026 Noteholders regarding consensual amendments to the Prepetition Senior Secured NMTC QLICI Loan Agreement and Prepetition Senior Secured NMTC Source Loan Agreement (collectively, including any related ancillary agreements and documents, the "NMTC Loan Documents"), including to update the NMTC Loan Documents to reflect the Reorganized Debtors' post-emergence corporate and capital structure. The Debtors anticipate that such amendments will be executed on a consensual basis, in accordance with the terms and conditions of the NMTC Loan Documents, upon the Debtors' emergence from the Chapter 11 Cases, thereby facilitating the Reinstatement of the Allowed NMTC

Claims in accordance with the Plan; provided that the Debtors reserve the right to alternatively elect to repay the Allowed NMTC Claims in full in cash on the Effective Date in accordance with the Plan, including in the event the Debtors, the applicable NMTC Parties, and the Required Consenting 2026 Noteholders do not reach an agreement on the final form of such updates to the NMTC Loan Documents by the Plan Effective Date.[30]

(f) Section 1123(a)(6): Article IV.J provides for the prohibition of non-voting equity securities, as implemented by the New Organizational Documents, as required by section 1123(a)(6) of the Bankruptcy Code.

(g) Section 1123(a)(7): Article IV.L provides that as of the Effective Date, the terms of the existing boards of directors of the Debtors will expire, and further that, subject to any requirement for Court approval pursuant to section 1129(a)(5) of the Bankruptcy Code, the New Board will be appointed in accordance with the Plan, the New Organizational Documents, and the other constating documents of each Reorganized Debtor. As discussed herein, pursuant to section 1129(a)(5) of the Bankruptcy Code, the appointment of the New Board, as well as the election of the executive teams of the Reorganized Debtors, is consistent with the interests of creditors and equity security holders and complies

[30] The Plan provides that all Allowed NMTC Claims shall, at the option of the Debtors or the Reorganized Debtors, as applicable, with the consent of the Majority Consenting 2026 Noteholders, either: (i) receive payment in full in Cash or such other treatment so as to render it Unimpaired pursuant to section 1124 of the Bankruptcy Code; or (ii) be Reinstated in accordance with section 1124(2) of the Bankruptcy Code and continued after the Effective Date.

with public policy with respect to the manner of selection of the Reorganized Debtors' officers and directors, as required by section 1123(a)(7) of the Bankruptcy Code.[31]

b. Section 1123(b): The Plan Satisfies the Discretionary Provisions of Section 1123(b) of the Bankruptcy Code

45. Section 1123(b) of the Bankruptcy Code allows a plan to include a variety of different permissive provisions. Each of the Plan's permissive provisions comports with the requirements set forth in section 1123(b):

(a) Section 1123(b)(1): Per section 1123(b)(1) of the Bankruptcy Code, Article III classifies and describes the treatment for Claims and Interests under the Plan, and identifies which Claims and Interests are impaired or unimpaired.

(b) Section 1123(b)(2): Per section 1123(b)(2) of the Bankruptcy Code, Article V provides that all of the Debtors' Executory Contracts and Unexpired Leases will be assumed as of the Effective Date in accordance with section 365 of the Bankruptcy Code, unless expressly otherwise provided pursuant to the Plan. As noted above, the Debtors filed their Schedule of Rejected Executory Contracts and Unexpired Leases and Schedule of Assumed Executory Contracts and Unexpired Leases with the Plan Supplement. *See* Plan Supplement at Exhibits D – E.

(c) Section 1123(b)(3): Per section 1123(b)(3)(A) of the Bankruptcy Code, Article VIII.D provides for a release of certain of the Debtors' Claims and

[31] *See generally* 11 U.S.C. § 1123(a)(1)-(7).

Causes of Action. Article IV.O of the Plan incorporates the settlement of a variety of issues, Claims, Interests, and controversies. In addition, Article IV.P provides that, except as otherwise provided in the Plan, all of the Debtors' Causes of Action will vest in the Reorganized Debtors and that the Reorganized Debtors will retain, and may compromise or settle, all such Causes of Action.

(d) Section 1123(b)(5): As permitted by section 1123(b)(5) of the Bankruptcy Code, Article III modifies the rights of Holders of Claims as set forth therein.

c. Section 1123(b)(6): The Discretionary Contents of the Plan Are Permitted by Section 1123(b)(6) of the Bankruptcy Code

46. Section 1123(b)(6) of the Bankruptcy Code also authorizes the inclusion of "any other appropriate provision not inconsistent with the applicable provisions of [the Bankruptcy Code.]" 11 U.S.C. § 1123(a)(6). The Plan includes several such discretionary provisions, including (a) various terms discharging, releasing, and enjoining the pursuit of Claims and (b) a consensual Third-Party Release of certain potential Claims. The release and exculpation provisions set forth in the Plan are the result of extensive good faith and arm's-length negotiations by and among the Debtors and certain of the Released Parties[32] and the

[32] Pursuant to Article I.A.208 of the Plan, the term "Released Parties" means, each of the following solely in its capacity as such: (a) the Debtors and their Estates; (b) the Reorganized Debtors; (c) the DIP Agents; (d) the DIP Creditors; (e) the Restructuring Support Parties; (f) the Bond Green Bonds Restructuring Support Parties; (g) the Committee and each of its current and former members, in their capacity as such; (h) the RWE Committee and each of its current and former members, in their capacity as such; (i) the Exit Facility Agent; (j) the Exit Facility Lenders; (k) the Rights Offering Backstop Parties; (l) the 2026 Notes Indenture Trustee; (m) the Epes Green Bonds Indenture Trustee; (n) the Senior Secured Credit Facility Agent; (o) each Releasing Party; and (p) each Related Party of each of the foregoing parties under clauses (a) through (o); provided that, in each case, any Holder of a Claim or Interest that is not a Releasing Party shall not be a "Released Party."

Exculpated Parties, [33] respectively. Such provisions are consistent with applicable case law and precedent in this district, comply with the Bankruptcy Code in all respects, and should be approved in all respects as integral components of the Plan.

47. The Debtor Release. Article VIII.D provides for a release of any and all Claims, Causes of Action, obligations, suits, judgments, damages, demands, losses, liabilities, and remedies, including contingent, unliquidated, unknown, unforeseen, unmatured, unaccrued, and derivative claims, of the Debtors, their Estates, and the Reorganized Debtors, against the Released Parties in connection with, among other things and in whole or in part, the Debtors, their Estates, the Debtors' in- or out-of-court restructuring efforts, the Restructuring, the Debtors' intercompany transactions, the Senior Secured Credit Facility Documents, the DIP Orders, the Avoidance Actions, the purchase or sale or rescission of the purchase or sale of any Security of the Debtors or the Reorganized Debtors, the Restructuring Support Agreement, the Disclosure Statement, the Plan, the Plan Supplement, the Definitive Documentation, the DIP Facility, the DIP Facility Documents, the Exit Facility, the Exit Facility Commitment Letter, the Exit Facility Documents, the Management Incentive Plan, the Global Settlement, the New Organizational Documents, the Reorganized Enviva Inc. Interests, the Rights Offering, the Rights Offering Backstop Agreement, the DIP Tranche A Equity Participation, the 2026 Notes

[33] Pursuant to Article I.A.115 of the Plan, the term "Exculpated Parties" collectively, and in each case in its capacity as such: (a) the Debtors; (b) the Reorganized Debtors; (c) the Committee and each of its current and former members; (d) each current and former Affiliate of each Entity in the foregoing clause (a) through the following clause (e); and (e) the directors, officers, and professionals of each Entity in clause (a) through clause (d); provided that, in each case, an Entity shall be an "Exculpated Party" only to the extent it has performed duties in connection with the Chapter 11 Cases. For the avoidance of doubt, the term "Affiliate" as used in this provision does not include IHE Holdings, LLC, Enviva Management International Holdings, Limited, Enviva Management Germany GmbH, Enviva Management Japan K.K., Enviva Management UK, Limited, African Isabelle Shipping Co. Ltd (Bahamas), African Sisters Shipping Co. Ltd (Bahamas), Enviva Wilmington Holdings, LLC, Enviva Pellets Hamlet, LLC, Enviva Energy Services Cooperatief, U.A., Enviva Pellets Amory II, LLC, and Enviva Tooling Services Company, LLC.

Indenture, the Bond Green Bonds Indenture, the Epes Green Bonds Indenture, the Senior Secured Credit Agreement, the Prepetition Senior Secured NMTC Source Loan Agreement, the Prepetition Senior Secured NMTC QLICI Loan Agreement, the restructuring of any Claim or Interest before or during the Chapter 11 Cases, or any Restructuring, contract, instrument, document, release, or other agreement or document (including any legal opinion regarding any such transaction, contract, instrument, document, release, or other agreement or the reliance by any Released Party on the Plan or the Confirmation Order in lieu of such legal opinion) created or entered into in connection with the Restructuring Support Agreement, the Disclosure Statement, the Plan, the Plan Supplement, the DIP Facility, the DIP Facility Documents, the Exit Facility, the Exit Facility Commitment Letter, the Exit Facility Documents, the Management Incentive Plan, the Global Settlement, the New Organizational Documents, the Reorganized Enviva Inc. Interests, the DIP Tranche A Equity Participation, the Rights Offering, the Rights Offering Backstop Agreement, the 2026 Notes Indenture, the Bond Green Bonds Indenture, the Epes Green Bonds Indenture, the Senior Secured Credit Agreement, the Prepetition Senior Secured NMTC Source Loan Agreement, the Prepetition Senior Secured NMTC QLICI Loan Agreement, the related agreements, instruments, and other documents (including the Definitive Documentation), the Overbid Process, the Chapter 11 Cases, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the solicitation of votes with respect to the Plan, the administration and implementation of the Plan, including the issuance or distribution of Securities or other property pursuant to the Plan, the Definitive Documentation, or upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date arising from, or related or relating to any of the foregoing (the "Debtor Release").

48. Section 1123(b)(3)(A) of the Bankruptcy Code provides that a chapter 11 plan may include "the settlement or adjustment of any claim or interest belonging to the debtor or to the estate."[34] Further, a debtor may release claims under section 1123(b)(3)(A) of the Bankruptcy Code if such release is a valid exercise of the debtor's business judgment, is fair, reasonable, and in the best interests of the estate.[35] Whether a debtor release is fair, equitable, and in the best interest of the debtor's estate is determined pursuant to Bankruptcy Rule 9019. [36] Accordingly, in considering whether to approve the release by the Debtor Release as an integral component of the broader compromise embodied in the Plan, the Court should consider "(i) the probability of success in litigation; (ii) the potential difficulties in any collection; (iii) the complexity of the litigation and the expense, inconvenience, and delay necessarily attending it; and (iv) the paramount interest of the creditors."[37] Generally, under this standard, a Debtors' business judgment will be deferred to so long as the settlement terms do not fall "below the lowest point in the range of reasonableness."[38]

49. The Debtor Release is fair, equitable, and in the best interest of the Debtors' Estate as:

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[34] 11 U.S.C. § 1123(b)(3)(A).

[35] *In re Washington Mut., Inc*., 442 B.R. 314, 327 (Bankr. D. Del. 2011) ("In making its evaluation [whether to approve a settlement], the court must determine whether 'the compromise is fair, reasonable, and in the best interest of the estate.'") (internal citations omitted); *Official Comm. Of Unsecured Creditors* v. *White Plans Joint Venture* (*In re Bond*), 16 F.3d 408, 1994 WL 20107, at *4 (4th Cir. 1994) (when determining whether a settlement is fair and equitable, the court may give deference to the debtor's business judgment at the time of execution of the settlement).

