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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)

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

[1] Due to the large number of Debtors in these jointly administered chapter 11 cases, a complete list of the Debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list may be obtained on the website of the Debtors' claims and noticing agent at www.kccllc.net/enviva. The location of the Debtors' corporate headquarters is: 7272 Wisconsin Avenue, Suite 1800, Bethesda, MD 20814.

Upon the motion (the "***DIP Motion***")[2] of Enviva Inc. and each of its affiliates that are debtors and debtors-in-possession (each, a "***Debtor***" and collectively, the "***Debtors***") in the above-captioned cases (the "***Chapter 11 Cases***"), pursuant to sections 105, 361, 362, 363(b), 363(c)(2), 363(k), 363(m), 364(c)(1), 364(c)(2), 364(c)(3), 364(e), 503, 506(c), 507 and 552 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "***Bankruptcy Code***"), rules 2002, 4001, 6003, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the "***Bankruptcy Rules***"), and rules 2002-1, 4001-1(b), 4002-1(i) and 9013-1 of the Local Rules of the United States Bankruptcy Court for the Eastern District of Virginia (the "***Local Rules***"), seeking entry of this final order (this "***Final Order***"), among other things:

(i) authorizing Enviva Inc. (in such capacity, the "***DIP Borrower and Issuer***", or the "***Company***") to obtain postpetition financing (the "***DIP Financing***") pursuant to a multi-tranche, delayed-draw debtor-in-possession credit and note purchase agreement, consisting of loans and notes in an aggregate principal amount of $500 million (the commitments in respect thereof, the "***DIP Commitment***" and, such loans and notes, the "***DIP Loans and Notes***") from the DIP Creditors (as defined in the DIP Facility Agreement (as defined herein)), of which $150 million became available immediately upon entry of the Interim Order (as defined below) (the "***Initial Draw***"), and the remainder will, upon entry of this Final Order, be available through a maximum of four additional draws, in each case subject to the terms and conditions set forth herein and in that certain Debtor-in-Possession Credit and Note Purchase Agreement attached as **Exhibit 1** to the *Interim 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. 103] (the "***Interim Order***" and, together with this Final Order, the "***Orders***") (as amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the "***DIP Facility Agreement***"), by and among the Company, the DIP Creditors, and Acquiom Agency Services LLC ("***Acquiom***") and Seaport Loan Products LLC ("***Seaport***"), as co-administrative agents (together, the "***Administrative Agent***"), and Acquiom as the collateral agent (in such

[2] Capitalized terms used but not defined herein are given the meanings ascribed to such terms in the DIP Facility Agreement (as defined herein) or the Declarations (as defined herein).

capacity, the "***Collateral Agent***" and, together with the Administrative Agent, the "***DIP Agent***" and, the DIP Agent together with the DIP Creditors, the "***DIP Secured Parties***");

(ii) authorizing the Debtors, other than, for the avoidance of doubt, any Excluded Subsidiaries (collectively, the "***DIP Guarantors***" and, together with the DIP Borrower and Issuer, the "***DIP Credit Parties***") to jointly and severally guarantee the DIP Loans and Notes and the other DIP Obligations (as defined herein);

(iii) authorizing the DIP Credit Parties, as applicable, to execute, deliver and perform under the DIP Facility Agreement and all other credit documentation related to the DIP Loans and Notes, including, without limitation, as applicable, security agreements, pledge agreements, debentures, mortgages, control agreements, mortgages, deeds, charges, guarantees, promissory notes, intercompany notes, certificates, instruments, intellectual property security agreements, notes, fee letters and such other documents that are ancillary or incidental thereto or that may be reasonably requested by the DIP Secured Parties in connection with the DIP Loans and Notes, in each case, as amended, restated, supplemented, waived or otherwise modified from time to time in accordance with the terms thereof and hereof (collectively, together with the DIP Facility Agreement and the Orders, the "***DIP Documents***");

(iv) authorizing the DIP Credit Parties, as applicable, to issue, incur and guarantee all loans, notes, advances, extensions of credit, financial accommodations, reimbursement obligations, fees and premiums (including, without limitation, commitment fees, upfront fees, exit fees, backstop fees or premiums, administrative agency fees and any other fees payable pursuant to the DIP Documents), the equity participation election rights and terms, costs, expenses and other liabilities and all other obligations (including indemnities and similar obligations, whether contingent or absolute) due or payable to or for the benefit of any DIP Secured Party or any indemnified party related thereto under the DIP Documents (collectively, the "***DIP Obligations***"), and to perform such other and further acts as may be required, necessary, desirable or appropriate in connection therewith;

(v) subject and subordinate to the Carve-Out (as defined herein), granting to the DIP Agent, for the benefit of itself and the DIP Secured Parties, allowed superpriority administrative expense claims pursuant to section 364(c)(1) of the Bankruptcy Code in respect of all DIP Obligations of the DIP Credit Parties;

(vi) subject and subordinate to (A) the Carve-Out, (B) the Prepetition Liens solely on the Prepetition Collateral (each as defined herein), (C) the NMTC Liens (as defined herein) solely on the NMTC Collateral (as defined herein) and (D) such other security interests and liens as and solely to the extent set forth herein, granting to the DIP Agent, for the benefit of itself and the DIP Secured Parties, valid, enforceable, non-avoidable and automatically perfected liens

pursuant to sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code on all DIP Collateral (as defined herein), including, without limitation, all Cash Collateral (as defined herein) and any Avoidance Proceeds (as defined herein), on the terms described herein;

(vii) authorizing the DIP Agent (acting with the consent or at the direction of the Required DIP Creditors (as defined in the DIP Facility Agreement)), to take all commercially reasonable actions to implement and effectuate the terms of the Orders;

(viii) (A) waiving the Debtors' right to surcharge the Prepetition Collateral (as defined herein) and the DIP Collateral (together, the "***Collateral***") pursuant to section 506(c) of the Bankruptcy Code and (B) finding that any "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply;

(ix) determining that the equitable doctrine of "marshaling" and other similar doctrines (A) with respect to the DIP Collateral for the benefit of any party other than the DIP Secured Parties and (B) with respect to any of the Prepetition Collateral (including the Cash Collateral) for the benefit of any party other than the Prepetition Secured Parties (as defined herein), including in respect of their Adequate Protection Obligations, shall not apply;

(x) approving the syndication of the Company Allocated Portion of the DIP Financing and authorizing the Debtors, the Information Agent (as defined in the Syndication Materials (as defined herein)), and the other parties involved in the syndication of the Company Allocated Portion of the DIP Financing to take all actions they deem to be reasonably necessary or advisable to syndicate the Company Allocated Portion of the DIP Financing, including pursuant to the Syndication Materials that were approved by the entry of the Interim Order;

(xi) authorizing the Debtors to use proceeds of the DIP Loans and Notes and Cash Collateral solely in accordance with the DIP Documents, including those provisions relating to the use of proceeds in accordance with the Approved Budget (as defined herein) (subject only to permitted variances);

(xii) authorizing the Debtors to pay the principal, interest, fees, expenses, reimbursements and other amounts payable under the DIP Documents as such become earned, due and payable to the extent provided in, and in accordance with, the DIP Documents;

(xiii) subject to the restrictions set forth in the DIP Documents, authorizing the Debtors to use the Prepetition Collateral, including Cash Collateral of the Prepetition Secured Parties under the Prepetition Senior Secured Credit Documents (as defined herein) and the NMTC Participants (as defined herein) under the NMTC Loan Documents (as defined herein), and provide Adequate Protection (as defined herein), as applicable, to the Prepetition Secured Parties

and the NMTC Participants, in each case solely to the extent of any diminution in value, if any, as of the Petition Date, of their respective interests in the Prepetition Collateral (including Cash Collateral) and the NMTC Collateral (including Cash Collateral), as applicable, for any reason provided for under the Bankruptcy Code, including resulting from the imposition of the automatic stay under section 362 of the Bankruptcy Code (the "***Automatic Stay***") or the Debtors' use, sale or lease of the Prepetition Collateral (including Cash Collateral) or the NMTC Collateral (including Cash Collateral), as applicable;

(xiv) vacating and modifying the Automatic Stay to the extent set forth herein and as necessary to permit the Debtors, the DIP Secured Parties, and the Prepetition Secured Parties to implement and effectuate the terms and provisions of the DIP Documents, including this Final Order, and, subject to the terms of the DIP Documents (including the Orders), to deliver any Termination Declaration (as defined herein) or other notices in relation thereto and the exercise of certain rights and remedies, as contemplated hereby and by the other DIP Documents; and

(xv) waiving any applicable stay (including under Bankruptcy Rule 6004) and providing for immediate effectiveness of this Final Order.

The Court having considered the relief requested in (a) the DIP Motion; (b) the exhibits attached thereto; (c) the *Declaration of Christian Tempke in Support of the Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Superpriority Administrative Expense Claims, (III) Granting Adequate Protection to Prepetition Secured Parties, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief* [Docket No. 29]; (d) the *Declaration of Mark Rajcevich in Support of the Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Superpriority Administrative Expense Claims, (III) Granting Adequate Protection to Prepetition Secured Parties, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief* [Docket No. 30]; (e) the *Declaration of Glenn Nunziata in Support of Chapter 11 Petitions* [Docket No. 27]; (f) the *Declaration of Mark Rajcevich in Support of Chapter 11 Petitions* [Docket No. 28] ((c) –(f) collectively,

the "***Declarations***"); (g) the available DIP Documents; (h) the *Limited Objection of the NMTC Participants to Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Superpriority Administrative Expense Claims, (III) Granting Adequate Protection to Prepetition Secured Parties, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief* [Docket No. 258] (the ***NMTC Participants Limited Objection***"), *Preliminary Objection of the Official Committee of Unsecured Creditors to Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Superpriority Administrative Expense Claims, (III) Granting Adequate Protection to Prepetition Secured Parties, and (IV) Modifying the Automatic Stay, and (V) Granting Related Relief* [Docket No. 375], and *Supplemental Objection of the Official Committee of Unsecured Creditors to Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Superpriority Administrative Expense Claims, (III) Granting Adequate Protection to Prepetition Secured Parties, and (IV) Modifying the Automatic Stay, and (V) Granting Related Relief* [Docket No. 390]; and (i) the other evidence submitted and arguments made at the interim hearing held on March 14, 2024 (the "***Interim Hearing***") and the final hearing held on May 1, 2024 (the "***Final Hearing***"); and the Court having entered the Interim Order; and due and sufficient notice of the Final Hearing having been given in accordance with Bankruptcy Rules 2002 and 4001(b), (c) and (d), and all applicable Local Rules; and the Final Hearing having been held and concluded; and all objections, if any, to the interim and final relief requested in the DIP Motion having been withdrawn, resolved or overruled by the Court; and it appearing that approval of the relief requested in the DIP Motion is fair and

reasonable and in the best interests of the Debtors, their estates, creditors and other parties in interest, and is essential for the continued operation of the Debtors' businesses and the preservation of the value of the Debtors' assets; and it appearing that the DIP Credit Parties' entry into the DIP Documents is a sound and prudent exercise of the Debtors' business judgment; and after due deliberation and consideration, and good and sufficient cause appearing therefor.

BASED UPON THE RECORD ESTABLISHED AT THE INTERIM HEARING AND THE FINAL HEARING, THE COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:[3]

A. *Petition Date*. On March 12, 2024 (the "***Petition Date***"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Eastern District of Virginia (the "***Court***"). On March 14, 2024 the Court entered an order approving the joint administration of the Chapter 11 Cases.

B. *Debtors in Possession*. The Debtors have continued in the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Cases.

C. *Jurisdiction and Venue*. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated August 15, 1984. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). The Debtors have confirmed their consent, pursuant to Bankruptcy Rule 7008, to the entry of a final order by the Court in connection with the Motion to

[3] The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014, and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon entry hereof. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue in the Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory bases for the relief provided herein are sections 105, 361, 362, 363(b), 363(c), 363(e), 363(k), 363(m), 364(c), 364(e), 503, 506, 507 and 552 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004 and 9014 and Local Rules 2002-1, 4001-1(b), 4002-1(i) and 9013-1.

D. *Committee Formation*. On March 25, 2024, the United States Trustee for the Eastern District of Virginia (the "***U.S. Trustee***") appointed an official committee of unsecured creditors in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code (a "***Creditors' Committee***").

E. *Notice*. The Final Hearing was held pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2). Proper, timely, adequate and sufficient notice of the DIP Motion and the Final Hearing has been provided in accordance with the Interim Order, the Bankruptcy Code, Bankruptcy Rules and Local Rules, and no other or further notice was or is required to enter this Final Order.

F. *Cash Collateral*. As used herein, the term "***Cash Collateral***" shall mean all of the Debtors' cash, wherever located and held, including cash in deposit accounts, that constitutes or will constitute "cash collateral" of any of the Prepetition Secured Parties, the NMTC Participants and DIP Secured Parties within the meaning of section 363(a) of the Bankruptcy Code. The term "***Prepetition Cash Collateral***" shall mean all Prepetition Collateral that constitutes Cash Collateral. The term "***Prepetition NMTC Cash Collateral***" shall mean all NMTC Collateral that constitutes Cash Collateral.

G. *Debtors' Stipulations*. Subject to the provisions and limitations contained in paragraph 18 hereof (including the Challenge Period, as defined therein), and after consultation

with their attorneys and financial advisors, and in exchange for and as a material inducement to the Prepetition Secured Parties and the NMTC Participants to consent to the Debtors' access to the Cash Collateral, to the extent set forth herein, the Debtors admit, stipulate and agree that:

(a) *Prepetition Senior Secured Credit Agreement*. Pursuant to that certain Credit Agreement, dated as of April 9, 2015 (as amended, supplemented, restated, amended and restated or otherwise modified prior to the Petition Date, including, without limitation, by that certain Twelfth Amendment to Credit Agreement, dated as of February 24, 2023, the "***Prepetition Senior Secured Credit Agreement***," and collectively with the other Loan Documents (as defined in the Prepetition Senior Secured Credit Agreement) and any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, amended and restated, supplemented, waived or otherwise modified prior to the Petition Date, the "***Prepetition Senior Secured Credit Documents***"), by and among (i) Enviva Inc. (in such capacity, the "***Prepetition Administrative Borrower***"), (ii) Enviva, LP (in such capacity, the "***Prepetition Subsidiary Borrower***" and, together with the Prepetition Administrative Borrower, the "***Prepetition Borrowers***"), (iii) each of the other Guarantors (as defined in the Prepetition Senior Secured Credit Agreement) listed therein (collectively, in such capacity, the "***Prepetition Senior Secured Guarantors***"[4] and, together with the Prepetition Borrowers, the "***Prepetition Loan Parties***"),[5] (iv) Ankura Trust Company, LLC, as successor administrative agent and collateral

[4] As of the Petition Date, the Prepetition Senior Secured Guarantors include: Enviva GP, LLC; Enviva Partners Finance Corp.; Enviva Holdings GP, LLC; Enviva Holdings, LP; Enviva Shipping Holdings, LLC; Enviva Management Company, LLC; Enviva Aircraft Holdings Corp.; Enviva Development Finance Company, LLC; Enviva Pellets, LLC; Enviva Pellets Lucedale, LLC; Enviva Pellets Waycross, LLC; Enviva Port of Pascagoula, LLC; Enviva Energy Services, LLC; Enviva Pellets Greenwood, LLC; and Enviva Pellets Bond, LLC.