[36] *In re Patriot Coal Corp*., *et al.*, No. 15-32450 (KLP) (Bankr. E.D. Va., Oct. 9, 2015) [Docket No. 1615] at *31 ("The releases and discharges of Claims and Causes of Action by the Debtors . . . in accordance with section 1123(b)(3)(A) of the Bankruptcy Code represent a valid exercise of the Debtors' business judgment under Bankruptcy Rule 9019.").

[37] *In re Alpha Nat. Res., Inc*., 544 B.R. 848, 857 (Bankr. E.D. Va. 2016).

[38] *Id.* at 857.

(a) the Debtor Release reflects an appropriate and reasonable exercise of the Debtors' and the Plan Evaluation Committee's business judgment regarding the risk and expense of pursuing claims and causes of action, on the one hand, and the benefits of retaining those same claims and causes of action on the other. Specifically, when negotiating the Debtor Release, the Debtors and the Plan Evaluation Committee, with the assistance of their advisors and after significant diligence and the conclusion of an independent investigation by the Special Committee, determined that pursuing claims and causes of action against the Released Parties would not be in the best interests of the Debtors, their Estates, their stakeholders, or the Reorganized Debtors because such claims and causes of action were unlikely to be sufficiently material to warrant the litigation costs associated with their prosecution (*i.e.*, the pursuit of such claims would likely be complex, time-consuming, administratively burdensome, expensive, and ultimately, value-destructive). In addition, the Plan Evaluation Committee determined in its business judgment, for the benefit of the Debtors' Estates and Holders of General Unsecured Claims, to exclude the Excluded Claims from the Debtor Release;

(b) the Debtors have otherwise expressly preserved certain Claims and Causes of Action pursuant to the Schedule of Retained Causes of Action;

(c) no party has objected to the Debtor Release;

(d) the Plan, including the Debtor Release, was negotiated in good faith and at arm's length by sophisticated entities that were represented by able advisors;

(e) the Debtor Release has provided a material benefit to the Estates by ensuring the support of each Released Party and by ensuring the Debtors receive reciprocal releases, as more fully discussed below; and

(f) the Debtor Release was an essential component of the Global Settlement, which is the culmination of extensive and robust negotiations and which represents a global compromise of claims and rights that will enable the Debtors to emerge from these Chapter 11 cases without undue delay.

50. For all of these reasons, the Debtors submit that the decision to provide the Debtor Release falls within the range of reasonableness. Accordingly, the Debtors submit that the Debtor Release is fair, equitable, and in the best interest of the Debtors' Estates, and should therefore be approved.

51. Third-Party Release. Article VIII.E provides for a consensual release of any and all Claims and Causes of Action, including derivative claims, by certain non-Debtor Releasing Parties[39] against the Released Parties in connection with, among other things and in

[39] Pursuant to Article I.A.209 of the Plan, the term "Releasing Parties" means each of the following solely in its capacity as such: (a) the Debtors and their Estates; (b) the Reorganized Debtors; (c) the DIP Agents; (d) the DIP Creditors; (e) the Restructuring Support Parties; (f) the Bond Green Bonds Restructuring Support Parties; (g) the Committee and each of its current and former members, in their capacity as such; (h) the Exit Facility Agent; (i) the Exit Facility Lenders; (j) the Rights Offering Backstop Parties; (k) the 2026 Notes Indenture Trustee; (l) the Epes Green Bonds Indenture Trustee; (m) the Senior Secured Credit Facility Agent; (n) the RWE Committee and each of its current and former members, in their capacity as such; (o) all Holders of Impaired Claims and Interests who voted to accept the Plan; (p) all Holders of Impaired Claims and Interests who abstained from voting on the Plan, voted to reject the Plan, or are deemed to have rejected the Plan; (q) all Holders of Unimpaired Claims; (r) all Holders of Interests; and (s) each Related Party of each Entity in clause (a) through this clause (s) for which such Entity is legally entitled to bind such Related Party to the release contained in the Plan under applicable law; provided that an Entity listed in clauses (o) through (r) shall only

whole or in part, the Debtors, their Estates, the Debtors' in- or out-of-court restructuring efforts, the Restructuring, the Debtors' intercompany transactions, the Senior Secured Credit Facility Documents, the DIP Orders (and any payments or transfers in connection therewith), any Avoidance Actions, the purchase, sale, or rescission of the purchase or sale of any Security of the Debtors or the Reorganized Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party whether before or during the Debtors' restructuring, or the restructuring of Claims and Interests before or during the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or Filing of the Restructuring Support Agreement, the Disclosure Statement, the Plan, the Plan Supplement, the Definitive Documentation, the DIP Facility, the DIP Facility Documents, the Exit Facility, the Exit Facility Commitment Letter, the Exit Facility Documents, the Management Incentive Plan, the Global Settlement, the New Organizational Documents, the Reorganized Enviva Inc. Interests, the DIP Tranche A Equity Participation, the Rights Offering, the Rights Offering Backstop Agreement, the 2026 Notes Indenture, the Bond Green Bonds Indenture, the Epes Green Bonds Indenture, the Senior Secured Credit Agreement, the Prepetition Senior Secured NMTC Source Loan Agreement, the Prepetition Senior Secured NMTC QLICI Loan Agreement, the restructuring of any Claim or Interest before or during the Chapter 11 Cases, or any Restructuring, contract, instrument, document, release, or other agreement or document (including any legal opinion regarding any such transaction, contract, instrument, document, release, or other agreement or

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constitute a Releasing Party if the applicable Entity either (x) elects to opt in to provide the releases contained in the Plan or (y) is otherwise specifically enumerated in clause (a) through (n); provided further, that any member of the RWE Committee that fails to opt in to provide the releases contained in the Plan shall not be a "Releasing Party" and, if an Entity is not a "Releasing Party," then its Related Parties (in their capacities as such) are not Releasing Parties.

the reliance by any Released Party on the Plan or the Confirmation Order in lieu of such legal opinion) created or entered into in connection with the Restructuring Support Agreement, the Disclosure Statement, the Plan, the Plan Supplement, the DIP Facility, the DIP Facility Documents, the Exit Facility, the Exit Facility Commitment Letter, the Exit Facility Documents, the New Organizational Documents, the Reorganized Enviva Inc. Interests, the DIP Tranche A Equity Participation, the Rights Offering, the Rights Offering Backstop Agreement, the 2026 Notes Indenture, the Bond Green Bonds Indenture, the Epes Green Bonds Indenture, the Senior Secured Credit Agreement, the Prepetition Senior Secured NMTC Source Loan Agreement, the Prepetition Senior Secured NMTC QLICI Loan Agreement, the related agreements, instruments, and other documents (including the Definitive Documentation), the Overbid Process, the Chapter 11 Cases, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the solicitation of votes with respect to the Plan, the administration and implementation of the Plan, including the issuance or distribution of Securities or other property pursuant to the Plan, the Definitive Documentation, or upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date arising from, or related or relating to any of the foregoing (the "Third-Party Release"). The Third-Party Releases are fully consensual and should be approved.

52. In the Fourth Circuit, non-debtor releases and injunctions are appropriate in situations where the releases and injunctions are an integral part of the chapter 11 plan and where such releases are consensual under the circumstances.[40]

[40] *See Nordic Aviation Cap. Designated Activity Co.*, No. 21-33693 (KRH) (Bankr. E.D. Va. Apr. 20, 2022) [Docket No. 743] (finding opt-in third-party release in chapter 11 plan to be consensual and confirming plan); *see also Patterson v. Mahwah Bergen Retail Group, Inc.*, 636 B.R. 641, 684 (E.D. Va. 2022) (acknowledging that several circuits and bankruptcy courts "have found that a party can consent to a third-party release and eliminated the need for a *Behrmann* analysis."); *In re Neogenix Oncology, Inc*., 508 B.R. 345, 361 (Bankr. D.

53. The Debtors utilized an opt-in mechanism for the Third-Party Releases. Accordingly, pursuant to the Voting Procedures, an affirmative act of consent was required for a Releasing Party to be bound by the Third-Party Release. Additionally, the Confirmation Hearing Notice, which was served on all parties in interest, included a prominent reminder that the Plan contains exculpation, injunction, and release provisions and also utilized capitalized bold text and underlining to ensure that readers understood the steps they needed to take to opt-in to the Third-Party Releases. Additionally, the Holders of Claims and Interests in Classes 1 through 10 received Ballots or Notices of Non-Voting Status, as applicable, that conspicuously noted the Third-Party Releases, and included detailed instructions on the mechanics of opting-in to such Third-Party Releases. Thus, the Debtors submit that a Releasing Party's decision to opt-in to the Third-Party Release reflects an intentional, conscious, and fully consensual choice to grant such release.

54. The Debtors also submit that the Third-Party Release is sufficiently specific to put the Releasing Parties on notice of the claims being released. As set forth above, the Third-Party Release describes in great detail the nature and type of Claims being released. In addition to being consensual, the Third-Party Releases are substantively warranted.

55. As previously alluded to, the Third-Party Release is an integral part of the Plan and a condition of the Global Settlement set forth therein. The Third-Party Release was a core negotiation point, appropriately offers certain protections to parties that constructively participated in the restructuring, and was critical in reaching consensus to support the Plan. It is important to note that the Third-Party Release is given for consideration: the Released Parties

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Md. 2014) (finding "[i]t is well recognized that, where the application of the *Dow Corning* or other applicable factors leads to the conclusion that the third-party releases should not be approved, the court can nevertheless approve the releases with the consent of the releasing parties. The rationale for allowing consensual third-party releases is that the affected parties are bound by their consensual agreement.").

played an extensive and integral role in the Debtors' restructuring and all parties in interest benefit from the Plan and the significant contributions of the Released Parties in furtherance thereof, which contributions include a capital infusion through the Rights Offering, which is backstopped by the Rights Offering Backstop Parties, and the commitments to provide the AHG Exit Facility and the Alternative Exit Debt Financing. These contributions will allow for a holistic restructuring that will enable the Debtors to significantly reduce their funded debt obligations and have sufficient liquidity to operate after the Effective Date. Additionally, the Debtors' creditors support the Third-Party Release, as reflected by the fact that a total of 149 parties opted into the Third-Party Release.[41]

56. Based on the foregoing, the Third-Party Release is appropriate and justified under the circumstances, and should therefore be approved.

57. Exculpation. Article VIII.F contains an exculpation benefitting the Exculpated Parties for claims arising out of or relating to the Debtors, their Estates, the formulation, preparation, dissemination, negotiation, Filing, or termination of the Restructuring Support Agreement and related prepetition transactions, the Rights Offering Backstop Agreement, the DIP Tranche A Equity Participation, the Rights Offering, the Exit Facility, the Exit Facility Documents, the Exit Facility Commitment Letter, the New Organizational Documents, the DIP Facility, the DIP Facility Documents, the issuance of the Reorganized Enviva Inc. Interests, the Management Incentive Plan, the Global Settlement, the Disclosure Statement, the Plan, the Plan Supplement, the related agreements, instruments, and other documents (including the Definitive Documentation), the Overbid Process, the solicitation of votes with respect to the Plan, or the Restructuring, or any related contract, instrument, release or

[41] See Exhibit C to the Voting Declaration.

other agreement or document (including providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Exculpated Party on the Plan or the Confirmation Order in lieu of such legal opinion) created or entered into in connection with the Debtors' in or out-of-court restructuring efforts, the Disclosure Statement, the Plan, the Restructuring Support Agreement, the DIP Tranche A Equity Participation, the Rights Offering, the Rights Offering Backstop Agreement, the Exit Facility, the Exit Facility Documents, the Exit Facility Commitment Letter, the New Organizational Documents, the DIP Facility, the DIP Facility Documents, the issuance of the Reorganized Enviva Inc. Interests, the Management Incentive Plan, the Global Settlement, the related agreements, instruments, and other documents (including the Definitive Documentation), the Filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan or the Confirmation Order, including the issuance of Securities pursuant to the Plan, or the distribution of property under the Plan, the related agreements, instruments, and other documents (including the Definitive Documentation), or any other related agreement, act or omission, transaction, event or other occurrence related to the foregoing and taking place on or before the Effective Date (the "Exculpation"). The Exculpation carves out acts or omissions that are determined in a Final Order to have constituted knowing and intentional fraud, gross negligence, or willful misconduct.[42]

58. Unlike the Third-Party Release, the Exculpation does not affect the liability of third parties *per se*, but rather sets a standard of care of gross negligence, knowing

[42] The above description is only a summary of the Exculpation, which is qualified entirely by the language of the Exculpation and the applicable definitions in the Plan, which shall control.

and intentional fraud, or willful misconduct in hypothetical future litigation against an exculpated party for acts arising out of the Debtors' restructuring.[43]

59. A bankruptcy court has the power to approve an exculpation provision in a chapter 11 plan, as a chapter 11 plan cannot be confirmed unless the bankruptcy court finds that the plan has been proposed in good faith.[44] Thus, an exculpation provision represents a legal determination that flows from several different findings that a bankruptcy court must reach in confirming a plan, as well as the statutory exculpation in section 1125(e) of the Bankruptcy Code.[45] Once the court makes a good faith finding, it is appropriate to set the standard of care of the parties involved in the formulation of that chapter 11 plan.[46] Exculpation provisions, therefore, properly prevent future collateral attacks against estate fiduciaries and others that actively participate in a debtor's restructuring.

60. Exculpation provisions in chapter 11 plans are not uncommon, and are generally permissible, "so long as they are properly limited and not overly broad."[47] In this Circuit, the test frequently employed to determine whether a particular exculpation provision is "overly broad" considers whether the applicable exculpation provision (a) is narrowly tailored to meet the estate's needs, (b) is limited to parties that have performed necessary and valuable

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[43] *In re Health Diagnostic Lab'y, Inc*., 551 B.R. 218, 232 (Bankr. E.D. Va. 2016) ("The practical effect of a proper exculpation provision is not to provide a release for any party, but to raise the standard of liability of fiduciaries for their conduct during the bankruptcy case.")

[44] *See* 11 U.S.C. § 1129(a)(3).

[45] *See* 11 U.S.C. § 157(b)(2)(L).

[46] *See In re PWS Holding Corp*., 228 F.3d 224, 246-247 (3d Cir. 2000) (observing that creditors providing services to the debtors are entitled to a "limited grant of immunity . . . for actions within the scope of their duties . . . .").

[47] *In re Health Diagnostic Lab'y, Inc*., 551 B.R. at 232 ("Exculpation provisions in chapter 11 plans are not uncommon and 'generally are permissible, so long as they are properly limited and not overly broad.'")

duties in connection with the case, (c) is limited to acts and omissions taken in connection with the case; and (d) purports to release any prepetition claims.[48][49]

61. Here, the Exculpation is appropriate as it represents an integral component of the Plan and is the product of good faith, arm's-length negotiations among various parties (including the key constituents of the Chapter 11 Cases). The Exculpation in the Plan is extremely narrow, extending only to the Debtors, the Reorganized Debtors, the Committee and each of its current and former members, and the current and former Affiliates of each of the foregoing, as well as any directors, officers, and professionals thereof solely to the extent that such exculpated parties have performed duties in connection with these Chapter 11 Cases. It also is appropriately and narrowly tailored in time and scope[50] (*i.e.,* it excludes acts of knowing and intentional fraud, willful misconduct, or gross negligence and relates only to acts or omissions in connection with, or arising out of or related to, the Debtors' restructuring), and is authorized pursuant to the Court's authority under sections 105, 1123(b), 1125, and 1129(a)(1) of the Bankruptcy Code. Additionally, the Exculpation provides necessary and customary protections to those parties in interest (whether estate fiduciaries or otherwise) whose efforts were and continue to be vital to formulating and implementing the Plan — this is the exact sort of effort and investment exculpation is meant to encourage and protect and the Exculpated Parties should

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[48] *In re Nat'l Heritage Found., Inc*., 478 B.R. 216, 232-234 (Bankr. E.D. Va. 2012).

[49] Courts in this Circuit have approved exculpation for estate and non-estate fiduciaries. *In re Alpha Media Holdings LLC*, No. 21-30209 (KRH) (Bankr. E.D. Va. Apr. 1, 2021) [Docket No. 382] (confirming a Plan in which the definition of "Exculpated Party" encompassed non-estate fiduciaries); *In re Intelsat S.A.*, *et al*., No. 20-32299 (KLP) (Bankr. E.D. Va. Dec. 17, 2021) [Docket No. 3894] (same); *In re Chinos Holdings, Inc*., *et al*., 20-32181 (KLP) (Bankr. E.D. Va. Aug. 26, 2020) [Docket No. 880] (same); *In re Pier 1 Imports, Inc.*, No. 20-30805 (KRH) (Bankr. E.D. Va. Jul. 30, 2020) [Docket No. 967] (same).

[50] *See In re Chinos Holdings, Inc., et al*., No. 20-32181 (KLP), at 111 (Bankr. E.D. Va. Aug. 26, 2020) [Docket No. 880] (approving exculpation provision, over U.S. Trustee objection, which provided a carveout for "actions determined to constitute gross negligence, willful misconduct, or intentional fraud . . .").

not have to fear frivolous litigation arising out of the Plan they worked tirelessly and diligently to facilitate and implement.

62. All of the Debtors' key stakeholders support the Exculpation, including the Ad Hoc Group and the Committee. The Debtors received no objections to the Exculpation from any economic stakeholder despite providing ample notice of its terms to all parties in interest, including by listing the entire Exculpation in the Ballots, the Notice of Non-Voting Status, and the various opt-in forms.

63. For the reasons set forth above, the Exculpation is appropriate and the Debtors respectfully request that the Court approve the Exculpation.

64. Injunction. Article VIII contains an injunction provision that permanently enjoins all Entities who have held, hold, or may hold Claims, Interests, or Causes of Action that have been released, discharged, or are subject to exculpation are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Reorganized Debtors, the Released Parties, or the Exculpated Parties: (a) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action; (b) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action; (c) creating, perfecting, or enforcing any Lien or encumbrance of any kind against such Entities or the property or the estates of such Entities on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action; (d) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Entities or against the property of such Entities on

account of or in connection with or with respect to any such Claims, Interests, or Causes of Action; and (e) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action released or settled pursuant to the Plan. (the "Injunction").[51]

65. The Injunction is necessary to implement, preserve, and enforce the Plan's release, discharge, and exculpation provisions, which are integral to the Plan. Furthermore, the Injunction is properly tailored to achieve its objective and only encompasses Claims or Causes of Action that have been voluntarily released. The Court should, therefore, approve the Injunction in connection with approving the discharge, release, and exculpation provisions included in the Plan.

d. Section 1123(d): The Plan's Cure Process Is Appropriate under Section 1123(d)

66. Section 1123(d) of the Bankruptcy Code provides that amounts necessary to cure defaults under a plan shall be "determined in accordance with the underlying agreement and applicable nonbankruptcy law." 11 U.S.C. § 1123(d). Article V.D provides for the satisfaction of the Cure Claims associated with each Executory Contract or Unexpired Lease to be assumed in accordance with section 365(b)(1) of the Bankruptcy Code. *See* 11 U.S.C. § 365(b)(1). Specifically, the Debtors or the Reorganized Debtors, as applicable, shall pay the Cure Claims, if any, as indicated on the Cure Notice distributed to the counterparties of assumed Executory Contracts and Unexpired Leases, on the Effective Date.[52] Any disputed Cure Claim

[51] The above description is only a summary of the Injunction, which is qualified entirely by the language of the Injunction and the applicable definitions in the Plan, which shall control.

[52] *See* Plan Art. V.D; First Certificate of Service for the Cure and Rejection Notices; Second Certificate of Service for the Cure and Rejection Notices. The form of the cure notice was approved in the Disclosure Statement Order at paragraph 24 and Exhibit C thereto.

will be determined in accordance with the procedures set forth in Article V.D of the Plan and applicable law. As such, the Plan provides that the Debtors will cure, or provides adequate assurance that the Debtors will promptly cure, defaults with respect to assumed Executory Contracts or Unexpired Leases in compliance with section 365(b)(1) of the Bankruptcy Code. Accordingly, the Plan complies with section 1123(d) of the Bankruptcy Code.

67. Based upon the foregoing, the Plan complies fully with sections 1122 and 1123, and therefore satisfies the requirements of section 1129(a)(1) of the Bankruptcy Code.

ii. Section 1129(a)(2): The Debtors Have Complied with the Bankruptcy Code

68. As indicated by its legislative history, section 1129(a)(2) of the Bankruptcy Code requires compliance with the disclosure, solicitation, and voting requirements set forth in sections 1125 and 1126 of the Bankruptcy Code.[53]

1. Section 1125: Post-Petition Disclosure Statement and Solicitation

69. Section 1125 of the Bankruptcy Code prohibits the solicitation of acceptances or rejections of a plan "unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved, after notice and a hearing, by the court as containing adequate information." 11 U.S.C. § 1125(b). Section 1125 of the Bankruptcy Code ensures that parties in interest are fully

[53] *See* 11 U.S.C. § 1129(a)(2); *see also* H.R. Rep. No. 95-595, at 412 (1977) ("Paragraph (2) [of § 1129(a)] requires that the proponent of the plan comply with the applicable provisions of chapter 11, such as section 1125 regarding disclosure."); *See In re Manchester Oaks Homeowners Ass'n, Inc.*, No. 11-10179-BFK, 2014 WL 961167, at *22 (Bankr. E.D. Va. Mar. 12, 2014) ("Section 1125 of the Code, which itself is set out as a separate requirement for confirmation of a plan in [s]ection 1129(a)(2) of the Code (requiring that the plan proponent comply with applicable provisions of Title 11)."); *In re Cypresswood Land Partners*, 409 B.R. 396, 424 (Bankr. S.D. Tex. 2009) ("Bankruptcy courts limit their inquiry under § 1129(a)(2) to ensuring that the plan proponent has complied with the solicitation and disclosure requirements of § 1125.").

informed regarding the debtor's condition so that they may make an informed decision regarding whether to accept or reject the plan.

70. The Debtors have satisfied section 1125 of the Bankruptcy Code. The Court approved the Disclosure Statement as containing adequate information, and following the Court's entry of the Disclosure Statement Order, the Noticing and Claims Agent solicited and tabulated votes on the Plan consistent with the Court-approved Voting Procedures.[54] The Debtors, through the Noticing and Claims Agent, complied with the content and delivery requirements of the Disclosure Statement Order, thereby satisfying sections 1125(a) and (b) of the Bankruptcy Code. Further, the Debtors did not solicit acceptances of the Plan from any holder of a Claim before entry of the Disclosure Statement Order, and thus complied with section 1125(b) of the Bankruptcy Code. The Debtors also satisfied section 1125(c) of the Bankruptcy Code, which provides that the same disclosure statement must be transmitted to each holder of a claim or interest in a particular class. Accordingly, the Debtors have complied with the requirements of section 1125 of the Bankruptcy Code.