[5] For the avoidance of doubt, the Prepetition Loan Parties do not include Enviva Pellets Epes Finance Company, LLC (as further described and defined below, the "***Prepetition NMTC Source Loan Borrower***"), Enviva Pellets Epes, LLC (as further described and defined below, the "***Prepetition NMTC QLICI Borrower***"),

agent (in such capacities, the "***Prepetition Agent***") and (v) the lenders (the "***Prepetition Secured Lenders***" and, together with the Prepetition Agent, the "***Prepetition Secured Parties***") and other parties thereto, the Prepetition Secured Lenders have extended credit in the form of term and revolving loans to the Prepetition Loan Parties under the Prepetition Senior Secured Credit Documents;

(b) *Prepetition Senior Secured Debt.* As of the Petition Date, the Prepetition Loan Parties were justly and lawfully indebted and liable to the Prepetition Secured Parties without defense, challenge, objection, claim, counterclaim or offset of any kind, in the aggregate principal amount of not less than (i) $103,950,000 of the outstanding Term Loans (as defined in the Prepetition Senior Secured Credit Agreement) and (ii) $568,545,880 of the outstanding Revolving Loans *plus* $1,384,870 in face amount of Letters of Credit outstanding (each as defined in the Prepetition Senior Secured Credit Agreement), in each case pursuant to and in accordance with the terms of, the Prepetition Senior Secured Credit Documents, plus accrued and unpaid interest thereon and fees, expenses (including any attorneys', accountants', appraisers' and financial advisors' fees and expenses, in each case, that are chargeable or reimbursable under the Prepetition Senior Secured Credit Documents), costs, charges, indemnities and other Obligations (as defined in the Prepetition Senior Secured Credit Agreement) incurred in connection therewith as provided in the Prepetition Senior Secured Credit Documents (collectively, the "***Prepetition Senior Secured Debt***"), which Prepetition Senior Secured Debt has been guaranteed on a joint and several basis by each of the Prepetition Senior Secured Guarantors. As of the Petition Date (and without limitation of any earlier accrual), (i) interest on all outstanding Prepetition Senior Secured Debt,

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or Enviva Pellets Epes Holdings, LLC (collectively, such special purpose entities and Debtors being the "***NMTC Debtor SPEs***" and each an "***NMTC Debtor SPE***").

including all principal and interest was subject to accrual at a rate inclusive of default interest under Section 2.07 of the Prepetition Senior Secured Credit Agreement and (ii) (other than, as of the Petition Date, the $20,000,000 of existing Term SOFR Loans (as defined in the Prepetition Senior Secured Credit Agreement) (the "***Existing SOFR Loans***")) was accruing with application of ABR (as defined in the Prepetition Senior Secured Credit Agreement) and no Prepetition Senior Secured Debt (including the Existing SOFR Loans) is or has been permitted to be incurred, converted into, or continued as, Term SOFR Loans, and in accordance with Section 2.10(viii) of the Prepetition Senior Secured Credit Agreement, notice to such effect was duly given pursuant to Section 2.10(viii) of the Prepetition Senior Secured Credit Agreement prior to the Petition Date;

(c) *Validity of Prepetition Senior Secured Debt*. The Prepetition Senior Secured Debt constitutes legal, valid, binding and non-avoidable obligations of the Prepetition Borrowers and Prepetition Senior Secured Guarantors, as applicable, enforceable in accordance with the terms of the Prepetition Senior Secured Credit Documents, and no portion of the Prepetition Senior Secured Debt or any payment made to the Prepetition Secured Parties, in their capacities as such, or applied to or paid on account of the Obligations (as defined in the Prepetition Senior Secured Credit Agreement) owing under the Prepetition Senior Secured Credit Documents prior to the Petition Date is subject to any contest, attack, rejection, recovery, reduction, defense, counterclaim, offset, subordination (whether equitable, contractual, or otherwise), recharacterization, avoidance or other Claim (as defined in the Bankruptcy Code), cause of action (including any claims or avoidance actions under chapter 5 of the Bankruptcy Code), choses in action or other challenge of any nature under the Bankruptcy Code or applicable non-bankruptcy law;

(d) *Validity, Perfection and Priority of Prepetition Liens*. Pursuant to and in connection with the Prepetition Senior Secured Credit Documents, the Prepetition Loan Parties

granted to the Prepetition Agent, for the benefit of the Prepetition Secured Parties, a security interest in and fully perfected first priority continuing liens (the "***Prepetition Liens***") on the Collateral (as defined in the Prepetition Senior Secured Credit Agreement) (which, for the avoidance of doubt, includes certain Cash Collateral) and all proceeds, products, accessions, rents, and profits thereof, in each case whether then owned or existing or thereafter acquired or arising (collectively, the "***Prepetition Collateral***").[6] As of the Petition Date, the Prepetition Liens are valid, binding, properly perfected, enforceable and are not subject to avoidance, recharacterization, subordination (whether equitable, contractual, or otherwise), contest, recovery, attack, disgorgement, effect, rejection, reduction, disallowance, impairment, counterclaim, offset, crossclaim, defense, Claim (as defined in the Bankruptcy Code), cause of action (including any claims or avoidance actions under chapter 5 of the Bankruptcy Code), choses in action or other challenge of any nature under the Bankruptcy Code or applicable non-bankruptcy law (excluding, for the avoidance of doubt, the Permitted Encumbrances, as defined in the Prepetition Senior Secured Credit Agreement);

(e) *2026 Senior Notes*. Pursuant to that certain indenture for the 6.5000% senior notes due 2026 (collectively, the "***2026 Senior Notes***"), dated as of December 9, 2019 (the "***2026 Senior Notes Indenture***" and, collectively with any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, amended and restated, supplemented, waived, or otherwise modified prior to the Petition Date, the "***2026 Senior Notes Documents***"), by and among (i) Enviva, LP and Enviva Partners Finance Corp.,

[6] The Debtors make no stipulation with respect to whether the Prepetition Liens on the Prepetition Collateral encumber long-term ground leases for the use of a port in Pascagoula, Mississippi and a wood pellet production facility in Waycross, Georgia and the right to operate such wood pellet production facility (including the equipment and certain ancillary facilities titled to the lessor), the rent abatements, and the DIP Credit Parties' purchase option). All rights of parties in interest with respect to such matters hereby reserved.

(together, the "***2026 Senior Notes Issuers***"), (ii) the Guarantors (as defined in the 2026 Senior Notes Indenture, the "***2026 Senior Notes Guarantors***")[7] and (iii) Wilmington Savings Fund Society, FSB as successor trustee (the "***2026 Senior Notes Trustee***") for the benefit of the holders of the 2026 Senior Notes (the "***2026 Senior Noteholders***"), the 2026 Senior Notes Issuers issued the 2026 Senior Notes to the 2026 Senior Noteholders and the 2026 Senior Notes Guarantors guaranteed on a joint and several basis the obligations of the 2026 Senior Notes Issuers under the 2026 Senior Notes Indenture and the other 2026 Senior Notes Documents;

(f) *2026 Senior Notes Debt*. The 2026 Senior Notes Issuers and the 2026 Senior Notes Guarantors were justly and lawfully indebted and liable to the 2026 Senior Noteholders in the aggregate principal amount of not less than $750,000,000.00 of the outstanding 2026 Senior Notes, which notes were issued by the 2026 Senior Notes Issuers pursuant to and in accordance with the terms of, the 2026 Senior Notes Documents, plus accrued and unpaid interest (including default rate interest) thereon and any fees, expenses (including any attorneys', accountants', appraisers' and financial advisors' fees and expenses, in each case, that are chargeable or reimbursable under the 2026 Senior Notes Documents), disbursements, costs, charges, indemnities and other Obligations (as defined in the 2026 Senior Notes Indenture) under the 2026 Senior Notes Documents (whether arising before or after the Petition Date) (collectively, the "***2026 Senior Notes Debt***"), which 2026 Senior Notes Debt has been guaranteed on a joint and several basis by each of the 2026 Senior Notes Guarantors;

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[7] As of the Petition Date, the 2026 Senior Note Guarantors include Enviva GP, LLC, Enviva Holdings GP, LLC, Enviva Holdings, LP, Enviva Shipping Holdings, LLC, Enviva Management Company, LLC, Enviva Aircraft Holdings Corp., Enviva, LP, Enviva Development Finance Company, LLC, Enviva Pellets, LLC, Enviva Pellets Lucedale, LLC, Enviva Pellets Waycross, LLC, Enviva Port of Pascagoula, LLC, Enviva Energy Services, LLC, Enviva Pellets Greenwood, LLC, and Enviva Pellets Bond, LLC. For the avoidance of doubt, none of the NMTC Debtor SPEs is a 2026 Senior Notes Issuer or a 2026 Senior Notes Guarantor.

(g) *Validity of the* 2026 *Senior Notes Debt*. The 2026 Senior Notes Debt constitutes legal, valid, binding and non-avoidable obligations of the 2026 Senior Notes Issuers and the 2026 Senior Notes Guarantors, as applicable, in accordance with the 2026 Senior Notes Documents, enforceable in accordance with their terms, and no portion of the 2026 Senior Notes Debt or any payment made to the 2026 Senior Noteholders or the 2026 Senior Notes Trustee, in their capacities as such, or applied to or paid on account of the Obligations (as defined in the 2026 Senior Notes Indenture) owing under the 2026 Senior Notes Documents prior to the Petition Date, is subject to any contest, attack, rejection, recovery, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other Claim (as defined in the Bankruptcy Code), cause of action or other challenge of any nature under the Bankruptcy Code or applicable non-bankruptcy law;

(h) *Epes Green Bonds*. Pursuant to (i) that certain indenture of trust, dated as of July 1, 2022 (the "***Epes Green Bonds Indenture***"), as supplemented or otherwise modified from time to time, by and between the Industrial Development Authority of Sumter County (the "***Epes Green Bonds Issuer***"), a public corporation organized under the laws of the State of Alabama, and Wilmington Trust, National Association, as trustee (the "***Epes Green Bonds Trustee***"), and certain other holders thereof (the "***Epes Green Bonds Holders***") and (ii) that certain unsecured loan and guaranty agreement, dated as of July 1, 2022 (the "***Epes Green Bonds Loan Agreement***") (as amended, restated or otherwise modified from time to time (and, together with the Epes Green Bonds Indenture and other agreements executed in connection therewith, the "***Epes Green Bonds Documents***") by and between (x) the Epes Green Bonds Issuer, (y) Enviva Inc. and (z) the Guarantors (as defined in the Epes Green Bonds Loan Agreement, the "***Epes Green Bonds***

Guarantors"),[8] the Epes Green Bonds Issuer loaned the proceeds from the sale of the bonds (the "***Epes Green Bonds***") to Enviva Inc. and Enviva Inc. borrowed the same from the Epes Green Bonds Issuer. The Epes Green Bonds Guarantors guaranteed on a joint and several basis the obligations of Enviva Inc. under the Epes Green Bonds Documents;

(i) *Epes Green Bonds Debt.* Enviva Inc. and the Epes Green Bonds Guarantors were justly and lawfully indebted and liable to the Epes Green Bonds Holders pursuant to the Epes Green Bonds Documents in the aggregate principal and accrued and unpaid interest amount of not less than $250,000,000 plus any additional fees and expenses (including any attorneys', accountants', appraisers' and financial advisors' fees and expenses that are chargeable or reimbursable under the Epes Green Bonds Documents) now or hereafter due under the Epes Green Bonds Documents (collectively, the "***Epes Green Bonds Debt***");

(j) *Validity of the Epes Green Bonds Debt*. The Epes Green Bonds Debt constitutes legal, valid, binding and non-avoidable obligations of Enviva Inc. and the Epes Green Bonds Guarantors, as applicable, in accordance with the Epes Green Bonds Documents, enforceable in accordance with their terms and no portion of the Epes Green Bonds Debt or any payment made to the Epes Green Bonds Issuer or Epes Green Bonds Trustee, in their capacities as such (including for the benefit of the Epes Green Bonds Holders), or applied to or paid on account of the obligations owing under the Epes Green Bonds Documents prior to the Petition Date, is subject to any contest, attack, rejection, recovery, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other Claim (as defined in the Bankruptcy Code),

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[8] As of the Petition Date, the Epes Green Bonds Guarantors include Enviva GP, LLC, Enviva Partners Finance Corp., Enviva Aircraft Holdings Corp., Enviva Holdings GP, LLC, Enviva Holdings, LP, Enviva Shipping Holdings, LLC, Enviva Management Company, LLC, Enviva Development Finance Company, LLC, Enviva Pellets, LLC, Enviva, LP, Enviva Pellets Lucedale, LLC, Enviva Pellets Waycross, LLC, Enviva Port of Pascagoula, LLC, Enviva Pellets Bond, LLC, Enviva Pellets Greenwood, LLC, and Enviva Energy Services, LLC. For the avoidance of doubt, none of the NMTC Debtor SPEs is an Epes Green Bonds Guarantor.

cause of action or other challenge of any nature under the Bankruptcy Code or applicable non-bankruptcy law;

(k) *Epes Green Bonds Restricted Cash*. During the pendency of the Chapter 11 Cases, the Debtors shall have no right to use the monies that are held in the Construction Fund (as defined in the Epes Green Bonds Indenture), and the Debtors' authority to use any Cash Collateral as provided herein does not include the Debtors' use of any such monies;

(l) *Bond Green Bonds*. Pursuant to (i) that certain indenture of trust, dated as of November 1, 2022 (the "***Bond Green Bonds Indenture***"), as supplemented or otherwise modified from time to time, by and between the Mississippi Business Finance Corporation (the "***Bond Green Bonds Issuer***"), a public corporation organized under the laws of the State of Mississippi, and Wilmington Trust, National Association, as trustee (the "***Bond Green Bonds Trustee***"), and certain other holders thereof (the "***Bond Green Bonds Holders***," and, collectively, with the Bond Green Bonds Issuer, the Bond Green Bonds Trustee, the Epes Green Bonds Holders, the Epes Green Bonds Issuer, the Epes Green Bonds Trustee, the 2026 Senior Noteholders, the 2026 Senior Notes Issuers and the 2026 Senior Notes Trustee, the "***Prepetition Unsecured Notes Parties***") and (ii) that certain unsecured loan and guaranty agreement, dated as of November 1, 2022 (the "***Bond Green Bonds Loan Agreement***") (as amended, restated or otherwise modified from time to time and, together with the Bond Green Bonds Indenture and other agreements executed in connection therewith, the "***Bond Green Bonds Documents***" and, together with the Prepetition Senior Secured Credit Documents, the Senior Notes Documents and the Epes Green Bonds Documents, the "***Prepetition Debt Documents***") by and between (x) the Bond Green Bonds Issuer, (y) Enviva Inc. and (z) the Guarantors (as defined in the Bond Green Bonds Loan

Agreement, the "***Bond Green Bonds Guarantors***"),[9] the Bond Green Bonds Issuer loaned the proceeds from the sale of the bonds (the "***Bond Green Bonds*"**) to Enviva Inc. and Enviva Inc. borrowed the same from the Bond Green Bonds Issuer. The Bond Green Bonds Guarantors guaranteed on a joint and several basis the obligations of Enviva Inc. under the Bond Green Bonds Documents;