2. Section 1126: Acceptance of the Plan

71. Section 1126 of the Bankruptcy Code sets forth the procedures for soliciting votes on a plan and determining acceptance thereof. Pursuant to section 1126, only holders of allowed claims or equity interests in impaired classes of claims or equity interests that will receive or retain property under a plan on account of such claims or equity interests may vote to accept or reject such plan. *See* 11 U.S.C. §§ 1126(a), (f), and (g). As set forth above, the Debtors solicited acceptances of the Plan only from the Holders of Claims in the Voting Classes,

[54] *See generally* Voting Declaration.

which are the only Classes that are Impaired and entitled to vote on the Plan.[55] The Debtors did not solicit votes to accept or reject the Plan from the Holders of Claims and Interests in the Non-Voting Classes, all of which are either (a) Unimpaired and, therefore, deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code or (b) Impaired and presumed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code.

72. Sections 1126(c) and (d) of the Bankruptcy Code specify that holders of an impaired class of claims or interests must vote in favor of a plan by at least two-thirds in amount and more than one-half in number of the allowed claims, or interests, of such class to accept the plan. *See* 11 U.S.C. §§ 1126(c), (d). Of those who timely voted, Holders of Claims in Class 5 and Class 6 in excess of these statutory thresholds voted to accept the Plan. Based on the foregoing, the requirements of sections 1125 and 1126 of the Bankruptcy Code have been satisfied, and thus the Debtors have satisfied the requirements of section 1129(a)(2) of the Bankruptcy Code.

iii. Section 1129(a)(3): The Plan Has Been Proposed in Good Faith and Is Not by Any Means Forbidden by Law

73. Section 1129(a)(3) of the Bankruptcy Code requires that a plan be "proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1129(a)(3). Congress designed the section to "prevent abuse of the bankruptcy laws and protect jurisdictional integrity."[56] The Fourth Circuit has held that a plan is proposed in good faith "if there is a reasonable likelihood that the plan will achieve a result which is consistent with the objectives and purposes of the Bankruptcy Code."[57] To determine whether a plan seeks relief consistent

[55] *See* Voting Declaration at ¶¶ 9-11.

[56] *Crestar Bank* v. *Walker (In re Walker)*, 165 B.R. 994, 1001 (E.D. Va. 1994) (internal citations omitted).

[57] *Id.* at 1001 ("The overriding standard for good faith within the meaning of [section] 1129(a)(3) is whether 'there

with the Bankruptcy Code, courts consider the totality of the circumstances surrounding the development of the plan.[58] As a general rule, when a plan maximizes the economic return to creditors in light of the totality of the facts and circumstances of the case, the good faith standard is satisfied.[59]

74. The Plan satisfies section 1129(a)(3) of the Bankruptcy Code. Here, the Plan will enable the Debtors to substantially deleverage their balance sheet and, through the Rights Offering and incurrence of the Exit Facility, raise sufficient financing to fund the Debtors' emergence costs and go-forward operations. The Restructuring Support Agreement, the Plan, the Rights Offering Backstop Agreement, the Alternative Exit Debt Financing and the Alternative Exit Debt Financing Commitment Letter, the Global Settlement, and all related documents were negotiated, proposed, and entered into by the Debtors and the respective parties thereto in good faith and from arm's length bargaining positions, without any collusion, fraud, or attempt to take unfair advantage of any party. The support for the Plan in the aggregate from the Holders of Claims in Classes 5 and 6 is strong evidence that the Plan has a proper purpose and is likely to succeed. Finally, as set forth herein, the Plan complies with bankruptcy and applicable non-bankruptcy law. Accordingly, the Plan satisfies section 1129(a)(3) of the Bankruptcy Code.

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is a reasonable likelihood that the plan will achieve a result consistent with the standards prescribed under the Code.'" (internal citations omitted)).

[58] *Id.* at 1001 ("[W]hether a plan is filed in good faith is a matter to be assessed in view of the totality of the circumstances which necessitated the plan, in perspective of the purposes of the Bankruptcy Code").

[59] *In re Bennett*, No. 07-10864 (SSM), 2008 WL 1869308, at *2 (Bankr. E.D. Va. Apr. 23, 2008) (finding the good faith requirement met where "no evidence was presented at the [confirmation] hearing to show that the debtor had the financial ability to pay more on account of unsecured claims than proposed in his plan.").

iv. Section 1129(a)(4): The Plan Provides That Professional Fees and Expenses Are Subject to Court Approval

75. Section 1129(a)(4) of the Bankruptcy Code requires that "any payment made or to be made by the proponent . . . for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable."[60] As one court in the Fourth Circuit explained, legal fees and expenses must be approved by the court.[61] As to routine legal fees and expenses that have been approved as reasonable in the first instance, "the court will ordinarily have little reason to inquire further with respect to the amount charged."[62]

76. Article II.B of the Plan provides that all Professional Fees must be approved by the Court as reasonable pursuant to final fee applications, and Article XI.2 of the Plan provides that the Bankruptcy Court retains jurisdiction to "decide and resolve all matters related to the granting and denying, in whole or in part, of any applications for allowance of compensation or reimbursement of expenses to Professionals." Accordingly, the Plan satisfies Section 1129(a)(4), and no party has asserted otherwise.

v. Section 1129(a)(5): The Debtors Disclosed All Necessary Information Regarding Directors, Officers, and Insiders Prior to the Effective Date

77. Section 1129(a)(5) of the Bankruptcy Code requires that: (a) the plan proponent disclose the identity and affiliations of the proposed officers and directors of the reorganized debtors; (b) the appointment or continuation of such officers and directors be consistent with the interests of creditors and equity security holders and with public policy; and

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60 11 U.S.C. § 1129(a)(4).

61 *In re Sherwood Square Assocs*., 107 B.R. 872, 878 (Bankr. D. M.D. 1989).

62 *Mabey* v. *Southwest Elec. Power Co.* (*In re Cajun Elec. Power Coop., Inc*.), 150 F.3d 503, 517 (5th Cir. 1998).

(c) to the extent there are any insiders that will be retained or employed by the debtors, that there be disclosure of the identity and nature of any compensation of any such insiders.[63]

78. The Debtors included as part of the Plan Supplement, the identities of initial members of the New Board, to the extent known, and the governance term sheet. To the extent that the identities of specific board members are not yet known, the Debtors have disclosed the process by which the applicable directors will be selected. The governance term sheet included in the Plan Supplement provides that the New Board shall be comprised of up to seven directors, one of which shall be Glenn Nunziata, as the chief executive officer of the Reorganized Debtors, with the others to be appointed by creditors, or, as applicable, holders of the Reorganized Enviva Inc. Interests, as set forth therein. The manner of naming and selecting directors and officers provided in the Plan Supplement is consistent with public policy. Accordingly, the Plan satisfies section 1129(a)(5) of the Bankruptcy Code.

vi. Section 1129(a)(6): The Plan Does Not Contain Any Rate Changes

79. Section 1129(a)(6) of the Bankruptcy Code requires applicable government approval of "any rate change provided for in the plan."[64] Section 1129(a)(6) is inapplicable to these Chapter 11 Cases, as the Plan does not provide for any rate changes.

vii. Section 1129(a)(7): The Plan Satisfies the Best Interests Test

80. Section 1129(a)(7) of the Bankruptcy Code requires that, with respect to each impaired class of claims or interests, each individual holder of a claim or interest has either accepted the plan or will receive or retain property having a present value, as of the effective date of the plan, of not less than what such holder would receive if the debtor were liquidated under

63 11 U.S.C. § 1129(a)(5).

64 11 U.S.C. § 1129(a)(6).

chapter 7 of the Bankruptcy Code at that time.[65] The "best interests" test is satisfied where the estimated recoveries for a debtor's stakeholders in a hypothetical chapter 7 liquidation are less than or equal to the estimated recoveries for a holder of an impaired claim or interest under a debtor's plan of reorganization that rejects the plan.[66]

81. To demonstrate compliance with section 1129(a)(7) of the Bankruptcy Code, as set forth in Exhibit E to the Disclosure Statement, the Debtors, with the assistance of their advisors, have analyzed the probable result of a hypothetical chapter 7 liquidation of each of the Debtors' assets (the "Liquidation Analysis"). The Liquidation Analysis demonstrates that the Plan will provide all Holders of Claims and Interests with a recovery that is not less than what they would otherwise receive under a hypothetical chapter 7 liquidation. Subject to the assumptions and qualifications contained therein, the Liquidation Analysis establishes that all Holders of Claims and Interests in Impaired Classes will receive or retain property under the Plan valued, as of the Effective Date, in an amount greater than or equal to the value of what they would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code.

82. The Debtors' Liquidation Analysis is sound, reasonable, and incorporates justified assumptions and estimates regarding the liquidation of the Debtors' assets and claims, such as the (a) additional costs and expenses that would be incurred by the Debtors as a result of

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65 11 U.S.C. § 1129(a)(7).

66 *See Bank of Am. Nat'l Tr. & Sav. Ass'n* v. *203 N. LaSalle St. P'ship*, 526 U.S. 434, 442, 119 S. Ct. 1411, 1416 143 L. Ed. 2d 607 (1999) ("The 'best interests' test applies to individual creditors holding impaired claims, even if the class as a whole votes to accept the plan."); *In re A.H. Robins, Co. Inc*., 880 F.2d 694, 698 (4th Cir. 1989) (stating section 1129(a)(7)(A)(ii) requires that an impaired class of claims must "receive . . . under the Plan . . . property of a value . . . that is not less than the amount that . . . [it would] receive . . . if the debtor were liquidated under chapter 7") (citing 11 U.S.C. § 1129(a)(7)(A)(ii)); *In re Piece Goods Shops Co., L.P*., 188 B.R. 778, 791 (Bankr. M.D.N.C. 1995) ("The best interests test requires that each holder of a claim or interest in an impaired class accept the plan or, alternatively, receive or retain under the plan property having a present value at least equal to what the holder would receive or retain if the debtor were liquidated under chapter 7 on the effective date of the plan.").

a chapter 7 liquidation and (b) substantial increase in claims that may arise in a chapter 7 liquidation.[67] The Liquidation Analysis also takes into account various assumptions, including that (i) on the date of conversion to a chapter 7 liquidation, (a) the Debtors' operations and purchasing of raw material would cease, and the only funding available will come from the Debtors' current cash on hand and the liquidation proceeds, (b) the Court would appoint a Trustee who would commence liquidating and monetizing the Debtors' assets over a 3-month period (the "Marketing Period"), and (c) the wind-down of the Debtors' Estates would occur over a 3-month period concurrent with the Marketing Period. The assumptions and estimates in the Liquidation Analysis are appropriate in the context of these Chapter 11 Cases and are based upon the collective knowledge and expertise of the Debtors' management and advisors, all of whom have intimate knowledge of the Debtors' businesses and relevant industry or restructuring experience. Based on the foregoing, the Plan satisfies the requirements of the "best interests" test under section 1129(a)(7) of the Bankruptcy Code.

viii. Section 1129(a)(8): The Plan Has Been Accepted by an Impaired Voting Class

83. Section 1129(a)(8) of the Bankruptcy Code requires the following: "[w]ith respect to each class of claims or interests – (A) such class has accepted the plan; or (B) such class is not impaired under the plan."[68] As set forth above, all Voting Classes voted to accept the Plan well in excess of two-thirds in amount and one-half in number of Holders entitled to vote in such Classes who voted on the Plan.[69] Accordingly, the Debtors have satisfied the

[67] *See generally* Liquidation Analysis.

[68] 11 U.S.C. § 1129(a)(8).

[69] *See* Exhibit A to the Voting Declaration and footnote no. 13 above.

requirements of section 1129(a)(10) of the Bankruptcy Code, and can thus confirm the Plan notwithstanding the failure to satisfy section 1129(a)(8) of the Bankruptcy Code.

ix. Section 1129(a)(9): The Plan Provides for Payment in Full of All Allowed Priority Claims

84. Section 1129(a)(9) of the Bankruptcy Code requires that Claims entitled to priority under section 507(a) of the Bankruptcy Code be paid in full in Cash unless the holders thereof agree to a different treatment with respect to such Claims.[70] The Plan provides that Allowed Administrative Claims and Allowed Priority Tax Claims will be paid in full in Cash on or as soon as reasonably practicable after the Effective Date or, if not then due or Allowed, on or as soon as reasonably practicable after the date such Claim is due or becomes Allowed, or otherwise in the ordinary course of business or as agreed with the relevant Holder of such Claims, all consistent with sections 1129(a)(9)(A)-(C) of the Bankruptcy Code.

x. Section 1129(a)(10): At Least One Class of Impaired Claims Has Accepted the Plan

85. Section 1129(a)(10) of the Bankruptcy Code requires the affirmative acceptance of the Plan by at least one Class of impaired Claims, "determined without including any acceptance of the plan by any insider."[71] Class 5 and Class 6 are each Impaired and accepted the Plan, without including the acceptance of the Plan by any insiders in such Classes. Accordingly, the Plan satisfies section 1129(a)(10) of the Bankruptcy Code.

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[70] 11 U.S.C. § 1129(a)(9).

[71] 11 U.S.C. § 1129(a)(10); *see also, Grasslawn Lodging, LLC* v. *Transwest Resort Properties Inc*. (*In re Transwest Resort Properties, Inc*.), 881 F.3d 724, 730 (9th Cir. 2018) (concluding that the "per plan" approach is the "plain language" interpretation of section 1129(a)(10)); *In re Enron Corp.*, No. 01-16034, 2004 Bankr. LEXIS 2549, **235-36 (Bankr. S.D.N.Y. July 15, 2004) (holding that the "plain language and inherent fundamental policy" of section 1129(a)(10) permitted the confirmation of a joint plan for 177 debtors where at least one class of claims per plan voted to accept the plan.).

xi. Section 1129(a)(11): The Plan Is Feasible

86. Section 1129(a)(11) of the Bankruptcy Code requires the court to determine that a plan is feasible, and that "[c]onfirmation of the plan is not likely to be followed by [a] liquidation, or the need for further financial reorganization."[72] A debtor does not have to guarantee the success of a plan to demonstrate its feasibility under section 1129(a)(11) of the Bankruptcy Code.[73] Instead, courts will find that a plan is feasible if a debtor demonstrates a reasonable assurance that consummation of the plan will not likely be followed by a further need for financial reorganization. In other words, the Court must find that the Plan "offers a reasonable expectation of success."[74]

87. For purposes of determining the feasibility of the Plan, the Debtors' management prepared financial projections, with the assistance of its financial advisor, that were attached as Exhibit F to the Disclosure Statement (the "Financial Projections"). The Financial Projections were integral to the development of the Reorganized Debtors' valuation analysis performed by Lazard Frères & Co. LLC ("Lazard"), the Debtors' investment banker, that were attached to the Disclosure Statement as Exhibit G (the "Valuation Analysis").

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72 11 U.S.C. § 1129(a)(11).

73 *See Crestar Bank* v. *Walker (In re Walker)*, 165 B.R. 994, 1004 (E.D. Va. 1994) (Noting that the plan must "present a workable scheme of reorganization and operation from which there may be a reasonable expectation of success.") (internal citations omitted); *In re Save Our Springs (S.O.S.) All., Inc.*, 632 F.3d 168, 172 (5th Cir. 2011) ("To obtain confirmation of its reorganization plan, a debtor must show by a preponderance of the evidence that its plan is feasible, which means that it is 'not likely to be followed by . . . liquidation, or the need for further financial reorganization.'") (internal citation omitted).

74 *In re Travelstead*, 227 B.R. 638, 651 (D. Md. 1998) (quoting *In re Johns-Mansville Corp*., 843 F.2d 636, 649 (2d Cir. 1988)); *In re DeLuca*, No. 95-11893-AM, 1996 WL 910908 at *22 (Bankr. E.D. Va. Apr. 12, 1996) ("[T]he debtor must show more than a bare possibility of success; the debtor must show at least a reasonable likelihood of success, that is, that success is more likely than failure").

88. The Debtors firmly believe that the Reorganized Debtors will be able to make all payments required pursuant to the Plan and, therefore, that Confirmation of the Plan is not likely to be followed by liquidation or the need for further reorganization.[75]

89. The Plan eliminates approximately $1.4 billion of the Debtors' prepetition funded debt from its balance sheet. This massive deleveraging right-sizes the Debtors' balance sheet and will best-position the Reorganized Debtors for success post-emergence. As set forth in the Financial Projections, the Debtors thoroughly analyzed their ability to meet their obligations under the Plan and to continue as a going concern without the need for further financial restructuring. The Financial Projections demonstrate the Debtors ability to meet their obligations under the Plan.

90. The Plan is the product of extensive negotiations and discussions among the Debtors and their key stakeholders. The Debtors' stakeholders extensively reviewed the Financial Projections, and the Debtors' business plan, which ultimately resulted in the terms incorporated into the Plan. Indeed, the substantial majority of Holders of DIP Tranche A Claims have elected to participate in the DIP Tranche A Equity Participation, thereby evidencing their conviction that the Plan is feasible. Accordingly, the Plan satisfies the feasibility requirements of section 1129(a)(11) of the Bankruptcy Code.

xii. Section 1129(a)(12): All Statutory Fees Have Been or Will Be Paid under the Plan

91. Section 1129(a)(12) of the Bankruptcy Code requires the payment of all fees payable under section 1930 of title 28 of the United States Code, which are afforded priority

[75] *See* Confirmation Declaration at ¶ [64].

as administrative expenses.[76] In accordance with these sections, the Plan provides that all such fees due and payable before the Effective Date shall be paid by each of the Debtors or the Reorganized Debtors, as applicable, for each quarter, until the Chapter 11 Cases are converted, dismissed, or closed, whichever occurs first. *See* Plan Art. II.E. The Plan therefore complies with section 1129(a)(12) of the Bankruptcy Code.

xiii. Section 1129(a)(13): The Plan Does Not Modify Retiree Benefits

92. Section 1129(a)(13) of the Bankruptcy Code requires that the Plan provide for the continuation, after the Effective Date, of all retiree benefits.[77] The Plan satisfies the requirements of section 1129(a)(13) of the Bankruptcy Code because Article IV.S provides for the continuation of payment of retiree benefits after the Effective Date.

B. Section 1129(b): The Plan Satisfies the "Cram Down" Requirements

93. Under section 1129(b) of the Bankruptcy Code, the court may "cram down" a plan over the dissenting vote of an impaired class or classes of claims or interests as long as the plan does not "discriminate unfairly" and is "fair and equitable" with respect to such dissenting class or classes. By its express terms, section 1129(b) of the Bankruptcy Code is only applicable to a class of creditors or equity holders that rejects a plan.[78]

94. As discussed above, all Voting Classes voted to accept the Plan (collectively, the "Accepting Classes").[79] Accordingly, "cram down" is only relevant to Class 7 (Intercompany Claims), Class 8 (Section 510(b) Claims), Class 9 (Intercompany Interests), and

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[76] 11 U.S.C. §§ 1129(a)(12); 507(a)(2).

[77] 11 U.S.C. §§ 1129(a)(13); 1114.

[78] *See* 11 U.S.C. § 1129(b) ("[T]he court . . . shall confirm the plan notwithstanding the requirements of [section 1129(a)(8)] if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, *and has not accepted*, the plan.") (emphasis added).

[79] Excluding Classes of Claims with no voting Holders that have been eliminated for voting purposes.

Class 10 (Existing Equity Interests), which have been deemed under certain circumstances, to reject the Plan. The Plan may be confirmed as to each of these Classes pursuant to the "cram down" provisions of section 1129(b) of the Bankruptcy Code.

i. The Plan Does Not Discriminate Unfairly

95. "The Bankruptcy Code does not provide a standard for determining when 'unfair discrimination' exists."[80] Courts instead examine the facts and circumstances of a particular case to determine whether there is unfair discrimination.[81] The requirement that there be no unfair discrimination ensures that similarly situated creditors and interest holders do not receive materially different treatment under a proposed plan without a compelling justification.[82]

96. The Plan does not discriminate unfairly with respect to any Class. There is no unfair discrimination among the Accepting Classes, on the one hand, and the Classes of Claims that are Impaired under the Plan and are deemed, or may be Impaired under the Plan and are conclusively deemed, to reject the Plan (*i.e.*, Class 7 (Intercompany Claims), Class 8 (Section 510(b) Claims), Class 9 (Intercompany Interests), and Class 10 (Existing Equity Interests)) (the "Rejecting Classes"). Class 5 (Bond General Unsecured Claims) consists of all Claims

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[80] *See In re Idearc Inc.*, 423 B.R. 138, 171 (Bankr. N.D. Tex. 2009) (quoting *203 North LaSalle Street Ltd. Partn.*, 190 B.R. 567, 585 (Bankr. N.D. Ill. 1995)).

[81] *In re Bowles*, 48 B.R. 502, 507 (Bankr. E.D. Va. 1985) ("[W]hether or not a particular plan does [unfairly] discriminate is to be determined on a case-by-case basis . . . ."); *see also In re Kolton*, 1990 WL 87007 at *5-6 (Bankr. W.D. Tex. Apr. 4, 1990) (same); *In re Freymiller Trucking, Inc.*, 190 B.R. 913, 916 (Bankr. W.D. Okla. 1996), as modified (Jan. 10, 1996) (holding that a determination of unfair discrimination requires a court to "consider all aspects of the case and the totality of all the circumstances").

[82] *See In re Health Diagnostic Lab'y, Inc.*, 551 B.R. at 230 (explaining that "[a] plan unfairly discriminates . . . if similar claims are treated differently without a reasonable basis for the disparate treatment, or a class of claims receive consideration of a value that is greater than the amount of its allowed claims."); *see also In re Idearc Inc.*, 423 B.R. at 171 ("[T]he unfair discrimination standard prevents creditors and equity interest holders with similar legal rights from receiving materially different treatment under a proposed plan without compelling *justifications* for doing so.") (emphasis added); *Liberty Nat'l Enters.* v. *Ambanc La Mesa Ltd. P'ship* (*In re Ambanc La Mesa Ltd. P'ship*), 115 F.3d 650, 654 (9th Cir. 1997); *In re Aztec Co.*, 107 B.R. 585, 589-91 (Bankr. M.D. Tenn. 1989); *In re Johns-Manville Corp.*, 68 B.R. 618, 636 (Bankr. S.D.N.Y. 1986), *aff'd*, 78 B.R. 407 (S.D.N.Y. 1987), *aff'd sub nom. Kane v. Johns-Manville Corp.*, 843 F.2d 636 (2d Cir. 1988).

arising under the 2026 Notes Indenture, Bond Green Bonds Indenture, and the Epes Green Bonds Indenture, and provides the Holders thereunder with specific rights and obligations against the Debtors arising from their respective investments, as applicable. Among other things, (a) the Bond General Unsecured Claims benefit from guarantees given by numerous Debtors such that the Bond General Unsecured Claims are full and equal obligations of each obligor Debtor's estate and (b) the Bond General Unsecured Claims have already been allowed at each applicable Debtor in known amount pursuant to, among other things, the stipulations set forth in the Final DIP Order. By contrast, Class 6 (Non-Bond General Unsecured Claims) consists of a broad array of non-financial General Unsecured Claims held by, among others, trade creditors, suppliers, servicers, vendors, litigation claimants, and contract counterparties, who each generally have different rights and obligations governing their Claims but whose Claims share a common general unsecured priority. These Non-Bond General Unsecured Claims do not benefit from uniform guarantees, and in many instances, the allowance of such Claims remains subject to further proceedings. Class 7 (Intercompany Claims) are legally distinct from both of these Classes, as the Intercompany Claims consist of Claims held by and among the Debtors and their subsidiary entities against other Debtors. Class 8 (Section 510(b) Claims) consists of all Section 510(b) Claims. Class 9 (Intercompany Interests) represents Interests held in the Debtors by other Debtors. Finally, Class 10 (Existing Equity Interests) consists of all interests in Enviva Inc. that existed prior to the Effective Date. Class 10 (Existing Equity Interests) is legally distinct in nature from all other Classes, including Class 9 (Intercompany Interests). Class 10 represents all Interests in Enviva Inc., the "top" of the Debtors' corporate structure, which such Interests are publicly held by a broad array of Holders. Class 9 (Intercompany Interests) represents Interests held by Debtors in other Debtors. All Interests in Enviva Inc. are classified together and

afforded the same treatment under the Plan. Similarly, all Intercompany Interests are classified together and afforded the same treatment under the Plan. These Classes represent legally distinct Interests. Accordingly, there is no unfair discrimination among the Holders of Interests in Class 9 and Class 10.