(m) *Bond Green Bonds Debt.* Enviva Inc. and the Bond Green Bonds Guarantors were justly and lawfully indebted and liable to the Bond Green Bonds Holders pursuant to the Bond Green Bonds Documents in the aggregate principal and accrued and unpaid interest amount of not less than $100,000,000, plus any additional fees and expenses (including any attorneys', accountants', appraisers' and financial advisors' fees and expenses that are chargeable or reimbursable under the Bond Green Bonds Documents), now or hereafter due under the Bond Green Bonds Documents (collectively, the "***Bond Green Bonds Debt***");

(n) *Validity of the Bond Green Bonds Debt*. The Bond Green Bonds Debt constitutes legal, valid, binding and non-avoidable obligations of Enviva Inc. and the Bond Green Bonds Guarantors, as applicable, in accordance with the Bond Green Bonds Documents, enforceable in accordance with their terms, and no portion of the Bond Green Bonds Debt or any payment made to the Bond Green Bonds Issuer or Bond Green Bonds Trustee, in their capacities as such (including for the benefit of the Bond Green Bonds Holders), or applied to or paid on account of the obligations owing under the Bond Green Bonds Documents prior to the Petition Date, is subject to any contest, attack, rejection, recovery, reduction, defense, counterclaim, offset,

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[9] As of the Petition Date, the Bond Green Bonds Guarantors include Enviva, LP, Enviva GP, LLC, Enviva Partners Finance Corp., Enviva Aircraft Holdings Corp., Enviva Holdings GP, LLC, Enviva Holdings, LP, Enviva Shipping Holdings, LLC, Enviva Management Company, LLC, Enviva Development Finance Company, LLC, Enviva Pellets, LLC, Enviva Pellets Lucedale, LLC, Enviva Pellets Waycross, LLC, Enviva Port of Pascagoula, LLC, Enviva Pellets Bond, LLC, Enviva Pellets Greenwood, LLC, and Enviva Energy Services, LLC. For the avoidance of doubt, none of the NMTC Debtor SPEs is a Bond Green Bonds Guarantor.

subordination, recharacterization, avoidance or other Claim (as defined in the Bankruptcy Code), cause of action or other challenge of any nature under the Bankruptcy Code or applicable non-bankruptcy law;

(o) *Bond Green Bonds Restricted Cash*. During the pendency of the Chapter 11 Cases, the Debtors shall have no right to use the monies that are held in the Construction Fund (as defined in the Bond Green Bonds Indenture), and the Debtors' authority to use any Cash Collateral as provided herein does not include the Debtors' use of any such monies;

(p) *Prepetition NMTC Source Loan*. Pursuant to that certain Loan Agreement, dated as of June 27, 2022 (as amended, supplemented, restated, amended and restated or otherwise modified prior to the Petition Date, the "***Prepetition Senior Secured NMTC Source Loan Agreement***," and collectively with the Note and all other Loan Documents (as such terms are defined in the Prepetition Senior Secured NMTC Source Loan Agreement) and any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, amended and restated, supplemented, waived or otherwise modified prior to the Petition Date, the "***Prepetition Senior Secured NMTC Source Loan Documents***"), by and among (i) Enviva Pellets Epes Finance Company, LLC (in such capacity, the "***Prepetition NMTC Source Loan Borrower***") and (ii) United Bank (the "***Prepetition NMTC Source Loan Lender***"), the Prepetition NMTC Source Loan Lender has extended credit in the form of a source loan (the "***Prepetition Senior Secured NMTC Source Loan***") in connection with a new markets tax credit transaction (the "***NMTC Transactions***") to the Prepetition NMTC Source Loan Borrower under the Prepetition Senior Secured NMTC Source Loan Documents;

(q) *Prepetition NMTC Source Loan Debt*. As of the Petition Date, the Prepetition NMTC Source Loan Borrower was justly and lawfully indebted and liable to the

Prepetition NMTC Source Loan Lender without defense, challenge, objection, claim, counterclaim or offset of any kind, in the aggregate principal amount of not less than (i) $30,402,403 of the outstanding Loan (as defined in the Prepetition Senior Secured NMTC Source Loan Agreement) pursuant to and in accordance with the terms of, the Prepetition Senior Secured NMTC Source Loan Documents, plus accrued and unpaid interest thereon and fees, expenses, costs, charges, indemnities and other Obligations (as defined in the Prepetition Senior Secured NMTC Source Loan Documents) incurred in connection therewith as provided in the Prepetition Senior Secured NMTC Source Loan Documents (collectively, the "***Prepetition Senior Secured NMTC Source Loan Debt***"); *provided* that, except with respect to payments expressly authorized under paragraphs 13(f) and 13(h) of this Final Order and subject to paragraph 35 of this Final Order, the rights of the Debtors, the NMTC Participants, and all parties in interest with respect to any claims for, or rights to payment of, fees and expenses asserted under the Prepetition Senior Secured NMTC Source Loan Debt or otherwise in connection with the NMTC Transactions shall be fully reserved;

(r) *Validity of Prepetition Senior Secured NMTC Source Loan Debt*. The Prepetition Senior Secured NMTC Source Loan Debt constitutes legal, valid, binding and non-avoidable obligations of the Prepetition NMTC Source Loan Borrower, as applicable, enforceable in accordance with the terms of the Prepetition Senior Secured NMTC Source Loan Documents, and no portion of the Prepetition Senior Secured NMTC Source Loan Debt or any payment made to the Prepetition NMTC Source Loan Lender or applied to or paid on account of the Obligations (as defined in the Prepetition Senior Secured NMTC Source Loan Agreement) owing under the Prepetition Senior Secured NMTC Source Loan Documents prior to the Petition Date is subject to any contest, attack, rejection, recovery, reduction, defense, counterclaim, offset,

subordination (whether equitable, contractual, or otherwise), recharacterization, avoidance or other Claim (as defined in the Bankruptcy Code), cause of action (including any Claims (as defined in the Bankruptcy Code) or avoidance actions under chapter 5 of the Bankruptcy Code), choses in action or other challenge of any nature under the Bankruptcy Code or applicable non-bankruptcy law;

(s) *Validity, Perfection and Priority of Prepetition NMTC Source Loan Liens*. Pursuant to and in connection with the Prepetition Senior Secured NMTC Source Loan Documents, the Prepetition NMTC Source Loan Borrower granted to the Prepetition NMTC Source Loan Lender a security interest in and fully perfected first priority continuing liens (the "***Prepetition NMTC Source Loan Liens***") on the Collateral (as defined in the Prepetition Senior Secured NMTC Source Loan Agreement, including for the avoidance of doubt, the Leverage Loan Collateral, the Contribution Agreement, the Pledged Account (as such terms are defined in the Prepetition Senior Secured NMTC Source Loan Agreement) (which, for the avoidance of doubt, includes Prepetition NMTC Cash Collateral) and all proceeds, products, accessions, rents and profits thereof, in each case whether then owned or existing or thereafter acquired or arising (collectively, the "***Prepetition NMTC Source Loan Collateral***"). As of the Petition Date, the Prepetition NMTC Source Loan Liens are valid, binding, properly perfected, enforceable and are not subject to avoidance, recharacterization, subordination (whether equitable, contractual or otherwise), contest, recovery, attack, disgorgement, effect, rejection, reduction, disallowance, impairment, counterclaim, offset, crossclaim, defense, Claim (as defined in the Bankruptcy Code), cause of action (including any claims or avoidance actions under chapter 5 of the Bankruptcy Code), choses in action or other challenge of any nature under the Bankruptcy Code or applicable non-bankruptcy law;

(t) *Prepetition NMTC Qualified Low-Income Community Investment (QLICI) Loans*. Pursuant to that certain Loan Agreement, dated as of June 27, 2022 (as amended, supplemented, restated, amended and restated or otherwise modified prior to the Petition Date, the "***Prepetition Senior Secured NMTC QLICI Loan Agreement***" and, collectively with the Notes and all other Loan Documents (as such terms are defined in the Prepetition Senior Secured NMTC QLICI Loan Agreement) and any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, amended and restated, supplemented, waived or otherwise modified prior to the Petition Date, the "***Prepetition Senior Secured NMTC QLICI Loan Documents***"),[10] by and among (i) Enviva Pellets Epes, LLC (in such capacity, the "***Prepetition NMTC QLICI Borrower***"),[11] (ii) the Lenders identified in the Prepetition Senior Secured NMTC QLICI Loan Agreement (such Lenders being the "***Prepetition NMTC QLICI Lenders***")[12] and (iii) Enviva Inc. (solely for the limited purposes of maintaining certain covenants as set forth in the Prepetition Senior Secured NMTC QLICI Loan Agreement), the Prepetition NMTC QLICI Lenders have extended credit in the form of various Loans (as defined and set forth in the Prepetition Senior Secured NMTC QLICI Loan Agreement and collectively such Loans being referred to herein as the ***"Prepetition NMTC QLICI Loans"***) in connection with the NMTC

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[10] "***NMTC Loan Documents***" shall collectively refer to the Prepetition Senior Secured NMTC Source Loan Documents and the Prepetition Senior Secured NMTC QLICI Loan Documents.

[11] Enviva Pellets Epes Holdings, LLC is the parent company of the Prepetition NMTC QLICI Borrower.

[12] For the avoidance of doubt, the Prepetition NMTC QLICI Lenders are (i) NIF SUB IV, LLC, (ii) UBCD Sub-CDE Midway, LLC, (iii) PBCIF Sub-CDE4, LLC and (iv) MuniStrategies Sub-CDE#41, LLC. Further, "***NMTC Participants***" collectively means (v) the Prepetition NMTC Source Loan Lender, (w) the Prepetition NMTC QLICI Lenders, (x)(i) National Impact Fund, LLC as the managing member of NIF SUB IV, LLC, (ii) UB Community Development, LLC as the managing member of UBCD Sub-CDE Midway, LLC, (iii) PB Community Impact Fund, LLC as the managing member of PBCIF Sub-CDE4, LLC and (iv) MuniStrategies, LLC as the managing member of MuniStrategies Sub-CDE#41, LLC, (y) COCRF Investor 232, LLC (the "***NMTC Investment Fund***") and (z) Capital One, N.A. as the 100% interest owner of the NMTC Investment Fund.

Transactions to the Prepetition NMTC QLICI Borrower under the Prepetition Senior Secured NMTC QLICI Loan Documents;

(u) *Prepetition NMTC QLICI Debt*. As of the Petition Date, the Prepetition NMTC QLICI Borrower was justly and lawfully indebted and liable to the Prepetition NMTC QLICI Lenders without defense, challenge, objection, claim, counterclaim, or offset of any kind, in the aggregate principal amount of not less than (a) $42,030,000 of the outstanding Loans (as defined in the Prepetition Senior Secured NMTC QLICI Loan Agreement) pursuant to, and in accordance with the terms of, the Prepetition Senior Secured NMTC QLICI Loan Documents, plus accrued and unpaid interest thereon and fees, expenses, costs, charges, indemnities and other Obligations (as set forth in the Prepetition Senior Secured NMTC QLICI Loan Documents, the "***QLICI Obligations***") incurred in connection therewith as provided in the Prepetition Senior Secured NMTC QLICI Loan Documents (collectively, the "***Prepetition Senior Secured NMTC QLICI Loan Debt***" and, together with the Prepetition Senior Secured NMTC Source Loan Debt, the "***Prepetition Senior Secured NMTC Debt***"); *provided* that, except with respect to payments expressly authorized under paragraphs 13(f) and 13(h) of this Final Order and subject to paragraph 35 of this Final Order, the rights of the Debtors, the NMTC Participants, and all parties in interest with respect to any claims for, or rights to payment of, fees and expenses asserted under the Prepetition Senior Secured NMTC QLICI Loan Debt or otherwise in connection with the NMTC Transactions shall be fully reserved;

(v) *Validity of Prepetition Senior Secured NMTC QLICI Loan Debt*. The Prepetition Senior Secured NMTC QLICI Loan Debt constitutes legal, valid, binding and non-avoidable obligations of the Prepetition NMTC QLICI Borrower, as applicable, enforceable in accordance with the terms of the Prepetition Senior Secured NMTC QLICI Loan Documents,

and no portion of the Prepetition Senior Secured NMTC QLICI Loan Debt or any payment made to the Prepetition NMTC QLICI Lenders or applied to or paid on account of the QLICI Obligations owing under the Prepetition Senior Secured NMTC QLICI Loan Documents prior to the Petition Date is subject to any contest, attack, rejection, recovery, reduction, defense, counterclaim, offset, subordination (whether equitable, contractual or otherwise), recharacterization, avoidance or other Claim (as defined in the Bankruptcy Code), cause of action (including any claims or avoidance actions under chapter 5 of the Bankruptcy Code), choses in action or other challenge of any nature under the Bankruptcy Code or applicable non-bankruptcy law;

(w) *Validity, Perfection and Priority of Prepetition NMTC QLICI Liens*. Pursuant to and in connection with the Prepetition Senior Secured NMTC QLICI Loan Documents, the Prepetition NMTC QLICI Borrower granted to the Prepetition NMTC QLICI Lenders a security interest in and fully perfected first priority continuing liens (the "***Prepetition NMTC QLICI Liens***")[13] on the Collateral (as defined and set forth in the Prepetition Senior Secured NMTC QLICI Loan Agreement), including, but not limited to (i) a first priority mortgage and security interest in certain property relating to the Debtors' Epes, Alabama production facility (as described in the Epes Plant Mortgage (as such term is defined herein)), including the underlying land, improvements, equipment and all replacements, products and cash and non-cash proceeds thereof, granted pursuant to that certain Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of June 27, 2022 (the "***Epes Plant Mortgage***") (ii) as it relates to MuniStrategies Sub-CDE#41, LLC, a secured pledge of that certain Capital One, N.A. account number ending in 7151 (such account being referred to herein as the ***"Muni Reserve***

[13] The term "***NMTC Liens***" shall collectively refer to the Prepetition NMTC Source Loan Liens and the Prepetition NMTC QLICI Liens.

Account") pledged as security to MuniStrategies Sub-CDE#41, LLC (iii) as it relates to NIF SUB IV, LLC, a secured pledge of that certain Capital One, N.A. account number ending in 7160 (such account being referred to herein as the ***"NIF Reserve Account"*** and collectively with the Muni Reserve Account, the ***"CDE Reserve Accounts"***) pledged as security to NIF SUB IV, LLC, and (iv) and all proceeds, products, accessions, rents and profits thereof, in each case whether then owned or existing or thereafter acquired or arising (collectively, the "***Prepetition NMTC QLICI Collateral***").[14] As of the Petition Date, the Prepetition NMTC QLICI Liens are valid, binding, properly perfected, enforceable, and are not subject to avoidance, recharacterization, subordination (whether equitable, contractual, or otherwise), contest, recovery, attack, disgorgement, effect, rejection, reduction, disallowance, impairment, counterclaim, offset, crossclaim, defense, Claim (as defined in the Bankruptcy Code), cause of action (including any claims or avoidance actions under chapter 5 of the Bankruptcy Code), choses in action or other challenge of any nature under the Bankruptcy Code or applicable non-bankruptcy law (excluding, for the avoidance of doubt, the Permitted Liens, as defined in the Prepetition Senior Secured NMTC QLICI Loan Agreement);

(x) *No Control*. None of the Prepetition Secured Parties control (or have in the past controlled) the Debtors or their properties or operations, have authority to determine the manner in which any Debtors' operations are conducted or are control persons or insiders of the Debtors by virtue of any actions taken with respect to, in connection with, related to or arising from the Prepetition Senior Secured Credit Documents;

(y) *No Claims or Causes of Action*. No claims or causes of action held by the Debtors or their estates exist against, or with respect to, the Prepetition Secured Parties or the

[14] The term "***NMTC Collateral***" shall collectively refer to the Prepetition NMTC Source Loan Collateral and the Prepetition NMTC QLICI Collateral.

Ad Hoc Group or any of their respective Representatives (as defined herein and, in each case, in their capacity as such) under or relating to any agreements by and among the Debtors and any Prepetition Secured Party or the Ad Hoc Group, as of the Petition Date; and

(z) *No Control by NMTC Participants*. None of the NMTC Participants control (or have in the past controlled) the NMTC Debtor SPEs or their properties or operations, have authority to determine the manner in which any NMTC Debtor SPEs' operations are conducted or are control persons or insiders of the NMTC Debtor SPEs by virtue of any actions taken with respect to, in connection with, related to or arising from the NMTC Loan Documents.

H. *Findings Regarding the DIP Financing and Use of Cash Collateral*. Good and sufficient cause has been shown for the entry of this Final Order and for authorization of the DIP Credit Parties to obtain financing pursuant to the DIP Documents.

(a) The Debtors have an immediate and critical need to obtain the DIP Financing and to use Prepetition Collateral (including Prepetition Cash Collateral), the NMTC Collateral and other Cash Collateral in order to, among other things, permit the Debtors to continue the orderly operation of their businesses, to maintain business relationships with vendors, suppliers and customers, to make payroll, to make capital expenditures, to satisfy other working capital and operational needs and to fund expenses of the Chapter 11 Cases. The access of the Debtors to sufficient working capital and liquidity through the use of Prepetition Collateral (including Prepetition Cash Collateral), other Cash Collateral and the NMTC Collateral, the incurrence of new indebtedness under the DIP Documents and other financial accommodations provided under the DIP Documents are necessary and vital to the preservation and maintenance of the going concern value of the Debtors and to a successful reorganization of the Debtors. The Debtors do not have sufficient available sources of working capital and financing to preserve the value of their

businesses, and the Debtors would suffer immediate and irreparable harm without the ability to access the DIP Financing and Cash Collateral.

(b) The Debtors are unable to obtain financing on more favorable terms from sources other than the DIP Creditors under the DIP Documents and are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors are also unable to obtain secured credit without (i) granting to the DIP Secured Parties the DIP Liens and the DIP Superpriority Claims (each as defined herein) and (ii) incurring the Adequate Protection Obligations (as defined herein), to the extent set forth herein and under the terms and conditions set forth in the DIP Documents, in each case of (i) and (ii) subject and subordinate to the Carve-Out.

(c) The Debtors continue to collect cash, rents, income, offspring, products, proceeds and profits generated from the Prepetition Collateral and the NMTC Collateral, as applicable, and acquire equipment, inventory and other personal property, all of which, subject to the terms and conditions of the Prepetition Senior Secured Credit Documents and the NMTC Loan Documents, as applicable, constitutes Prepetition Collateral under the Prepetition Senior Secured Credit Documents and NMTC Collateral under the NMTC Loan Documents that is, in each case, subject to the Prepetition Secured Parties' security interests as set forth in the Prepetition Senior Secured Credit Documents and the NMTC Participants' security interests as set forth in the NMTC Loan Documents, as applicable.

(d) The Debtors desire to use in their business operations all or a portion of the cash, rents, income, offspring, products, proceeds and profits described in the preceding paragraph that constitute Cash Collateral of the Prepetition Secured Parties and the NMTC Participants, as applicable, under section 363(a) of the Bankruptcy Code. Certain prepetition rents, income,

offspring, products, proceeds and profits in existence as of the Petition Date or hereafter created or arising, including balances of funds in certain of the Debtors' prepetition and postpetition operating bank accounts, also constitute Cash Collateral.

(e) Based on the DIP Motion, the Declarations and the record and other evidence presented to the Court at the Interim Hearing and the Final Hearing, the terms of the DIP Financing, the terms of the adequate protection granted, as applicable, to the Prepetition Secured Parties and the NMTC Participants as provided in paragraph 13 of this Final Order (collectively, the "***Adequate Protection***") and the terms on which the Debtors may continue to use the Prepetition Collateral and the NMTC Collateral (including, in each case, Cash Collateral) pursuant to the DIP Documents are fair and reasonable reflect the DIP Credit Parties' exercise of prudent business judgment consistent with their fiduciary duties and constitute reasonably equivalent value and fair consideration.

(f) The Orders, the DIP Financing, the Adequate Protection and the use of the Prepetition Collateral (including Cash Collateral) and the NMTC Collateral have been negotiated in good faith and at arm's length among the DIP Credit Parties, the DIP Secured Parties, the applicable Prepetition Secured Parties and the NMTC Participants, and all of the DIP Credit Parties' obligations and indebtedness arising under, in respect of, or in connection with, the DIP Financing and the DIP Documents, including, without limitation, all loans, notes and guarantees incurred or issued by the DIP Credit Parties pursuant to the DIP Documents and any other DIP Obligations, shall be deemed to have been extended by the DIP Secured Parties and their respective affiliates in good faith, as that term is used in section 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and the DIP Secured Parties (and the successors and assigns thereof) shall be entitled to the full protection of section

364(e) of the Bankruptcy Code in the event that the Orders or any provision thereof and hereof, as applicable, is vacated, reversed or modified, on appeal or otherwise.

(g) The Prepetition Secured Parties have acted in good faith regarding the DIP Financing and the Debtors' continued use of the Prepetition Collateral (including Cash Collateral) to fund the administration of the Debtors' estates and continued operation of their businesses (including, subject and subordinate to the Carve-Out, the incurrence and payment of and performance under the Adequate Protection Obligations and the granting of the Adequate Protection Liens (as defined herein)), in accordance with the terms hereof, and the Prepetition Secured Parties (and the successors and assigns thereof) shall be entitled to the full protection of section 363(m) of the Bankruptcy Code in the event that the Orders or any provision thereof and hereof, as applicable, are vacated, reversed or modified, on appeal or otherwise.

(h) The NMTC Participants have acted in good faith regarding the Debtors' continued use of the NMTC Collateral and the Prepetition NMTC Cash Collateral to fund the administration of the Debtors' estates and continued operation of their businesses (including, subject and subordinate to the Carve-Out, the incurrence and payment of and performance under the Adequate Protection Obligations and the granting of the Adequate Protection Liens), in accordance with the terms hereof, and the NMTC Participants (and the successors and assigns thereof) shall be entitled to the full protection of section 363(m) of the Bankruptcy Code in the event that the Orders or any provision thereof and hereof, as applicable, are vacated, reversed or modified, on appeal or otherwise.

(i) The Prepetition Secured Parties and the NMTC Participants are entitled to the Adequate Protection provided in this Final Order as and to the extent set forth herein pursuant to sections 361, 362, 363 and 364 of the Bankruptcy Code. Based on the DIP Motion and on the

record presented to the Court, the terms of the proposed Adequate Protection and of the use of the Prepetition Collateral or the NMTC Collateral (including, in each case, Cash Collateral) are fair and reasonable, reflect the Debtors' prudent exercise of business judgment and constitute reasonably equivalent value and fair consideration for the use of the Prepetition Collateral or the NMTC Collateral, in each case, including Cash Collateral, and, to the extent their consent is required, the requisite Prepetition Secured Parties and the NMTC Participants have consented or are deemed hereby to have consented to the use of the Prepetition Collateral or the NMTC Collateral, in each case, including the Cash Collateral, on the terms set forth in the Orders; *provided* that nothing in the DIP Documents shall (x) be construed as the affirmative consent by any of the Prepetition Secured Parties or the NMTC Participants, as applicable, for the use of Cash Collateral other than on the terms set forth in the Orders (including the Approved Budget (subject only to permitted variances)) and the other DIP Documents, (y) be construed as a consent by any party to the terms of any other financing or any other lien encumbering the Prepetition Collateral (whether senior or junior) other than as contemplated by the DIP Documents, or (z) prejudice, limit or otherwise impair the rights of the Prepetition Secured Parties (acting solely with the consent or direction of the Required Lenders (as defined in the Prepetition Senior Secured Credit Agreement, the "***Prepetition Required Lenders***")) or the NMTC Participants, as applicable, to seek new, different or additional adequate protection or assert any rights, as applicable, of the Prepetition Agent, on behalf of the Prepetition Secured Parties, or the NMTC Participants, and the rights of any other party in interest, including the DIP Credit Parties, the Creditors' Committee, any other Prepetition Secured Party and the NMTC Participants, to object to such relief are hereby preserved; *provided* that any such new, different or additional adequate protection, if granted, shall be subject and subordinate to the Carve-Out. Notwithstanding the foregoing, the Prepetition Secured Parties

remain subject to the terms and conditions of the Prepetition Senior Secured Credit Documents, including with respect to all provisions pertaining to the vote, consent, direction or other matters pertaining to one (1) or more Prepetition Secured Parties thereunder.

(j) The liens, claims and other covenants and payments as set forth in this Final Order, as well as the protections afforded parties acting in "good faith" under section 363(m) of the Bankruptcy Code are integral, critical and essential components of the Adequate Protection provided to the Prepetition Secured Parties for the Debtors' use of the Prepetition Collateral (including Cash Collateral) and the NMTC Participants' for the Debtors' use of the NMTC Collateral (including Cash Collateral) to the extent provided for herein. The liens, claims and other covenants and payments as set forth in this Final Order, as well as the protections afforded parties acting in "good faith" under section 364(e) of the Bankruptcy Code are integral, critical and essential components of the DIP Financing provided by the DIP Secured Parties to the Debtors.

(k) The Debtors have prepared and delivered to the DIP Secured Parties and their advisors an initial budget (together with any additional line-item or other detail and supplements as may be provided pursuant to the terms of the DIP Documents, the "***Initial DIP Budget***") filed at Docket No. 103. The Initial DIP Budget reflects, among other things, for the 13-week period commencing on or about the Petition Date, the Debtors' projected operating receipts, operating disbursements, non-operating disbursements, net operating cash flow and liquidity for each one-week period covered thereby. The Initial DIP Budget may be modified, amended, extended and updated from time to time in accordance with the DIP Facility Agreement, and such modified, amended, extended and/or updated budget, once approved (or deemed approved) by the Required DIP Creditors in accordance with the DIP Facility Agreement, shall modify, replace, supplement or supersede, as applicable, the Initial DIP Budget for the periods

covered thereby (the Initial DIP Budget and each subsequent approved budget (including any additional line-item or other detail and supplements as may be provided pursuant to the terms of the DIP Documents) shall constitute, without duplication, an "***Approved Budget***"). Each subsequent Approved Budget (as approved in accordance, with the DIP Documents, including the Orders) shall be provided to counsel to the Creditors' Committee and, in summary form, the U.S. Trustee and counsel to the NMTC Participants. The Initial DIP Budget has been thoroughly reviewed by the Debtors, their management and their advisors, and the Debtors believe that the Initial DIP Budget is reasonable under the circumstances. The DIP Secured Parties, Prepetition Secured Parties and the NMTC Participants are relying, in part, upon the DIP Credit Parties' agreement to comply with the Approved Budget (subject only to permitted variances), the Adequate Protection Obligations set forth herein and the other DIP Documents in determining, as applicable, to enter into the postpetition financing arrangements and consent to the use of Cash Collateral provided for in this Final Order. In the event that the Debtors, in consultation with the Committee, the U.S. Trustee and counsel to the Ad Hoc Group, determine that a subsequent Approved Budget materially modifies the prior Approved Budget, the Debtors shall file such subsequent Approved Budget on the docket of the Court in a form substantially similar to the Initial Budget.

(l) Each of the Prepetition Secured Parties shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to the Prepetition Secured Parties with respect to proceeds, product, offspring or profits with respect to any of the Prepetition Collateral. The foregoing is a condition and a material inducement to the DIP Secured Parties'

agreement to provide the DIP Financing and the Prepetition Secured Parties' consent to the use of Cash Collateral.

I. *Relief Essential; Best Interest.* The Final Hearing was held in accordance with Bankruptcy Rules 4001(b)(2) and (c)(2). Consummation of the DIP Financing and the permitted use of Prepetition Collateral and NMTC Collateral (in each case, including Cash Collateral), in accordance with the Orders and the other DIP Documents, are therefore in the best interests of the Debtors' estates and consistent with the Debtors' exercise of their fiduciary duties.

J. *Prior Liens; Continuation of Prepetition Liens*. Nothing herein shall constitute a finding or ruling by the Court that any Prior Lien (as defined herein) is valid, senior, enforceable, prior, perfected or non-avoidable. Moreover, nothing herein shall prejudice the rights of any party in interest, including, but not limited to, the DIP Credit Parties, the DIP Secured Parties, or the Prepetition Secured Parties, to challenge the validity, priority, enforceability, seniority, avoidability, perfection or extent of any alleged Prior Lien. The right of a seller of goods to reclaim goods under section 546(c) of the Bankruptcy Code is not a Prior Lien, as used herein, and is expressly subject to the DIP Liens (as defined herein) and the Prepetition Liens. The Prepetition Liens, the DIP Liens and the NMTC Liens are continuing liens, and the Collateral is and will continue to be encumbered by such liens.

K. *Syndication Procedures*. The syndication procedures attached as **Exhibit D** to the Motion (as amended pursuant to the terms thereof, the "***Syndication Procedures***"), as well as the notice and instruction form attached as **Exhibit E** to the Motion (as amended pursuant to the terms thereof, the "***Syndication Notice and Instructions***"), including the subscription forms contained therein (the "***Syndication Subscription Forms***," and together with the Syndication Procedures and Syndication Notice and Instructions, the "***Syndication Materials***"), are fair and reasonable and

were and are being implemented in good faith by the Debtors, the Information Agent (as defined in the Syndication Materials), and the other parties involved in the syndication of the Company Allocated Portion of the DIP Financing. The Debtors, the Information Agent and the other parties involved in the syndication of the Company Allocated Portion of the DIP Financing are hereby authorized to take all actions they deem to be reasonably necessary or advisable to syndicate the Company Allocated Portion of the DIP Financing, including pursuant to the Syndication Materials, and no such party shall be liable to any person or entity with respect to any act taken or omitted from being taken in connection with such syndication, including any actions taken prior to the entry of this Final Order, which actions are hereby ratified. Further, the syndication of the Company Allocated Portion of the DIP Financing is being, and has been, implemented in good faith by the Debtors, the Information Agent and the other parties involved in the syndication of the Company Allocated Portion of the DIP Financing, and the syndication of the Company Allocated Portion of the DIP Financing is a reasonable and sound exercise of the Debtors' business judgment.

Based upon the foregoing findings and conclusions, the DIP Motion and the record before the Court with respect to the DIP Motion, and after due consideration and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. *Motion Granted*. The relief sought in the DIP Motion is granted, the financing described herein is authorized and approved and the Debtors' use of Cash Collateral is authorized, in each case, on a final basis, subject to the terms and conditions set forth herein and in the DIP Documents. All objections to this Final Order to the extent not withdrawn, waived, settled or resolved are hereby denied and overruled on the merits.