97. Accordingly, there is no unfair discrimination among the Rejecting Classes and the Accepting Classes and there is a reasonable basis for the disparate treatment among those Classes. Thus, the Plan does not "discriminate unfairly" with respect to any impaired Classes of Claims or Interests.

ii. The Plan Is Fair and Equitable

98. Sections 1129(b)(2)(B)(ii) and 1129(b)(2)(C)(ii) of the Bankruptcy Code provide that a plan is fair and equitable with respect to a class of impaired unsecured claims or interests if under the plan no holder of any junior claim or interest will receive or retain property under the plan on account of such junior claim or interest.[83] In other words, a plan is "fair and equitable" with respect to an impaired class of claims or interests that rejects a plan if it follows the "absolute priority" rule.[84] The absolute priority rule mandates that a junior class of claims or interests cannot receive a distribution under the plan unless senior classes are rendered unimpaired or give their consent.[85]

99. Moreover, the Debtors' Valuation Analysis, which has not been challenged by any Objection, reflects a plan enterprise value insufficient to provide any recovery on account of the Debtors' Existing Equity Interests. There has been no assertion or evidence put forth in the Chapter 11 Cases that sufficient value exists to provide a recovery in respect of

[83] *See* 11 U.S.C. §§ 1129(b)(2)(B)(ii), (C)(ii).

[84] *See* 11 U.S.C. § 1129(b); *203 N. LaSalle St. P'ship*, 526 U.S. at 441-42.

[85] 11 U.S.C. § 1129(b).

such Existing Equity Interests or that, in the absence of providing such a recovery, any senior class is receiving a recovery in excess of payment in full in accordance with the absolute priority rule. To the contrary, the uncontroverted evidence before the Court establishes that unsecured claims in Class 5 and Class 6 (which have accepted the Plan) are significantly impaired.

100. Distributions under the Plan are made in the order of priority prescribed by the Bankruptcy Code and in accordance with the rule of absolute priority.

101. The "fair and equitable" rule is satisfied as to the Classes that are deemed to reject the Plan (*i.e.*, the Rejecting Classes), as no Claims and Interests junior to each such Class, as applicable, will receive or retain any property under the Plan on account of such junior Claims or Interests. The Plan provides that on the Effective Date, all Intercompany Claims shall be adjusted, Reinstated, compromised, or discharged, and all Intercompany Interests shall be Reinstated and otherwise unaffected by the Plan or canceled in exchange for replacement equity interests in the applicable Reorganized Debtor. *See* Plan Art. III.B.7 and 9. To the extent Reinstated, Intercompany Interests and Intercompany Claims are Unimpaired solely to preserve the Debtors' corporate structure and internal business operations, and Holders of such Intercompany Interests shall not otherwise receive or retain any property on account of such Intercompany Interests. The option to reinstate these Intercompany Interests and Intercompany Claims is designed to allow the Debtors to preserve their holding company structure, to the extent applicable, and business operations instead of having to reconstitute a new one or recreate their internal business operations and relationships.[86]

[86] *See Ion Media Networks, Inc.* v. *Cyrus Select Opportunities Master Fund Ltd.* (*In re Ion Media Networks, Inc.*), 419 B.R. 585, 601 (Bankr. S.D.N.Y. 2009) ("[R]etention of intercompany equity interests for holding company purposes constitutes a device utilized to allow the Debtors to maintain their organizational structure and avoid the unnecessary cost of having to reconstitute that structure.").

102. Courts have explained that this type of "technical preservation of equity" does not violate the absolute priority rule because it is simply a "means to preserve the corporate structure that does not have any economic substance" and "does not enable any junior creditor or interest holder to retain or recover any value under the Plan."[87] This reasoning similarly applies to the preservation of Intercompany Claims between Debtors and other Debtors and their non-Debtor affiliates, as the sole purpose of maintaining such claims is to preserve the corporate structure and the intercompany business relationships therein. The Plan is thus "fair and equitable" as to the Rejecting Classes. Moreover, no senior creditor will receive in excess of the full value of its Claims under the Plan.

103. Because the Plan does not discriminate unfairly and is fair and equitable, the Plan satisfies the "cram down" requirements of section 1129(b) of the Bankruptcy Code and may be confirmed.

C. Section 1129(c): The Plan Is the Only Plan Currently on File

104. The Plan is the only plan filed in these Chapter 11 Cases and, accordingly, section 1129(c) of the Bankruptcy Code does not apply.

D. Section 1129(d): The Purpose of the Plan Is Not Tax or Securities Law Avoidance

105. The principal purpose of the Plan is not the avoidance of taxes or the avoidance of section 5 of the Securities Act, and no governmental unit has objected to Confirmation of the Plan on such grounds. The Plan, therefore, satisfies the requirements of section 1129(d) of the Bankruptcy Code.

[87] *Id.* (rejecting argument that a plan violated the absolute priority rule "because it preserves intercompany interests without paying [more senior claims] in full").

E. Section 1129(e): Does Not Apply to the Plan

106. The provisions of section 1129(e) of the Bankruptcy Code apply only to a "small business case." These Chapter 11 Cases are not "small business cases" and, accordingly, section 1129(e) of the Bankruptcy Code has no application to the Plan.

F. The Plan's Settlements and Compromises Are Reasonable and Satisfy Bankruptcy Rule 9019

107. The Plan embodies a good faith compromise of Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that a creditor or an Interest holder may have with respect to any Allowed Claim or Allowed Interest or any distribution to be made on account thereof. "The standard for evaluating the validity of a settlement contained in a Chapter 11 plan is the same as the standard for evaluating a settlement between a debtor and another party outside the context of a plan . . . . Stated differently, settlement provisions in a Chapter 11 plan must satisfy the standards used to evaluate compromises under [Bankruptcy] Rule 9019."[88]

108. The decision to approve a compromise under Bankruptcy Rule 9019 is committed to the Court's "sound discretion."[89]

109. Generally, the court evaluates the: "(a) probability of success in litigating the claim subject to settlement, with due consideration for the uncertainty in fact and law; (b) potential difficulties in any collection; (c) complexity of the litigation and the expense, inconvenience, and delay necessarily attending it; and (d) paramount interest of the creditors."[90]

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[88] *In re Bigler LP*, 442 B.R. 537 at 543 n.6 (Bankr. S.D. Tex. 2010) (citing *In re MCorp Fin., Inc.*, 160 B.R. 941, 951 (S.D. Tex. 1993)).

[89] *In re Cajun Elec. Power Coop., Inc.*, 119 F.3d 349,355 (5th Cir. 1997) (quoting Connecticut Gen. Life Ins. Co. v. United Cos. Fin. Corp. (*In re Foster Mortgage Corp.)*, 68 F.3d 914, 917 (additional citations omitted)).

[90] *Arrowsmith v. Mallory* (*In re Health Diagnostic Lab'y, Inc.*), 588 B.R. 154, 169 (Bankr. E.D. Va. 2018); *see also In re Frye*, 216 B.R. 166,174 (Bankr. E.D. Va. 1997) (applying the four-factor test for settlement

110. Although the debtor bears the burden of establishing that a settlement is fair and equitable based on the balance of the above factors, "the [debtor's] burden is not high."[91] Indeed, the court need only determine that the settlement does not "fall beneath the lowest point in the range of reasonableness."[92] Here, the Plan's settlements and compromises, including the Global Settlement, are the result of months of good faith, arm's-length negotiations amongst the parties to these settlements. The Plan's settlements and compromises, among other things:

- provide for a clear path to the Plan and the Debtors' exit from chapter 11 with a deleveraged balance sheet, providing the Debtors with stability to run their business going forward;
- represent a comprehensive restructuring transaction, which facilitates a significant deleveraging of the Debtors, through the significant reduction of the Debtors' balance sheet liabilities;
- provide significantly improved recoveries to holders of Claims in Class 5 (Bond General Unsecured Claims) and Class 6 (Non-Bond General Unsecured Claims) as compared to their potential recovery in a liquidation; and
- have the support of the Committee, the RWE Committee, and Ad Hoc Group.

111. Further, the Plan's settlements and compromises enabled the Debtors to build additional support for the Plan and resolve all potential disputes with certain stakeholders, which, in the case of the Committee and the RWE Committee, will prevent the needless expense of additional discovery in connection with Confirmation and on a post-emergence

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approval); *Fetner* v. *Hotel St. Capital, L.L.C.* (*In re Fetner),* No. 17-1306-KHK, 2021 WL 1022585, at *3 (E.D. Va. Feb 5, 2021), *aff'd*, No. 21-1285, 2021 WL 4922324 (4th Cir. Oct. 21, 2021) (citing the Frye four-factor test); *In re Tovan Constr., Inc.,* No. 19-12423-KHK, 2021 WL 1235359, at *2 (Bankr. E.D. Va. Mar. 31, 2021) (same).

91 *See In re Roqumore*, 393 B.R. 474, 480.

92 *Arrowsmith v. Mallory* (*In re Health Diagnostic Lab'y, Inc.*), 588 B.R. at 162 ("a settlement agreement can be approved so long as it does not fall below the lowest point in the range of reasonableness") (internal quotations omitted).

basis, as applicable. The Plan's settlements and compromises embody a number of compromises made by the Debtors and their stakeholders, including the following:

- members of the Ad Hoc Group provided and fully backstopped the Debtors' critical post-petition financing through the DIP Facility and permitted the Debtors' use of cash collateral;
- members of the Ad Hoc Group have (a) supported the transactions set forth in the Restructuring Support Agreement and the Plan, (b) agreed to compromise or waive certain of their own rights or Claims, and (c) agreed to participate in the DIP Tranche A Equity Participation, at such Holder's election;
- members of the Ad Hoc Group have provided and fully backstopped the Debtors' critical post-emergence debt and equity financing through the Exit Facility Commitment Letter and Backstop Commitment Agreement;
- the Committee and the RWE Committee have agreed to (a) support the Plan to reflect the Global Settlement and (b) withdraw and/or suspend all investigation, discovery and/or litigation relating to the Restructuring, the Plan, or the Confirmation of the Plan; and
- the Committee, the Appellant in the DIP Appeal, has agreed to stay the DIP Appeal and hold such litigation in abeyance until the Effective Date at which time the Committee will cause the DIP Appeal to be dismissed with prejudice.