2. *Authorization of the DIP Financing and the DIP Documents*.

(a) The DIP Credit Parties were, by the Interim Order, and hereby are, authorized to execute, deliver, enter into and, as applicable, comply with and perform all of their obligations under the DIP Documents and take such other and further acts as may be necessary, appropriate or desirable in connection therewith. The Company was, by the Interim Order, authorized to borrow or issue, as applicable, up to the aggregate amount of the Initial Draw, the DIP Loans and Notes pursuant to the DIP Facility Agreement and is hereby authorized to borrow or issue, as applicable, the DIP Loans and Notes pursuant to the DIP Facility Agreement, and the DIP Guarantors were, by the Interim Order, and hereby are, authorized to provide a guaranty of payment and performance in respect of the DIP Obligations, in each case, in accordance with the DIP Documents, and the DIP Obligations were, by the Interim Order, and hereby are, approved (as and when such amounts become earned, due, and payable in accordance with the DIP Documents) without the need to seek further Court approval. The proceeds of the DIP Loans and Notes shall be used for all purposes permitted under the DIP Documents, including the Orders (and subject to and in accordance with the Approved Budget (subject to any permitted variances)). Notwithstanding anything to the contrary herein, all proceeds of the DIP Financing shall be initially funded into the DIP Funding Account (as defined in the DIP Facility Agreement), which account shall at all times be secured on a first priority basis by the DIP Liens (subject and subordinate to the Carve-Out), and proceeds from the DIP Financing shall only be released from the DIP Funding Account in accordance with the DIP Documents.

(b) In furtherance of the foregoing and without further approval of the Court, each DIP Credit Party was, by the Interim Order, and hereby is, authorized and directed to perform all acts, to make, execute and deliver all instruments, certificates, agreements, charges, deeds and documents (including, without limitation, the execution, authorization or recordation of pledge and

security agreements, mortgages, financing statements and other similar documents), and to pay all fees, expenses and indemnities in connection with or that may be reasonably required, necessary or desirable for the DIP Credit Parties' performance of their obligations under or related to the DIP Financing, including, without limitation:

(i) the execution and delivery of, and performance under, each of the DIP Documents and one or more amendments, waivers, consents or other modifications to and under the DIP Documents, in each case, in such form as the DIP Credit Parties and the DIP Agent (acting in accordance with the terms of the DIP Facility Agreement) may agree, it being understood that no further approval of the Court shall be required for any authorizations, amendments, waivers, consents or other modifications to and under the DIP Documents (or any fees or other expenses, including attorneys', accountants', appraisers' and financial advisors' fees, amounts, charges, costs, indemnities and other like obligations, paid in connection therewith) that do not shorten the maturity of the extensions of credit thereunder, increase the aggregate commitments or increase the rate of interest payable or fees or premiums that are payable calculated on commitments thereunder (it being further understood that updates, modifications and supplements to the Approved Budget in accordance with the DIP Documents and required to be delivered to the DIP Secured Parties under the DIP Documents shall not require further approval from the Court);

(ii) the non-refundable payment to the DIP Secured Parties, as the case may be, of all fees, premiums, amount and rights received as consideration under, or in connection with, the DIP Financing under the DIP Documents, whether paid pursuant to the Interim Order or this Final Order, including any amendment fees, early termination fees, servicing fees, audit fees, liquidator fees, structuring fees, administrative agent's, collateral agent's or security trustee's fees, upfront fees and premiums, closing fees, commitment fees and premiums, exit fees and premiums,

closing date fees and premiums, backstop fees and premiums, break fees and premiums, fronting fees and expenses, original issue discount, prepayment fees and premiums or agency fees, rights under the DIP Facility Agreement, indemnities and professional fees and expenses (the payment of which fees, premiums, expenses and other amounts shall be irrevocable, and was and shall be, and was and shall be deemed to have been, approved upon entry of the Interim Order or this Final Order, as applicable, whether any such fees, premiums, expenses and other amounts arose before, on or after the Petition Date and whether or not the transactions contemplated hereby are consummated, and, upon payment thereof, shall not be subject to any contest, attack, rejection, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance, disallowance, impairment or other claim, cause of action or other challenge of any nature under the Bankruptcy Code, applicable non-bankruptcy law or otherwise by any person or entity) and any amounts due (or that may become due) in respect of any indemnification and expense reimbursement obligations, in each case referred to in the DIP Facility Agreement or other DIP Documents, and the costs and expenses as may be due from time to time in accordance with the DIP Documents, including, without limitation (but subject in each case to the terms and conditions of any fee letters that may at any time be in effect between such professionals or other advisors and the Debtors), reasonable and documented fees and expenses of the professionals retained by, or on behalf of, the DIP Agent (including, without limitation, those of McDermott Will & Emery LLP, and one local counsel to the DIP Agent in each applicable jurisdiction (collectively, the "***DIP Agent Advisors***")) and that certain ad hoc group of prepetition creditors and DIP Creditors (the "***Ad Hoc Group***") (including, without limitation, those of Davis Polk & Wardwell LLP, McGuireWoods LLP, Evercore Group, L.L.C., McCurdy Consulting Inc. and each other local or special counsel or other advisor to the Ad Hoc Group or any member thereof

(collectively, the "***Ad Hoc Group Advisors***")) (such fees and expenses of the DIP Agent and the Ad Hoc Group, the "***DIP Fees and Expenses***"), without the need to file retention motions or fee applications in accordance with paragraph 16 below; *provided* that the DIP Fees and Expenses incurred prior to, and which were unpaid as of, the Closing Date shall have been, and were, paid indefeasibly by the Debtors upon the occurrence of the Closing Date without such DIP Secured Parties' invoices being subject to the review procedures set forth in paragraph 16; and

(iii) the performance of all other acts required under or in connection with the DIP Documents, including the granting of the DIP Liens and the DIP Superpriority Claims (in each case subject and subordinate to the Carve-Out) and perfection of the DIP Liens as permitted herein and therein, and to perform such other and further acts as may be necessary, desirable or appropriate in connection therewith, in each case in accordance with the terms of the DIP Documents; *provided* that neither the DIP Funding Account nor any cash held therein shall be subject to any lien in favor of the Prepetition Secured Parties, including any Adequate Protection Liens, and such account and cash shall be secured by the DIP Liens on a first priority basis.

(iv) Proceeds of the DIP Financing and Cash Collateral may be utilized by the DIP Credit Parties for intercompany transfers as and to the extent permitted under the DIP Documents (and also authorized under any order approving the Cash Management Motion (as defined in the First Day Declarations) then in effect).

3. *DIP Obligations*. Upon execution and delivery of the DIP Documents, the DIP Documents constituted (and, as of the date of the entry of this Final Order, continue to constitute) legal, valid, binding and non-avoidable obligations of the DIP Credit Parties, enforceable against each DIP Credit Party and its estate in accordance with the terms of the DIP Documents, and any successors thereto, including any trustee appointed in the Chapter 11 Cases, or in any case under

chapter 7 of the Bankruptcy Code upon the conversion of any of the Chapter 11 Cases or in any other proceedings superseding or related to any of the foregoing (collectively, the "***Successor Cases***"). Upon execution and delivery of the DIP Documents, the DIP Obligations included (and, as of the date of the entry of this Final Order, continue to include) all loans, notes and any other indebtedness or obligations, contingent or absolute, which may now or from time to time be owing by any of the DIP Credit Parties to any of the DIP Secured Parties, in such capacities, in each case, under, or secured by, the DIP Documents, including all principal, interest, costs, fees, expenses, premiums, indemnities and other amounts under the DIP Documents, which, for the avoidance of doubt, includes the reasonable and documented fees and expenses of the DIP Agent Advisors and the Ad Hoc Group Advisors. The DIP Credit Parties shall be jointly and severally liable for the DIP Obligations. Except as permitted by the Orders, no obligation, payment, transfer or grant of security hereunder or under the other DIP Documents to the DIP Secured Parties (including their Representatives (as defined herein)) shall be stayed, restrained, voidable, avoidable, or recoverable, whether under the Bankruptcy Code or under any applicable law (including, without limitation, under sections 502(d), 544, and 547 to 550 of the Bankruptcy Code or under any applicable state Uniform Voidable Transactions Act, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law), or subject to any defense, avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual or otherwise), disallowance, impairment, claim, counterclaim, cross-claim or other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity.

4. *Carve-Out*.

(a) The word "cash" as used in this paragraph shall include all cash, checks, deposit accounts and other cash equivalents.

(i) For purposes of this Final Order, "***Carve-Out***" shall mean the sum of: (a) all fees required to be paid to the Clerk of the Court and all statutory fees required to be paid to the U.S. Trustee under section 1930(a) of title 28 of the United States Code, plus interest at the statutory rate pursuant to 31 U.S.C. § 3717 (without regard to the notice set forth in (c) below) (the "***U.S. Trustee Carve-Out***"); (b) all reasonable fees, costs and expenses up to $100,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (c) below) (the "***Chapter 7 Trustee Carve-Out***"); (c) subject to the application of any retainers that may be held and to the extent allowed at any time, whether by interim order, final order, procedural order, or otherwise, all unpaid fees, costs and expenses (other than any restructuring, sale, success or other transaction-based fees) (the "***Allowed Professional Fees***") incurred by or payable to persons or firms retained by the Debtors pursuant to section 327, 328 or 363 of the Bankruptcy Code (collectively, the "***Debtor Professionals***") and a committee pursuant to sections 328 or 1103 of the Bankruptcy Code (the "***Committee Professionals***" and, together with the Debtor Professionals, the "***Professionals***") before the first business day following delivery by the DIP Agent (acting with the consent or at the direction of the Required DIP Creditors) or the Required DIP Creditors of a Carve-Out Trigger Notice (as defined below), whether allowed by the Court prior to or after such time and without regard to whether such fees and expenses are provided for in any Approved Budget or the timing of the invoicing of such fees and expenses (the "***Pre-Carve-Out Trigger Fees***"); and (d) the Allowed Professional Fees of the Professionals in an aggregate amount not to exceed $3,500,000 incurred by the Debtor Professionals and

$1,500,000 incurred by the Committee Professionals (such caps, collectively, the "***Post-Carve-Out Trigger Notice Cap***"), each beginning on the first business day following delivery by the DIP Agent (acting with the consent or at the direction of the Required DIP Creditors) or the Required DIP Creditors of a Carve-Out Trigger Notice (the "***Post-Carve-Out Trigger Fees***"). For the avoidance of doubt, the Carve-Out shall not include any restructuring, sale, success or other transaction-based fees of any investment bankers or financial advisors. For the avoidance of doubt, to the extent the Carve-Out is funded from proceeds of the DIP Loans and Notes, such amounts shall constitute DIP Obligations. For the avoidance of doubt and notwithstanding anything to the contrary contained in the DIP Documents, the Prepetition Senior Secured Credit Documents or otherwise, the Carve-Out shall be senior in priority to all liens and claims securing the DIP Obligations, all DIP Liens, all DIP Superpriority Claims, all claims arising under the Prepetition Debt Documents or otherwise and all liens securing such claims thereunder, the Adequate Protection Liens, all Adequate Protection Claims, the 507(b) Claims, any and all other forms of adequate protection securing or on account of the claims arising under the Prepetition Senior Secured Credit Documents or otherwise and any claims against or other obligations of the Debtors, including any postpetition intercompany claims among the Debtors.

(ii) For purposes of the foregoing, "***Carve-Out Trigger Notice***" means a written notice delivered by email (or other electronic means) by the DIP Agent (acting with the consent or at the direction of the Required DIP Creditors) or the Required DIP Creditors (or, after the DIP Obligations have been indefeasibly paid in full and the DIP Commitments terminated, the Prepetition Agent (acting at the direction of the Prepetition Required Lenders)) to (a) the Debtors, (b) Vinson & Elkins LLP and Kutak Rock LLP as their restructuring counsel, (c) Akin Gump Strauss Hauer & Feld LLP and Hirschler Fleischer, P.C., as restructuring counsel to the

Creditors' Committee, (d) the U.S. Trustee, (e) counsel for the NMTC Participants and (e) the Ad Hoc Group, if the Carve-Out Trigger Notice is provided by the DIP Agent (acting with the consent or at the direction of the Required DIP Creditors), which notice shall be delivered following the occurrence and during the continuation of an Event of Default (as defined in the DIP Facility Agreement), stating that the Post-Carve-Out Trigger Notice Cap has been invoked. Notwithstanding the foregoing, (x) so long as a Carve-Out Trigger Notice has not been delivered, the Debtors shall be permitted to pay and/or reimburse, as applicable, Allowed Professional Fees that are allowed by the Court and payable under sections 328, 330, and 331 of the Bankruptcy Code and compensation procedures approved by the Court, and the payment and/or reimbursement of same shall not reduce the Carve-Out and (y) any Termination Declaration (as defined below) duly delivered in accordance with paragraph 7(e) shall be deemed to be an effective Carve-Out Trigger Notice.

(iii) On the date of delivery by the DIP Agent (acting with the consent or at the direction of the Required DIP Creditors) of a Carve-Out Trigger Notice in accordance with the terms of this Final Order (the "***Carve-Out Trigger Date***"), the Carve-Out Trigger Notice shall (a) constitute a demand to the Debtors as of such date to fund a reserve from all cash on hand (including Cash Collateral) as of such date and any available cash thereafter held by any Debtors in an amount equal to: (1) the U.S. Trustee Carve-Out, (2) the Chapter 7 Trustee Carve-Out and (3) the then-unpaid amounts of the Allowed Professional Fees (whether allowed by the Court prior to or after the Carve-Out Trigger Date) incurred through the first business day following the Carve-Out Trigger Date; and (b) be deemed a draw request and notice of borrowing by the DIP Credit Parties under the DIP Facility Agreement in an amount equal to the lesser of (1) the amounts of (1), (2) and (3) in clause (a) of this sentence, and (2) the amount of the undrawn

commitments under the DIP Facility Agreement, in each case, to the extent in excess of the amounts funded pursuant to clause (a) of this sentence. The Debtors shall deposit and hold any such amounts in a segregated account to pay the amounts set forth in the preceding sentence (the "***Pre-Carve-Out Trigger Notice Reserve***").

(iv) All funds in the Pre-Carve-Out Trigger Notice Reserve shall be used: *first* to pay the U.S. Trustee Carve-Out, the Chapter 7 Trustee Carve-Out and the Pre-Carve-Out Trigger Fees; *second* to the Prepetition Secured Parties and the NMTC Participants, as applicable, in accordance with their respective rights and the priorities of their liens, claims and interests against the Prepetition Collateral and the NMTC Collateral, as applicable; *third* to the DIP Agent on account of the DIP Obligations until the indefeasible payment in full in cash of the DIP Obligations; and *fourth* to the Debtors.

(v) On the Carve-Out Trigger Date, the Carve-Out Trigger Notice shall also constitute (a) a demand to the Debtors as of such date to fund a reserve from all cash on hand (including Cash Collateral) as of such date and any available cash thereafter held by any Debtors in an amount equal to the Post-Carve-Out Trigger Notice Cap and (b) a draw request and notice of borrowing by the DIP Credit Parties under the DIP Facility Agreement in an amount equal to the lesser of (1) the Post-Carve-Out Trigger Notice Cap and (2) the amount of the undrawn commitments under the DIP Facility Agreement (after giving effect to any draw request in the foregoing clause (iv)), in each case, to the extent in excess of the amounts funded pursuant to clause (a) of this sentence. The Debtors shall deposit and hold such amounts in a segregated account in trust to pay Allowed Professional Fees incurred after the Carve-Out Trigger Date up to the amount of the Post-Carve-Out Trigger Notice Cap (the "***Post-Carve-Out Trigger Notice Reserve***" and, together with the Pre-Carve-Out Trigger Notice Reserve, the "***Carve-Out***

Reserves"). All disbursements from such account shall be in accordance with the DIP Documents, including this Final Order.

(vi) All funds in the Post-Carve-Out Trigger Notice Reserve shall be used: *first* to pay the Post-Carve-Out Trigger Fees (up to the Post-Trigger Fee Cap); *second* to pay the U.S. Trustee Carve-Out, the Chapter 7 Trustee Carve-Out and the Pre-Carve-Out Trigger Fees; *third* to the Prepetition Secured Parties and the NMTC Participants, as applicable, in accordance with their respective rights and the priorities of their liens, claims and interests against the Prepetition Collateral and the NMTC Collateral, as applicable; *fourth* to the DIP Agent on account of the DIP Obligations until the indefeasible payment in full in cash of the DIP Obligations; and *fifth* to the Debtors.

(vii) Any payment or reimbursement made on or after the occurrence of the Carve-Out Trigger Date in respect of any Allowed Professional Fees shall permanently reduce the Carve-Out on a dollar-for-dollar basis.

(viii) The Debtors shall deposit the amounts in the Carve-Out Reserves in full prior to the payment of any DIP Collateral (including Cash Collateral) to the DIP Agent or any DIP Creditor or the payment of any amount to any of the Prepetition Agent or the Prepetition Secured Lenders, and the DIP Agent, the DIP Creditors, the Prepetition Agent and the Prepetition Secured Lenders, shall not sweep or foreclose on cash or Cash Collateral (including cash received as a result of the disposition of any property of the Debtors or the DIP Collateral) of the Debtors until the Carve-Out Reserves have been fully funded.

(ix) The Pre-Carve-Out Trigger Notice Reserve shall be held for the benefit of the U.S. Trustee to pay the U.S. Trustee Carve-Out, the Chapter 7 Trustee (if any) to pay the Chapter 7 Trustee Carve-Out, and the Professionals to pay the Allowed Professional Fees

benefiting from the Carve-Out, and shall be available only to satisfy such obligations until paid in full. The Post-Carve-Out Trigger Notice Reserve shall be held for the benefit of the Professionals to pay the Allowed Professional Fees and shall be available only to satisfy such obligations until paid in full. The failure of the Carve-Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve-Out, and nothing in the Orders, including the Carve-Out, the Post-Carve-Out Trigger Notice Cap, the Carve-Out Reserves, the Approved Budget or any of the foregoing shall be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors or that may be allowed by the Court, and the rights of all parties in interest shall be fully reserved with respect to such matters.

(x) To the extent that the Carve-Out Reserves are not fully funded in accordance with the terms hereof or prove insufficient to satisfy the full amount of the Carve-Out, any cash on hand and any other available cash thereafter held by the Debtors (whether realized by the Debtors, a chapter 7 trustee, the DIP Agent, or any other person) shall be applied: *first*, to fund the Pre-Carve-Out Trigger Reserve; *second*, to fund the Post-Carve-Out Trigger Reserve; *third*, to pay the U.S. Trustee Carve-Out, the Chapter 7 Carve-Out or Pre-Carve-Out Trigger Fees in excess of the Pre-Carve-Out Trigger Reserve; *fourth*, to the Prepetition Secured Parties and the NMTC Participants, as applicable, in accordance with their respective rights and the priorities of their respective liens, claims and interests; and *fifth*, to the DIP Agent on account of the DIP Obligations until the indefeasible payment in full in cash of the DIP Obligations.

(xi) To the extent permitted by the DIP Documents, and subject to the priorities and rights set forth herein, each of the Prepetition Agent, the NMTC Participants and the DIP Agent shall have a security interest in any residual cash balance remaining in the Carve-Out Reserves after the U.S. Trustee Carve-Out, the Chapter 7 Carve-Out or the Pre-Carve-Out Trigger

Fees in excess of the Pre-Carve-Out Trigger Reserve benefitting from the Carve-Out have been indefeasibly paid in full in cash pursuant to a final non-appealable order of the Court (or another court of competent jurisdiction). After satisfaction of the U.S. Trustee Carve-Out, the Chapter 7 Carve-Out or the Pre-Carve-Out Trigger Fees and the Post-Carve-Out Trigger Fees (up to the Post-Carve-Out Trigger Notice Cap), any excess funds in the Carve-Out Reserves shall be paid to the Prepetition Agent, the NMTC Participants and/or the DIP Agent as herein subparagraph (ix) and (x) above.

(xii) None of the DIP Secured Parties, the NMTC Participants or the Prepetition Secured Parties shall be responsible for the payment or reimbursement of any fees or expenses of any Professional incurred in connection with the Chapter 11 Cases or any Successor Cases. Nothing in the Orders shall be construed to obligate the DIP Secured Parties, the NMTC Participants or the Prepetition Secured Parties to pay compensation to, or to reimburse the expenses of, any Professional or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

5. *DIP Superpriority Claims*. Pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed superpriority administrative expense claims against the DIP Credit Parties on a joint and several basis (without the need to file any proof of claim) with priority over any and all claims against the DIP Credit Parties, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code and any and all administrative expenses or other claims arising under section 105, 326, 327, 328, 330, 331, 365, 503(b), 506(c), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or

attachment, which allowed claims (the "***DIP Superpriority Claims***") shall, for purposes of section 1129(a)(9)(A) of the Bankruptcy Code, be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, and which DIP Superpriority Claims shall be payable from and have recourse to all prepetition and postpetition property of the DIP Credit Parties and all proceeds thereof (excluding claims and causes of action under section 502(d), 544, 545, 547, 548, 549, 550 or 553 of the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code (collectively, "***Avoidance Actions***") but including any proceeds or property recovered, unencumbered or otherwise from Avoidance Actions, whether by judgment, settlement or otherwise ("***Avoidance Proceeds***")) in accordance with the DIP Documents and this Final Order, in each case subject and subordinate only to (x) the Carve-Out, and, as applicable, (y)(i) as against the Debtors that are Prepetition Loan Parties, solely to the extent of any recourse to the Prepetition Collateral, the 507(b) Claim against such Debtors (it being understood that the DIP Superpriority Claims shall otherwise be senior in priority to the 507(b) Claim) or (ii) as against the NMTC Debtor SPEs, solely to the extent of any recourse to the NMTC Collateral, the NMTC 507(b) Claim against such NMTC Debtor SPEs (it being understood that the DIP Superpriority Claims shall otherwise be senior in priority to the NMTC 507(b) Claim). The DIP Superpriority Claims shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that the Orders or any provision thereof and hereof, as applicable, is vacated, reversed or modified, on appeal or otherwise.

6. *DIP Liens*. As security for the DIP Obligations, effective and automatically and properly perfected upon the date of the Interim Order and without the necessity of the execution, recordation or filing by the DIP Credit Parties or any of the DIP Secured Parties of mortgages, security agreements, control agreements, pledge agreements, financing statements, intellectual

property filing or other similar documents, any notation of certificates of title for titled goods or other similar documents, instruments, deeds, charges or certificates or the possession or control by the DIP Agent of, or over, any prepetition or postpetition assets or property of the Debtors of the type described in paragraphs 6(a) through (c) below (collectively, and excluding any Avoidance Actions, but including Avoidance Proceeds, the "***DIP Collateral***"), without any further action by the DIP Secured Parties, the following valid, binding, continuing, enforceable and non-avoidable security interests and liens (all security interests and liens granted to the DIP Agent, for its benefit and for the benefit of the other DIP Secured Parties, pursuant to the DIP Documents, the "***DIP Liens***") were, by the Interim Order, and hereby are, granted to the DIP Agent, for its own benefit and the benefit of the other DIP Secured Parties:

(a) *Liens on Unencumbered Property*. Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully perfected first priority senior security interest (subject and subordinate only to the Carve-Out) in, and lien upon, all tangible, intangible, real, personal or mixed prepetition and postpetition property of the DIP Credit Parties or their estates, whether existing on the Petition Date or thereafter acquired, and the proceeds, products, rents, and profits thereof, that, on or as of the Petition Date, is not subject to (i) a valid, perfected and non-avoidable lien or (ii) a valid and non-avoidable lien in existence as of the Petition Date that is perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code (such liens described in clauses (i) and (ii), excluding any Prepetition Liens and the NMTC Liens, collectively, "***Prior Liens***"), which previously unencumbered property includes, without limitation, any and all unencumbered cash of the DIP Credit Parties (whether maintained with any of the DIP Secured Parties or otherwise) and any investment of cash, inventory, accounts receivable, investment property, other rights to payment, whether arising

before or after the Petition Date, contracts, properties, plants, fixtures, machinery, equipment, general intangibles, documents, instruments, securities, goodwill, causes of action, insurance policies and rights, claims and proceeds from insurance, commercial tort claims and claims that may constitute commercial tort claims (known and unknown), chattel paper (including electronic chattel paper and tangible chattel paper), interests in leaseholds, real properties, deposit accounts, accounts, patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property, equity interests of subsidiaries, joint ventures and other entities, wherever located and the proceeds, products, rents and profits of the foregoing, whether arising under section 552(b) of the Bankruptcy Code or otherwise (collectively, the "***Unencumbered Property***"), in each case other than the Avoidance Actions (for the avoidance of doubt, Unencumbered Property shall include Avoidance Proceeds).[15]

(b) *Liens Junior to Certain Other Liens*. Pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully perfected security interest (subject and subordinate to the Carve-Out) in, and lien upon, all tangible and intangible prepetition and postpetition property of the DIP Credit Parties or their estates (other than property described in the foregoing paragraph 6(a)), which shall be immediately junior and subordinate only to (i) the Carve-Out, (ii) solely with respect to Prepetition Collateral, (A) the Adequate Protection Liens secured by such Prepetition Collateral and (B) the Prepetition Liens, (iii) solely with respect to the NMTC Collateral, the NMTC Liens and the NMTC Adequate Protection Liens[16] and (iv) any Prior Liens; *provided* that nothing herein shall limit the rights of the DIP Secured Parties under the

[15] For the avoidance of doubt, and notwithstanding anything to the contrary in any of the DIP Documents, neither the Prepetition Collateral nor the NMTC Collateral is Unencumbered Property.

[16] Upon the full and indefeasible payment of the Prepetition Senior Secured NMTC Debt (and with the NMTC Liens having been released pursuant to the NMTC Loan Documents), the NMTC Collateral shall be deemed secured by the DIP Liens on the same basis as all property described in the foregoing paragraph 6(a), in accordance with the Interim Order, this Final Order and without further approval of the Court.

DIP Documents to the extent any Prior Liens are not permitted thereunder, under the Prepetition Senior Secured Credit Documents or under the NMTC Loan Documents.

(c) *Liens Senior to Certain Other Liens.* The DIP Liens shall not be: (i) subject or subordinate to or made *pari passu* with (A) any lien or security interest that is avoided and preserved for the benefit of the Debtors or their estates under section 551 of the Bankruptcy Code, (B) unless otherwise provided for in this Final Order or the other DIP Documents, any liens or security interests arising after the Petition Date, including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other governmental unit (including any regulatory body), commission, board or court for any liability of the DIP Secured Parties or (C) any intercompany or affiliate liens of the DIP Secured Parties or security interests of the DIP Secured Parties; or (ii) subordinated to or made *pari passu* with any other lien or security interest under section 363 or 364 of the Bankruptcy Code granted after the date hereof.

7. *Protection of DIP Creditors' and Prepetition Secured Parties' Rights*.

(a) So long as there are any DIP Obligations outstanding or the DIP Creditors have any outstanding DIP Commitments under the DIP Documents, the Prepetition Secured Parties shall: (i) have no right to and shall take no action to foreclose upon or recover in connection with, the Prepetition Liens or the Prepetition Collateral or the liens granted thereto pursuant to the Orders, or otherwise seek to exercise or enforce any rights or remedies against the DIP Collateral (including DIP Collateral that is Prepetition Collateral), absent the consent or direction of the Required DIP Creditors (or the DIP Agent acting with the consent or at the direction of the Required DIP Creditors), including in connection with the Adequate Protection Liens, and in so doing, the Prepetition Secured Parties shall act in a manner not inconsistent with the DIP Documents (including paragraph 7(e) hereof); (ii) be deemed to have consented to any

transfer, disposition or sale of or release of liens on, the DIP Collateral (but not any cash proceeds of such transfer, disposition or sale to the extent the assets transferred, disposed of or sold constitute Prepetition Collateral), to the extent such transfer, disposition sale or release is authorized under the DIP Documents and the Prepetition Agent is provided with two (2) business days' advance notice of any such transfer, disposition or sale of or release of liens on, the DIP Collateral; (iii) not file any further financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments or otherwise take any action to perfect their security interests in the DIP Collateral other than, solely as to this clause (iii), (x) the Prepetition Secured Parties filing financing statements or other documents to perfect the liens granted pursuant to the Orders, or (y) as may be required by applicable state law or foreign law to complete a previously commenced process of perfection or to continue the perfection of valid and non-avoidable liens or security interests existing as of the Petition Date; and (iv) deliver or cause to be delivered, at the DIP Credit Parties' cost and expense, any termination statements, releases and/or assignments in favor of the DIP Secured Parties or other documents necessary to effectuate and/or evidence the release, termination and/or assignment of liens on any portion of the DIP Collateral that is subject to any sale or disposition permitted by the DIP Documents, subject to clause (ii) above. For the avoidance of doubt, any distribution or application of DIP Collateral (whether or not constituting Prepetition Collateral or NMTC Collateral) shall be in accordance with the priorities set forth herein.

(b) To the extent any Prepetition Secured Party has possession of any DIP Collateral that is not Prepetition Collateral or has control with respect to any DIP Collateral that is not Prepetition Collateral, or has been noted as a secured party on any certificate of title for a titled good constituting DIP Collateral that is not Prepetition Collateral, then such Prepetition

Secured Party shall be deemed to maintain such possession or notation or exercise such control as a gratuitous bailee and/or gratuitous agent for perfection for the benefit of the DIP Secured Parties, and such Prepetition Secured Party, as applicable, shall comply with the instructions of the DIP Agent (acting with the consent or at the direction of the Required DIP Creditors) with respect to such notation or the exercise of such control or possession.