112. The Debtors, the Ad Hoc Group, the Committee and the RWE Committee are all represented by experienced and competent counsel and advisors who vigorously negotiated these settlements and compromises, as applicable, at arms-length. All parties and their counsel and advisors agree that approval of the Plan and the compromises contained therein is a significantly better outcome than the alternatives. Accordingly, the Plan's settlements and compromises collectively represent a reasonable resolution of the complex issues raised in these Chapter 11 Cases, result in a Plan that is fair, equitable and in the best interest of the Debtors' Estates, and should therefore be approved by the Bankruptcy Court.

II. THE REMAINING OBJECTIONS SHOULD BE OVERRULED

113. The Debtors received four formal Objections to Confirmation of the Plan, along with several objections to proposed Cure Amounts, and a handful of informal comments to

the Plan. The Debtors have incorporated comments from the Office of the United States Trustee for the Eastern District of Virginia (the "U.S. Trustee"), which have fully resolved the U.S. Trustee's concerns with the Plan. The Debtors have worked constructively with these parties to narrow issues and, where possible, reach consensual resolutions, including through the addition of provisions in the Confirmation Order. As set forth in the Response Chart, the Debtors have resolved all but 1 of the Objections. The Debtors continue to work with objecting parties to resolve the outstanding Objections in advance of the Confirmation Hearing. Nevertheless, to the extent the Debtors do not resolve the outstanding Objections, the Debtors respectfully request that the Court overrule the outstanding Objections for the reasons set forth herein and in the Response Chart and confirm the Plan.

III. THE DEBTORS' ENTRY INTO, AND PERFORMANCE UNDER, THE ALTERNATIVE EXIT DEBT FINANCING COMMITMENT LETTER, AND THE INCURRENCE, PAYMENT AND ALLOWANCE OF RELATED FEES, PREMIUMS, AND EXPENSES ARISING THEREUNDER AS SUPERPRIORITY EXPENSE CLAIMS, SHOULD BE APPROVED.

A. Entry Into the Alternative Exit Debt Financing Commitment Letter Is an Exercise of the Debtors' Sound Business Judgment.

114. Pursuant to section 363(b)(1) of the Bankruptcy Code, a debtor in possession "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Courts in the Fourth Circuit have granted a debtor's request to use property of the estate outside of the ordinary course of business pursuant to section 363(b) of the Bankruptcy Code upon a finding that such use is supported by sound business reasons. *See In re MCSGlobal Inc.*, 562 B.R. 648, 654 (Bankr. E.D. Va. 2017) ("A sale of substantially all of the assets of the estate prior to plan confirmation requires a "sound business purposes, ..."""); *see also In re Watertech Holdings, LLC*, 619 B.R. 324, 335 (Bankr. D.S.C. 2020) (same); *In re Merit Grp., Inc.*, 464 B.R. 240, 251 (Bankr. D.S.C. 2011)

(same); *WBQ P'ship v. Va. Dep't of Med. Assistance Servs.* (*In re WBQ P'ship*), 189 B.R. 97, 102 (Bankr. E.D. Va. 1995) (same).

115. Once a debtor articulates a valid business justification, "[t]he business judgment rule becomes 'a presumption that in making a business decision, the directors of a corporation acted on an informed basis, in good faith, and in honest belief that the action taken was in the best interests of the company.'" *In re Cir. City Stores, Inc.*, No. 08-35653-KRH, 2010 WL 2425957, at *3 (Bankr. E.D. Va. June 9, 2010) (quoting *Official Comm. of Subordinated Bondholders* v. *Integrated Res., Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992)). Importantly, the business judgment test is considered to be "deferential." *In re Alpha Nat. Res., Inc.*, 546 B.R. 348, 356 (Bankr. E.D. Va. 2016); *see also In re W.A. Mallory Co., Inc.*, 214 B.R. 834, 836 (Bankr. E.D. Va. 1997). "The Court should defer to the business judgment of the Debtors, unless 'the decision of the [Debtors] […] is so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice.'" *In re Cir. City Stores, Inc.*, 2010 WL 2425957, at *3 (Bankr. E.D. Va. June 9, 2010).

116. Section 105 of the Bankruptcy Code provides further support for entry of the Order. Section 105(a) of the Bankruptcy Code provides that a court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Pursuant to § 105(a), the bankruptcy courts have "broad equitable powers." *In re Pier 1 Imports, Inc.*, 615 B.R. 196, 202 n.7 (Bankr. E.D. Va. 2020); *see also In re Adamson Co., Inc.*, No. 94-30676-S, 1995 WL 17213897, at *4 (Bankr. E.D. Va. May 3, 1995) ("The equitable powers of § 105 'encourage courts to be innovative, and even original' in applying the Code") (quoting *Official Comm. of Equity Sec. Holders* v. *Mabey*, 832 F.2d 299, 302 (4th Cir.),

cert. denied 485 U.S. 962 (1988)). The Court is given these vast equitable powers to ensure that the Debtors are offered the benefits under the Bankruptcy Code.

117. Here, the Debtors respectfully submit that all substantive and procedural requirements for approval of the Alternative Exit Debt Financing and Alternative Exit Debt Financing Commitment Letter have already been met because (a) the Alternative Exit Debt Financing was expressly contemplated by the Amended Plan, (b) the Alternative Exit Debt Financing Commitment Letter and the material terms of the Alternative Exit Debt Financing were included in the Plan Supplement [Docket No. 1283], and (c) in accordance with Article IV.B.2.b of the Plan, no objections or issues with such documents have been raised. Moreover, the Alternative Exit Debt Financing fits squarely into the process by which the Debtors sought (and have now obtained) approved exit financing terms as a result of obtaining approval of the original Exit Facility Commitment Letter pursuant to the Backstop Order. Nevertheless, even if the Alternative Exit Debt Financing was put forth for *de novo* approval, the Debtors respectfully submit that they have more than met the burden for such approval, and for authority to enter into the Alternative Exit Debt Financing Commitment Letter.

118. The Debtors' entry into the Alternative Exit Debt Financing Commitment Letter is a reasonable and sound exercise of their business judgment and is necessary to secure the capital needed for the Debtors to emerge from Chapter 11 with a significantly deleveraged capital structure and sufficient liquidity to sustain their businesses. The Alternative Exit Debt Financing will allow the Debtors to consummate the Plan, which is already supported by a supermajority of the holders of the Debtors' funded debt.

119. The terms of the Alternative Exit Debt Financing are favorable to the Debtors vis-à-vis the terms of the AHG Exit Facility for a number of reasons. *First,* the

Alternative Exit Debt Financing will provide the Debtors with substantially greater projected post-emergence liquidity relative to the AHG Exit Facility, as the terms of the Alternative Exit Debt Financing contemplate that 100% of the interest rate payments for the first twelve (12) months of the term can be paid-in-kind (vs. in cash). The positive impact on liquidity (potentially in excess of $75 million) would provide the Debtors with greater operational flexibility over the next twelve (12) months, a critical time for the Debtors' business as they approach the final phase of construction of the Epes plant, to be followed by an operational ramp-up period shortly thereafter.

120. *Second*, the Alternative Exit Debt Financing has superior pricing relative to the AHG Exit Facility at higher leverage thresholds. For example, at a total net leverage ratio greater than 3.5x (currently forecasted in the Debtors' business plan until year-end 2026), the Alternative Exit Debt Financing contemplates a lower interest rate than the AHG Exit Facility. As another example, under the Alternative Exit Debt Financing, the Debtors would pay a flat 2.50% rate on unused commitments under the Delayed Draw Term Loans (as defined in the Term Sheet), versus 50% of the drawn margin under the AHG Exit Facility (which equates to a range of 2.75% to 4.50%).

121. *Third*, the Alternative Exit Debt Financing does not include a ratings requirement, whereas the AHG Exit Facility requires the Debtors to obtain a credit rating within 60 days after the Effective Date. Thus, entering into the Alternative Exit Debt Financing would reduce administrative burden and cost on the Debtors relative to the AHG Exit Facility.

122. Notably, the Alternative Exit Debt Financing is also attractively priced for the Debtors, with fees, premiums and other amounts payable in respect of the commitments limited to a 2.5% Upfront Premium (as defined in the Alternative Exit Debt Financing

Commitment Letter) along with customary expense reimbursement and indemnification rights substantially similar to those already approved in connection with the AHG Exit Facility. Unlike a traditional backstop or commitment premium, the Upfront Premium is payable *only* in the event that the Alternative Exit Debt Financing actually closes, or in the highly unlikely circumstance that the Debtors terminate the Alternative Exit Debt Financing Commitment Letter to pursue a different financing in its place. Further, at 2.5%, the Upfront Premium is substantially lower than the 5.5% of aggregate premiums that were already approved by this Court in connection with the AHG Exit Facility, and lower still than fees and premiums approved in other cases. *See, e.g.*, *In re Dynata, LLC, et al.*, No. 24-11057 (TMH) (Bankr. D. Del. Jul. 2, 2024) [Docket No. 195] (approving backstop premium of 9% of first out new money term loans); *In re Venator Materials PLC, et al.*, No. 23-90301(DRJ) (Bankr. S.D. Tex. Jul. 25, 2023) [Docket No. 344] (approving backstop premium of 10%); *In re Envision Healthcare Corp.,* No. 23-90342 (CML) (Bankr. S.D. Tex. Oct. 10, 2023) [Docket No. 1687] (approving commitment providing for 7.5% exit term loan backstop fee paid-in-kind).

123. For these reasons, the Debtors have determined, in their business judgment and in consultation with their advisors, that their agreements to pay the Alternative Exit Debt Financing Obligations were essential and an appropriate means to obtain the Alternative Debt Financing Facility commitments. Compared to the substantial value provided by the Alternative Exit Facility, the Alternative Exit Debt Financing Obligations are a reasonable use of estate resources and, to the extent the Alternative Exit Debt Financing Expense Reimbursement and Alternative Exit Debt Financing Indemnification Obligations are payable in cash, they should be accorded superpriority administrative expense claims of the Debtors' estate under sections 503(b) and 507 of the Bankruptcy Code, junior only to the DIP Superpriority Claims and the

507(b) Claims (each as defined in the Final DIP Order), and subject to the Carve-Out (as defined in the Final DIP Order) in accordance with the terms of the Alternative Exit Debt Financing Commitment Letter, and subject to the Carve-Out (as defined in the Final DIP Order). The Alternative Exit Debt Financing Obligations are actual and necessary costs, not only for preserving the Debtors' estates, but also for maximizing their value and enhancing overall stakeholder recoveries.

124. The Alternative Exit Debt Financing Commitment Parties would not have agreed to provide the Alternative Exit Debt Financing, which, again, affords the Debtors superior terms to those originally committed through the AHG Exit Facility without the Debtors agreeing to incur the Alternative Exit Debt Financing Obligations.

125. Accordingly, the Debtors have properly exercised their business judgment and acted in accordance with the terms of the Plan and the Backstop Order by seeking alternative financing proposals and ultimately negotiating and entering into the advantageous Alternative Exit Debt Financing Commitment. The Alternative Exit Debt Financing Obligations are a necessary inducement to the Alternative Exit Debt Financing Commitment. Accordingly, Alternative Exit Debt Financing Obligations are in the best interests of the Debtors and their estates and should be approved. For the reasons set forth above, the Debtors respectfully request that, in confirming the Plan, the Court affirm the financing "toggle" contemplated therein, and grant approval of the Debtors entry into the Alternative Exit Debt Financing and the Alternative Exit Debt Financing Commitment Letter.