(c) Until the indefeasible repayment in full of the Prepetition Senior Secured Debt (other than contingent indemnification obligations as to which no claim has been asserted), any proceeds of Prepetition Collateral received by any DIP Secured Party or Prepetition Secured Party, whether in connection with the exercise of any right or remedy (including setoff) relating to the Prepetition Collateral or otherwise received by a DIP Secured Party or Prepetition Secured Party, shall be segregated and held in trust for the benefit of and forthwith paid over to the Prepetition Agent for the benefit of the Prepetition Secured Parties in the same form as received, with any necessary endorsements, or as a court of competent jurisdiction may otherwise direct. The Prepetition Agent (acting at the direction of the Prepetition Required Lenders) was, by the Interim Order, and hereby is, authorized to make any such endorsements as agent for any such DIP Secured Parties or Prepetition Secured Parties, as applicable. This authorization is coupled with an interest and is irrevocable. Following the indefeasible repayment in full of the Prepetition Senior Secured Debt (other than contingent indemnification obligations as to which no claim has been asserted), any proceeds of DIP Collateral or Prepetition Collateral received by any Prepetition Secured Party, whether in connection with the exercise of any right or remedy (including setoff) or otherwise, shall be segregated and held in trust for the benefit of and forthwith paid over to the DIP Agent for the benefit of the DIP Secured Parties in the same form as received, with any necessary endorsements, or as a court of competent jurisdiction may otherwise direct.

In connection with the foregoing sentence, the DIP Agent was, by the Interim Order, and hereby is, authorized to make any such endorsements as agent for any such Prepetition Secured Parties.

(d) *Termination Date*. On the Termination Date (as defined below): (i) all DIP Obligations shall be immediately due and payable and all DIP Commitments will terminate; (ii) the Prepetition Secured Parties (acting solely with the consent, or at the direction, of the Prepetition Required Lenders) may terminate, reduce or restrict the ability of the Debtors to use Cash Collateral; *provided* that notwithstanding the foregoing, during the Remedies Notice Period (as defined below), the Debtors may use Cash Collateral solely to fund the Carve-Out and pay payroll and other expenses critical to the administration of the Debtors' estates strictly in accordance with the Approved Budget (subject to permitted variances); and (iii) the DIP Agent (acting with the consent or at the direction of the Required DIP Creditors) or the DIP Secured Parties (and, with the consent or at the direction of the Required DIP Creditors, or in the event the DIP Facility has been indefeasibly repaid in full, in cash, the Prepetition Agent and the Prepetition Secured Parties) shall be otherwise entitled to exercise rights and remedies under the DIP Documents (or in the case of the Prepetition Agent and the Prepetition Secured Parties, and solely following the indefeasible repayment in full, in cash of the DIP Facility, under the Prepetition Senior Secured Credit Documents) subject to and in accordance with this Final Order.

(e) *Rights and Remedies Upon Event of Default*. Subject to the limitations set forth herein, upon the occurrence and during the continuation of an Event of Default, notwithstanding the provisions of section 362 of the Bankruptcy Code, without any application, motion, or notice to, hearing before or order from the Court, but subject to the terms of the DIP Documents and this Final Order, including the Remedies Notice Period for the exercise of remedies other than those specified in the following clauses (i) and (ii): (i) the DIP Agent

(acting with the consent or at the direction of the Required DIP Creditors) or Required DIP Creditors may declare, which declaration shall be in writing and delivered by email or other electronic means to the Debtors, Vinson & Elkins LLP and Kutak Rock LLP as co-counsel to the Debtors, Akin Gump Strauss Hauer & Feld LLP and Hirschler Fleischer P.C. as co-counsel to the Creditors' Committee, counsel to the NMTC Participants, and the U.S. Trustee (any such declaration shall be referred to herein as a "***Termination Declaration***"), (A) all DIP Obligations owing under the DIP Documents to be immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are expressly waived by the Debtors, (B) the termination, reduction or restriction of any further commitment to extend credit to the Debtors to the extent any such commitment remains under the DIP Facility, (C) termination of the DIP Facility and the DIP Documents as to any future liability or obligation of the DIP Agent or DIP Secured Parties, but without affecting any of the DIP Liens or the DIP Obligations, (D) that any obligations to fund the Carve-Out Reserves shall be triggered, through the delivery of the Carve-Out Notice to the DIP Borrower and Issuer and other notice parties set forth herein and (E) the right to charge interest at the default rate under the applicable DIP Documents; and (ii) subject to this paragraph 7, the Prepetition Secured Parties may declare a termination, reduction or restriction on the ability of the Debtors to use Cash Collateral (the date on which a Termination Declaration is delivered, the "***Termination Date***"). The automatic stay in the Chapter 11 Cases otherwise applicable to the DIP Agent, the DIP Secured Parties, and the Prepetition Secured Parties is hereby modified so that following the expiration of five (5) business days after the Termination Date (the "***Remedies Notice Period***"): (a) the DIP Agent (acting with the consent or at the direction of the Required DIP Creditors), on behalf of the DIP Secured Parties, shall be entitled to exercise all of its rights and remedies in accordance with the DIP Documents and this Final Order to satisfy the

DIP Obligations, DIP Superpriority Claims and DIP Liens, including (subject to (i) the funding of the Carve-Out Reserves in accordance with paragraph 4(a)(iii) hereof and (ii) payment of all accrued but unpaid wages and benefits to the Debtors' employees) (w) freeze or sweep monies or balances in the Debtors' accounts, (x) immediately set-off any and all amounts in accounts maintained by the Debtors with the DIP Secured Parties against the DIP Obligations, (y) enforce any and all rights against DIP Collateral, including, without limitation, foreclosure on all or any portion of the DIP Collateral, occupying the Debtors' premises, collection of accounts receivable, sale or disposition of the DIP Collateral and (z) take any other actions or exercise any other rights or remedies permitted under this Final Order, the DIP Documents or applicable law, and (b) subject to the foregoing clause (a) and the other terms and conditions set forth in this Final Order, including the standstill set forth in the foregoing paragraph 7(a), the Prepetition Secured Parties shall be entitled to exercise their rights and remedies to the extent available in accordance with the applicable Prepetition Senior Secured Credit Documents and this Final Order with respect to the Debtors' use of Cash Collateral. During the Remedies Notice Period, the Debtors and the Creditors' Committee shall be entitled to seek an emergency hearing within the Remedies Notice Period with the Court for the purpose of contesting whether an Event of Default has occurred or is continuing (an "***Emergency Hearing***"), and the DIP Secured Parties shall consent to the Emergency Hearing. Unless the Court orders otherwise prior to the expiration of the Remedies Notice Period or the Debtors cure the Event(s) of Default giving rise to the Termination Declaration, the automatic stay, as to the DIP Agent (acting with the consent or at the direction of the Required DIP Creditors), the DIP Secured Parties and the Prepetition Secured Parties shall automatically be terminated at the end of the Remedies Notice Period without further notice or order. Upon expiration of the Remedies Notice Period, absent order of the Court to the contrary, the DIP Agent (acting with the

consent or at the direction of the Required DIP Creditors), the DIP Secured Parties and the Prepetition Secured Parties shall be permitted to exercise all remedies set forth herein, in the DIP Documents and as otherwise available at law without further order of or application or motion to the Court consistent with this Final Order. Notwithstanding anything to the contrary in Paragraph 7 hereof, upon delivery of a Termination Declaration arising from or relating to the Debtors' failure to satisfy any milestones in the DIP Facility Agreement or the RSA (as defined below), neither the DIP Secured Parties nor the Prepetition Secured Parties shall, absent an order of the Court, have the right to exercise any of the remedies set forth above other than the remedies set forth in clauses (i) and (ii) of the first sentence of this Paragraph 7(e); *provided that* the DIP Secured Parties and Prepetition Secured Parties shall be entitled to seek an emergency hearing on not less than five (5) business days' notice with respect to such matters during the Remedies Notice Period. The rights and remedies of the DIP Secured Parties specified in this Final Order are cumulative and not exclusive of any rights or remedies that the DIP Secured Parties have under the DIP Documents or otherwise. The Debtors shall be deemed to have waived any right to seek relief under the Bankruptcy Code, including under section 105 thereof, to the extent such relief would restrict or impair the rights and remedies of the DIP Agent or the DIP Creditors as set forth in this Final Order or the DIP Documents (with it being understood that this sentence shall not be construed to expand the rights of any other party). The Debtors shall cooperate with the DIP Secured Parties in their exercise of rights and remedies, whether against the DIP Collateral or otherwise and shall not take or direct any entity to take any action designed or intended to hinder or restrict in any respect such DIP Secured Parties from enforcing their security interests in the DIP Collateral; *provided* that, with respect to any DIP Collateral that is also NMTC Collateral, such DIP Collateral and/or the proceeds thereof shall be distributed solely in accordance with the

priorities set forth herein, and shall be made available for distribution first to the NMTC Participants in accordance with the terms of the applicable NMTC Loan Documents, subject to the NMTC Adequate Protection Liens and the NMTC Liens. The DIP Secured Parties shall consult in good faith with counsel to the NMTC Participants with respect to the tax implications associated with any exercise of remedies or the enforcement against DIP Collateral that is NMTC Collateral.

(f) No rights, protections or remedies of the DIP Secured Parties or the Prepetition Secured Parties granted by the provisions of the DIP Documents shall be limited, modified or impaired in any way by: (i) any actual or purported withdrawal of the consent of any party to the Debtors' authority to continue to use Cash Collateral; (ii) any actual or purported termination of the Debtors' authority to continue to use Cash Collateral; or (iii) the terms of any other order or stipulation related to the Debtors' continued use of Cash Collateral or the provision of adequate protection to any party.

8. *Limitation on Charging Expenses Against Collateral*. Except to the extent of the Carve-Out, no costs or expenses of administration of the Chapter 11 Cases or any Successor Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the DIP Collateral or Prepetition Collateral (in each case including Cash Collateral) pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the DIP Agent (acting with the consent or at the direction of the Required DIP Creditors), and/or the Prepetition Agent (acting at the direction of the Prepetition Required Lenders), as applicable, and no consent shall be implied from any other action, inaction or acquiescence by the DIP Secured Parties or the Prepetition Secured Parties, and nothing contained in this Final Order shall be deemed to be a consent by the DIP Secured Parties or the Prepetition Secured Parties to any charge,

lien, assessment or claims against the Collateral under section 506(c) of the Bankruptcy Code or otherwise.

9. *No Marshaling*. In no event shall any of the DIP Secured Parties or the Prepetition Secured Parties be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral, the DIP Obligations, the Prepetition Senior Secured Debt, the Adequate Protection Obligations or the Prepetition Collateral. Further, in no event shall the "equities of the case" exception in section 552(b) of the Bankruptcy Code apply to any of the Prepetition Secured Parties with respect to proceeds, products, offspring or profits of any Prepetition Collateral. Notwithstanding the foregoing or anything to the contrary in the DIP Documents, the Prepetition Debt Documents, or the Orders, the DIP Creditors, the Prepetition Secured Parties and the NMTC Participants shall use commercially reasonable efforts to first satisfy the claims and liens of such parties (including any Adequate Protection Claims and Adequate Protection Liens) from applicable Collateral other than Avoidance Proceeds before seeking to recover from Avoidance Proceeds.

10. *Payments Free and Clear*. Any and all payments or proceeds remitted to either the DIP Agent by, through or on behalf of the DIP Secured Parties, or the Prepetition Agent by, through or on behalf of the Prepetition Secured Parties, pursuant to the provisions of the DIP Documents or any subsequent order of the Court shall be irrevocable, received free and clear of any claim, charge, assessment or other liability, including, without limitation, any such claim or charge arising out of or based on, directly or indirectly, section 506(c) or 552(b) of the Bankruptcy Code, whether asserted or assessed by through or on behalf of the Debtors. Nothing in this paragraph 10 shall limit any Challenge rights set forth in paragraph 18 with respect to the Prepetition Senior Secured Debt.

11. *Use of Cash Collateral*. The Debtors were, by the Interim Order, and hereby are, subject to the terms and conditions of this Final Order, authorized to use all Cash Collateral in accordance with the DIP Documents and Approved Budget (subject to permitted variances); *provided* that (a) the Prepetition Secured Parties and the NMTC Participants, as applicable, are granted the Adequate Protection as hereinafter set forth and (b) except on the terms and conditions of this Final Order, the Debtors shall be enjoined and prohibited from at any times using Cash Collateral absent further order of the Court.

12. *Disposition of DIP Collateral*. The DIP Credit Parties shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral, except as otherwise permitted by the DIP Documents.

13. *Adequate Protection of Prepetition Secured Parties and NMTC Participants*. The Prepetition Secured Parties and NMTC Participants are each entitled, pursuant to sections 361, 362, 363(e) and 507 of the Bankruptcy Code, to adequate protection of their respective interests in: (x) in the case of the Prepetition Secured Parties, the Prepetition Collateral and (y) in the case of the NMTC Participants, the NMTC Collateral (including, in each case, Cash Collateral) solely to the extent of the aggregate diminution in the value of their respective interests, from the value, if any, that existed as of the Petition Date, in the Prepetition Collateral or NMTC Collateral (including Cash Collateral), as applicable, from and after the Petition Date for any reason provided for under the Bankruptcy Code, including, without limitation, any such diminution resulting from the sale, lease or use by the Debtors of the Prepetition Collateral or the NMTC Collateral, as applicable, the payment of any amounts under the Carve-Out or otherwise and the imposition of the Automatic Stay (the "***Adequate Protection Claims***"), which Adequate Protection Claims shall be subject and subordinate to the Carve-Out. In consideration of the foregoing, the Prepetition

Agent, for the benefit of the Prepetition Secured Parties, was, by the Interim Order, and hereby is, and the NMTC Participants hereby are, respectively, granted the following as Adequate Protection on account of their Adequate Protection Claims, and as an inducement to the Prepetition Secured Parties and NMTC Participants to consent and use of, in the case of the Prepetition Secured Parties, the Prepetition Collateral and, in the case of the NMTC Participants, the NMTC Collateral (including, in each case, Cash Collateral) (collectively, the "***Adequate Protection Obligations***")[17]:

(a) *Prepetition Senior Secured Adequate Protection Liens*. The Prepetition Agent, for itself and for the benefit of the other Prepetition Secured Parties, was, by the Interim Order, and hereby is, granted (effective and perfected upon the date of the Interim Order and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements), on account of the Prepetition Secured Parties' Adequate Protection Claims, a valid, perfected replacement security interest in and lien upon all of the DIP Collateral (the "***Adequate Protection Liens***"), senior to all other liens, but subject and subordinate only to (i) the Carve-Out, (ii) the DIP Liens (solely with respect to DIP Collateral that is not Prepetition Collateral), (iii) any Prior Liens on Prepetition Collateral and (iv) any liens on DIP Collateral that, other than Prepetition Collateral, are senior to the DIP Liens in accordance with the foregoing paragraph 6. For the avoidance of doubt, with respect to the DIP Collateral that is Prepetition Collateral, the Adequate Protection Liens shall be senior to the DIP Liens.

[17] For the avoidance of doubt, as used in this Final Order, (a) the term "***Adequate Protection Claims***" shall mean, in reference to the Prepetition Secured Parties, only those Adequate Protection Claims in connection with the Prepetition Collateral and, in reference to the NMTC Participants, only those Adequate Protection Claims in connection with the NMTC Collateral and (b) the term "***Adequate Protection Obligations***" shall mean, in reference to either the Prepetition Secured Parties or the NMTC Participants, only the Adequate Protection Obligations owing thereto or on behalf thereof.

(b) *NMTC Adequate Protection Liens*. The NMTC Participants are hereby granted (effective and perfected upon the date this Final Order without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements) on account of their Adequate Protection Claims, valid, perfected replacement security interests in and liens upon all of the NMTC Collateral (the "***NMTC Adequate Protection Liens***"), senior to all other liens, but subject and subordinate only to (i) the Carve-Out and (ii) any Prior Liens on NMTC Collateral. For the avoidance of doubt, the NMTC Adequate Protection Liens shall be secured only by the NMTC Collateral.