IV. GOOD CAUSE EXISTS TO WAIVE THE STAY OF THE CONFIRMATION ORDER

126. Bankruptcy Rule 3020(e) provides that "[a]n order confirming a plan is stayed until the expiration of 14 days after the entry of the order, unless the court orders

otherwise."[93] Bankruptcy Rules 6004(h) and 6006(d) provide similar stays to orders authorizing the use, sale, or lease of property (other than cash collateral) and orders authorizing a debtor to assign an executory contract or unexpired lease under section 365(f) of the Bankruptcy Code. Each rule also permits modification of the imposed stay upon court order.

127. The Debtors submit that good cause exists for waiving and eliminating any stay of the proposed Confirmation Order pursuant to Bankruptcy Rules 3020, 6004, and 6006 so that the proposed Confirmation Order will be effective immediately upon its entry.[94] The Restructuring contemplated by the Plan was vigorously negotiated among sophisticated parties and is premised on preserving the value of the Debtors as a going-concern. Given the complexity of the Plan and the various transactions implicated by the Plan, the Debtors may take certain steps to effectuate the Plan in anticipation of and to facilitate the occurrence of the Effective Date so that the Effective Date can occur promptly. Therefore, good cause exists to waive any stay imposed by the Bankruptcy Rules so that the proposed Confirmation Order may be effective immediately upon its entry. Given that time is of the essence, immediate effectiveness of the Confirmation Order would facilitate the Debtors' efforts to take the steps necessary to consummate the Plan by the Effective Date.

128. As set forth above, given the Debtors' extensive efforts to provide the parties in each of the Voting Classes, as well as their other stakeholders, a full measure of adequate notice, staying the Confirmation Order will not serve any due process-related ends.

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[93] Fed. R. Bankr. P. 3020(e).

[94] *See, e.g.*, *In re Intelsat S.A., et al.*, No. 20-32299 (KLP) (Bankr. E.D. Va. Dec. 17 2021) [Docket No. 3894] (waiving stay of confirmation order so effective date can occur promptly); *In re Alpha Media Holdings LLC*, No. 21-30209 (KRH) (Bankr. E.D. Va. Apr. 1 2021) [Docket No. 382] (waiving stay of confirmation order given complexity of the plan and the transactions contemplated by the plan, so that debtors can facilitate the occurrence of the effective date).

Accordingly, the Debtors request a waiver of any stay imposed by the Bankruptcy Rules so that the proposed Confirmation Order may be effective immediately upon its entry.

[*Remainder of Page Intentionally Left Blank*]

CONCLUSION

WHEREFORE, the Plan complies with all of the requirements of the Bankruptcy Code, and the Debtors respectfully request that this Court overrule the remaining Objections and enter the Confirmation Order to confirm the Plan.

Dated: November 12, 2024
Richmond, Virginia

/s/ *Jeremy S. Williams*

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Exhibit A

Confirmation Objection Chart

Formal Confirmation Objections[1]

	Objector	*Status*[2]	*Proposed Language / Objection*	*Debtors' Response to Objection*
I.	**SUBSTANTIVE PLAN OBJECTIONS**			
1.	**Michael Caradimitropoulo** ("Caradimitropoulo") [Docket No. 1192; objected *pro se*]	Unresolved	Caradimitropoulo objects to confirmation of the Plan because the Initial Plan provided existing shareholders with common equity in the Reorganized Debtors, and the Plan amended such treatment to provide that existing shareholders will receive no recovery. Caradimitropoulo requests that the Court not confirm the Plan unless existing shareholders are granted 10% of the Reorganized Debtors.	As discussed in detail in the Confirmation Brief, the Plan satisfies each requirement for Confirmation under Section 1129 of the Bankruptcy Code and should be confirmed. First, the Plan is fair and equitable. The Debtors filed the Initial Plan in accordance with the Restructuring Support Agreement which set forth the framework for recoveries based on, among other things, an estimated range of total enterprise value (the "Enterprise Value"). Over the course of these Chapter 11 Cases, the Enterprise Value and the underlying information on which it is based upon, changed, and accordingly, so did the recoveries available to Holders of Claims and Interests. As a result of these changes, the Debtors and its key stakeholders engaged in hard-fought, good faith negotiations that resulted in the Global Settlement, which was incorporated into the Plan. The Global Settlement is value-maximizing and provides meaningful distributions to Holders of General Unsecured Claims. While the distributions to Holders of General Unsecured Claims under the Plan is more than what was

[1] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Plan or in the *Debtors' Memorandum of Law in Support of Confirmation of the Amended Joint Chapter 11 Plan of Reorganization of Enviva Inc. and Its Debtor Affiliates* (the "Confirmation Brief").

[2] As used herein, a status of "Resolved" indicates that the Debtors have resolved the applicable objection as it relates to Confirmation of the Plan. In certain instances, the Debtors and the objecting party may have outstanding disputes involving similar issues in other matters before the Bankruptcy Court, and each of the parties' rights in such other matters are reserved.

	Objector	*Status*[2]	*Proposed Language / Objection*	*Debtors' Response to Objection*
				originally contemplated under the Initial Plan, such Holders are still only recovering, on average, less than 8% on their Claims. As such, in accordance with the rule of absolute priority, Holders of Existing Equity Interests are not entitled to receive or retain any property under the Plan on account of their junior interest. Second, the Plan satisfies the "best interests test," as the Liquidation Analysis demonstrates that the Plan will provide all Holders of Claims and Interests—including Holders of Existing Equity Interests—with a recovery that is not less than what they would otherwise receive under a hypothetical chapter 7 liquidation. In such a scenario, the Holders of Existing Equity Interests would receive nothing on account of their interests. Importantly, the Debtors have worked tirelessly to ensure that the transactions contemplated by the Plan will maximize recoveries for the benefit of all of the Debtors' stakeholders. Indeed, the Debtors conducted an Overbid Process, consistent with the terms of the Final DIP Order and the Overbid Procedures, to solicit bids for a value-maximizing alternative transaction. No Bids for an Alternative Transaction that would satisfy, among other things, all outstanding DIP Obligations and prepetition funded debt Claims were received, and accordingly, the Overbid Process concluded on November 4, 2024.[3] Accordingly, the Plan provides the best actionable restructuring transactions available to

[3] *See Notice of Conclusion of the Overbid Process* [Docket No. 1275].

	Objector	*Status*[2]	*Proposed Language / Objection*	*Debtors' Response to Objection*
				the Debtors' Estates and maximizes value for the benefit of all parties in interest. For the reasons set forth in the Confirmation Brief and herein, Caradimitropoulo's objection to Confirmation of the Plan should be overruled.
2.	**Southampton County Treasurer** ("Southampton") [Docket No. 1280]	Resolved	Southampton objects to confirmation of the Plan as it, among other things, excludes interest on claims unless specifically provided for, proposes to divest Southampton of its first priority statutory tax lien for $1,988,282.40 in machinery and tool taxes currently assessed upon the Debtors' property and abrogates Southampton's setoff rights under section 553 of the Bankruptcy Code.	The Debtors included language in the Confirmation Order to address this objection. Confirmation Order ¶ 167.
3.	**Sampson County, North Carolina** ("Sampson") [Docket No. 1281]	Resolved	Sampson objects to confirmation of the Plan because it fails to condition the assumption of the Debtors' incentive agreement with Sampson on (a) payment of the taxes and fees owed thereunder in full and (b) assumption of the Agreement *cum onere* and satisfaction of all conditions set forth in the Agreement, regardless of when they arose.	The Debtors included language in the Confirmation Order to address this objection. Confirmation Order ¶ 166.
4.	**Orion Construction, LLC** ("Orion") Docket No. 1295	Resolved	Orion objects to confirmation of the Plan as it relates to the enforcement of Orion's mechanics liens unless appropriate language is included in the confirmation order that permits Orion to take all necessary steps to enforce the mechanics liens in the appropriate forum.	The Debtors included language in the Confirmation Order to address this objection. Confirmation Order ¶ 165.
II.	**CURE OBJECTIONS**			
1.	**Caterpillar Financial Services Corporation** ("CFSC")	Resolved	CFSC asserts that the Cure Notice does not attribute each CFSC Lease to the correct Debtor. The Cure Notice lists unexpired leases or executory contracts	The Debtors and CFSC have agreed on revisions to the Schedule of Assumed Executory Contracts

	Objector	*Status*[2]	*Proposed Language / Objection*	*Debtors' Response to Objection*
	[Docket No. 1284]		that CFSC has with non-Debtor entities. The Finance Lease between Enviva Pellets Waycross, LLC and CFSC dated June 4, 2021 is listed on the Cure Notice, but is not an executory contract, and the serial numbers of several pieces of equipment leased to the Debtors by CFSC are listed incorrectly on the Cure Notice.	and Unexpired Leases, to be filed with an amended Plan Supplement.
2.	**Lhoist SA & Carrières et Fours à Chaux Dumont-Wautier SA** ("Lhoist") [Docket No. 1285]	Unresolved	Lhoist asserts that the Debtors' proposed cure amount is incorrect, the Debtors have not provided adequate assurance of future performance under the applicable supply agreement, and that the Debtors must make clear that all amendments to such supply agreement will also be assumed.	The Debtors are working to consensually resolve this objection or will seek a hearing in front of the Court at a later date.
3.	**Columbia Gas of Virginia, Inc.** ("Columbia Gas") [Docket No. 1286]	Resolved	Columbia Gas asserts that the Debtors' proposed cure amount is incorrect and that the Debtors have not provided sufficient adequate assurance as expressly set forth in the applicable agreement between the parties.	The Debtors and Columbia Gas have agreed on a revised cure amount that will be reflected in the Schedule of Assumed Executory Contracts and Unexpired Leases, to be filed with an amended Plan Supplement.
4.	**Alabama Power Company** ("Alabama Power") [Docket No. 1288]	Unresolved	Alabama Power asserts that the Debtors' proposed cure amount is incorrect.	The Debtors are working to consensually resolve this objection or will seek a hearing in front of the Court at a later date.
5.	**Rockwell Automation Inc.** ("Rockwell") [Docket 1289]	Likely Resolved	Rockwell objects to the assumption of its agreement unless the Debtors (a) pay Rockwell the cure amount that is due and owing in full, (b) assume the agreement *cum onere*, and (c) satisfy all conditions set forth in the agreement.	The Debtors anticipate this objection will be resolved.
6.	**John Deere Construction and Forestry Company & Deere Credit, Inc.** ("Deere") [Docket No. 1290]	Likely Resolved	Deere asserts that the Debtors' proposed cure amount is insufficient, that certain go-forward monthly payments under its agreements be corrected, that certain agreements listed on the cure schedule should be treated as secured claims under the Plan rather than assumed contracts, and that to the extent the Debtors	The Debtors are working to consensually resolve this objection and anticipate submitting a consent order to the Court to address the issues raised in the objection.

	Objector	*Status*[2]	*Proposed Language / Objection*	*Debtors' Response to Objection*
			seek to reinstate and/or leave unimpaired, or to pay out in full in Cash, Deere's filed oversecured claims in relation to certain contracts, then all outstanding attorney fees that have accrued under those contracts in relation to this case must be paid.	
7.	**SHW Storage and Handling Solutions, Inc.** ("SHW") [Docket No. 1291]	Likely Resolved	SHW does not object to the assumption of its agreement, but seeks confirmation that the Debtors will pay post-petition amounts coming due under its agreement in the ordinary course.	The Debtors anticipate this objection will be resolved.