(c) *Prepetition Secured Parties' Section 507(b) Claim*. The Prepetition Agent, for itself and for the benefit of the other Prepetition Secured Parties, was, by the Interim Order, and hereby is, granted an allowed superpriority administrative expense claim on account of such Prepetition Secured Parties' Adequate Protection Claims as provided for in section 507(b) of the Bankruptcy Code (the "***507(b) Claim***"), which 507(b) Claim shall be payable from and have recourse to all DIP Collateral and all proceeds thereof (excluding Avoidance Actions but including the Avoidance Proceeds) and shall have priority in payment over any and all administrative expenses of the kind specified or ordered pursuant to any provision of the Bankruptcy Code, except that the 507(b) Claim shall be subject and subordinate only to (i) the Carve-Out, (ii) the DIP Superpriority Claims (except against any Debtor that is a Prepetition Loan Party, as to any recourse to the Prepetition Collateral, in respect of which (and solely in respect of which) the 507(b) Claim shall be senior to the DIP Superpriority Claims); and (iii) solely as against the NMTC Debtor SPEs, the NMTC 507(b) Claim (as defined herein). Subject to the priorities set forth herein, the 507(b) Claim shall be asserted on a joint and several basis against each of the Debtors.

(d) *NMTC Participants' Section 507(b) Claim*. The NMTC Participants are hereby granted an allowed superpriority administrative expense claim against the NMTC Debtor SPEs (and, for the avoidance of doubt, no other Debtors) on account of such NMTC Participants' Adequate Protection Claims as provided for in section 507(b) of the Bankruptcy Code (the "***NMTC 507(b) Claim***"), which NMTC 507(b) Claim shall be payable from and have recourse to the NMTC Collateral and all proceeds thereof (excluding Avoidance Actions but including the Avoidance Proceeds of the NMTC Debtor SPEs) and shall have priority in payment over any and all administrative expenses of the kind specified or ordered pursuant to any provision of the Bankruptcy Code, except that the NMTC 507(b) Claim shall be subject and subordinate only to (i) the Carve-Out and (ii) the DIP Superpriority Claims (except against any NMTC Debtor SPE, as to any recourse to the NMTC Collateral, in respect of which (and solely in respect of which) the NMTC 507(b) Claim shall be senior to the DIP Superpriority Claims). Subject to the priorities set forth herein, the NMTC 507(b) Claim shall be asserted on a joint and several basis against each of the NMTC Debtor SPEs.[18]

(e) *Prepetition Secured Parties Adequate Protection Fees and Expenses*. As further adequate protection, the DIP Credit Parties shall provide current cash payments of all reasonable and documented prepetition and postpetition fees and expenses of (i) the Ad Hoc Group, including, without limitation but subject to the terms of any fee letter with the Debtors that may then be in effect, all reasonable and documented fees and expenses of the Ad Hoc Group Advisors and (ii) the Prepetition Agent, including, without limitation but subject to the terms of any fee

[18] For the avoidance doubt, the NMTC 507(b) Claim shall be considered one of the "507(b) Claims" (but solely with respect to the NMTC Debtor SPEs) pursuant to any order entered by the Bankruptcy Court approving the *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Maintain the Cash Management System, (B) Continue Using Existing Business Forms, and (C) Continue Intercompany Transfers, (II) Providing Administrative Expense Priority State for Postpetition Intercompany Claims, and (III) Granting Related Relief* [Docket No. 13].

letter with the Debtors that may then be in effect, all reasonable and documented fees and expenses of Cahill Gordon & Reindel LLP and one (1) local counsel to the Prepetition Agent in each applicable jurisdiction (such fees and expenses, the "***Prepetition Secured Parties Adequate Protection Fees and Expenses***"), subject to the review procedures set forth in paragraph 16 of this Final Order.

(f) *NMTC Participants' Adequate Protection Fees and Expenses*. As further adequate protection, the NMTC Participants shall be entitled to reimbursement of the reasonable and documented postpetition professional fees and expenses of Jones Walker LLP and Bean Kinney & Korman PC, which reimbursement shall not exceed $325,000 on a quarterly basis (each a ***"Quarterly Cap"***)[19] (or $850,000 on an aggregate basis), which fees and expenses shall be payable only up to the available Cash Collateral that constitutes NMTC Collateral at the time such reimbursement is requested (such fees and expenses, the "***NMTC Adequate Protection Fees and Expenses***" and such Cash Collateral being the "***Available NMTC Cash Collateral***"),[20] subject to the review procedures set forth in paragraph 16 of this Final Order; *provided* that, to the extent that the NMTC Adequate Protection Fees and Expenses (after being approved pursuant to the review procedures set forth in paragraph 16) exceed the Available NMTC Cash Collateral at any given time, any approved but unpaid NMTC Adequate Protection Fees and Expenses shall be payable from future Available NMTC Cash Collateral subject to the other limitations set forth herein; *provided further* that, the rights of the NMTC Participants to seek additional NMTC Adequate

[19] Subject to the aggregate cap of $850,000, to the extent that any NMTC Adequate Protection Fees and Expenses (defined below) exceed the Quarterly Cap in any particular quarter, such NMTC Adequate Protection Fees and Expenses shall be applied to each subsequent Quarterly Cap until such NMTC Adequate Protection Fees and Expenses are paid. Notwithstanding anything herein to the contrary, the Quarterly Cap shall not apply (but for the avoidance of doubt, the aggregate cap of $850,000 shall apply) to NMTC Adequate Protection Fees and Expenses accrued prior to entry of this Final Order.

[20] CDE Reserve Accounts shall not be used to pay the NMTC Adequate Protection Fees and Expenses.

Protection Fees and Expenses are hereby preserved in the event that the actual aggregate professional fees and expenses incurred by the NMTC Participants exceed $850,000. For the avoidance of doubt, no payment of NMTC Adequate Protection Fees and Expenses shall give rise to any NMTC Adequate Protection Lien or NMTC 507(b) Claim.

(g) *Prepetition Senior Secured Postpetition Interest Payments*. From and after entry of this Final Order, the Prepetition Agent, on behalf of the Prepetition Secured Lenders, shall receive current cash payment during the Chapter 11 Cases of all prepetition and postpetition accrued and unpaid interest on the Prepetition Senior Secured Debt under the Prepetition Senior Secured Credit Agreement as such interest becomes due and payable at the contractual rate thereunder as described in paragraph G(b) and in the amounts specified in the Prepetition Senior Secured Credit Agreement.

(h) *NMTC Debt Service Payments*. From and after entry of this Final Order, the NMTC Participants shall receive current cash payment during the Chapter 11 Cases of all prepetition and postpetition accrued and unpaid interest on the NMTC Loan Documents as such interest becomes due and payable at the contractual rate thereunder and in the amounts specified in the NMTC Loan Documents, in accordance with the Approved Budget and (A) as it relates to the Prepetition Senior Secured NMTC Source Loan, in an amount equal to $427,913.83 per calendar quarter that shall be paid on the 15th of the months of March, June, September and December of each year (plus an additional payment of $427,913.83 that shall be made within 10 days of entry of this Final Order that pertains to quarterly interest that was due March 2024) and (B) as it relates to the Prepetition NMTC QLICI Loans, in an amount equal to $310,869.36 per calendar quarter that shall be paid on the 5th of the months of March, June, September and

December of each year, exclusive of amounts held in restricted accounts[21] subject to any order approving the Cash Management Motion (as defined in the First Day Declarations) then in effect.

(i) *Additional Senior Secured Adequate Protection.* The DIP Borrower and Issuer shall provide (x) the Prepetition Agent, for distribution to the Prepetition Secured Lenders (and subject to the applicable confidentiality restrictions in any of the Prepetition Senior Secured Credit Documents), counsel to the NMTC Participants, for delivery to the NMTC Participants and counsel to the Creditors' Committee, for delivery to the Creditors' Committee (without waiver of the Debtors' right to designate any document as Professionals' eyes only), with copies of quarterly and annual financial reports, in each case contemporaneously with (or reasonably promptly following) the delivery of such reports to the DIP Agent under the DIP Documents and (y) counsel to the Prepetition Agent and counsel to the Minority Lender Group (as defined below), on a confidential and "professional eyes only" basis, copies of updated budgets and variance reports contemporaneously with (or reasonably promptly after) the delivery of such budgets and variance reports to parties under the DIP Documents; *provided* that if the DIP Agent (acting with the consent or at the direction of the Required DIP Creditors) waives or modifies its rights under the DIP Documents to receive any of the foregoing reporting, the Prepetition Agent (or, as applicable, its counsel and counsel to the Minority Lender Group) shall only receive such reporting (i) the delivery of which has not been waived by the DIP Agent (acting with the consent or at the direction of the Required DIP Creditors) in accordance with the terms of the DIP Documents and (ii) as modified upon request of the DIP Agent in accordance with the terms of the DIP Documents. In

[21] The following amounts held in the CDE Reserves Accounts may be used to partially pay the quarterly amounts due with respect to the Prepetition NMTC QLICI Loans: (i) up to $16,875 each calendar quarter from the NIF Reserve Account, and (ii) up to $13,750 each calendar quarter from the Muni Reserve Account.

addition, in the event the DIP Facility Agreement is indefeasibly repaid in full or no longer in effect for any reason, (A) the Milestones set forth in Schedule 5.18 of the DIP Facility Agreement, (B) the Debtors' obligations to provide and comply with the Initial DIP Budget and any subsequent Approved Budget as set forth herein and in the DIP Facility Agreement and (C) all information and reporting requirements set forth in the DIP Facility Agreement shall remain in full force and effect for the benefit of the Prepetition Secured Parties and all consents, waivers and amendments in connection therewith shall be subject to the determination of the Prepetition Required Lenders and/or the Prepetition Agent (acting at the direction of the Prepetition Required Lenders). In addition to the foregoing, the Debtors shall provide counsel to the NMTC Participants and counsel to the Creditors' Committee with quarterly updates on costs incurred in connection with the construction of the Debtors' Epes, Alabama facility and periodic updates as to the timing for completion of such facility, and shall (1) be provided in a manner consistent with the Debtors' past practice, (2) be developed from reports the Company otherwise prepares in the ordinary course of business and (3) be contemporaneously provided to the advisors to the Committee (it being understood that such updates and any related information and materials provided to the advisors to the Committee may be designated by the Debtors as confidential or Professionals' eyes only) and the Ad Hoc Group.

(j) *Fees and Expenses of Minority Lender Group*. Subject fully to the provisions of this subparagraph (j), the DIP Credit Parties shall provide, as additional adequate protection to the Prepetition Secured Parties, current cash payments of all reasonable and documented prepetition and postpetition fees and expenses of that certain ad hoc group of first lien lenders represented by Latham & Watkins LLP (among other advisors) that does not constitute the Prepetition Required Lenders (the "***Minority Lender Group***"), subject to an aggregate maximum

limit of $400,000, subject to the review procedures set forth in paragraph 16 of this Final Order (the "***Minority Lender Group Fee and Expense Reimbursement***"); *provided* that (i) except to the extent set forth in the succeeding clause (ii), the Minority Lender Group and its members shall not be entitled to any reimbursement of prepetition or postpetition fees or expenses in any amount exceeding $400,000 (whether paid as adequate protection, claim treatment or otherwise) or any allowed claim in respect thereof, and no such amounts may be used in respect of, or paid to reimburse any costs of, any litigation or investigation except as expressly consented to in writing by the Debtors, the Prepetition Required Lenders and the Required DIP Creditors; and (ii) if the Debtors determine in good faith that they are no longer pursuing (or are no longer able to pursue) a plan of reorganization that repays the Prepetition Secured Obligations in full, in cash on or as soon as practicable following the effective date thereof, then counsel to the Debtors shall, as soon as reasonably practicable after making such determination, deliver written notice (which may be by email) to counsel to the Minority Lender Group, counsel to the Ad Hoc Group and counsel to the Prepetition Agent, indicating such determination, at which point (A) the rights of the Minority Lender Group and its members shall be fully reserved to (1) petition the Court for additional adequate protection in excess of the Minority Lender Group Fee and Expense Reimbursement and (2) seek allowance of claims in respect of fees and expenses in excess of $400,000 in aggregate and (B) the rights of the Debtors, the Creditors' Committee, the Prepetition Required Lenders, the Ad Hoc Group and all other parties in interest shall be fully reserved to (1) oppose any such request for adequate protection (including, without limitation, any rights and arguments relating to the Minority Lender Group's lack of standing to seek adequate protection) or claim allowance and (2) pursue or provide any treatment that is legally permissible in respect of any claim of the Minority Lender Group. Unless and until the Debtors deliver notice of the type described in clause

(ii) of the preceding sentence, the Prepetition Required Lenders shall refrain from seeking to amend any provision of the Prepetition Senior Secured Credit Documents relating to the entitlement of the Minority Lender Group to payment of fees and expenses thereunder, including without limitation Section 9.05 thereof, provided that no such restriction shall apply following delivery of such notice.

(k) *Reservation of Rights of Prepetition Secured Parties*. The Prepetition Required Lenders (or the Prepetition Agent acting at the direction of the Prepetition Required Lenders) may request further or different adequate protection and the Debtors, the Creditors' Committee, the DIP Secured Parties, the NMTC Participants or any other party in interest may contest any such request; *provided* that any further or different adequate protection granted shall be subject and subordinate to the Carve-Out.

(l) *Reservation of Rights of NMTC Participants*. The NMTC Participants may request further or different adequate protection and the Debtors, the DIP Secured Parties, the Prepetition Required Lenders (or the Prepetition Agent acting at the direction of the Prepetition Required Lenders) or any other party in interest may contest any such request; *provided* that any further or different adequate protection granted shall be subject and subordinate to the Carve-Out.

(m) *Reservation of Rights Regarding All Adequate Protection Payments*. Notwithstanding anything to the contrary herein, (i) the rights of the Creditors' Committee (and, solely with respect to such payments of postpetition interest, the Debtors and all parties in interest) are fully reserved to seek a determination by final, non-appealable order, that any payments of postpetition fees and expenses, interest or other debt service payments, as applicable, made pursuant to paragraphs 13(e), (f), (g), (h) and (j) of this Final Order should be recharacterized under section 506(b) of the Bankruptcy Code as payment on account of the secured portion of the

Prepetition Senior Secured Debt and the Prepetition Senior Secured NMTC Debt, as applicable, as of the Petition Date (it being understood that any request for such determination as relates to the valuation of collateral secured by the applicable liens shall not be subject to the Challenge Period), and the rights of the applicable parties to contest any such determination are hereby reserved and (ii) the Court may order any other appropriate remedies in the event of a successful Challenge.

14. *Perfection of DIP Liens and Adequate Protection Liens*.

(a) Without in any way limiting the automatically valid and effective perfection of the DIP Liens granted pursuant to paragraph 6 of the Interim Order and paragraph 6 hereof and the Adequate Protection Liens granted pursuant to paragraph 13 of the Interim Order and paragraph 13 hereof, the DIP Secured Parties and the Prepetition Secured Parties were, by the Interim Order, and the DIP Secured Parties, the Prepetition Secured Parties and the NMTC Participants hereby are, authorized to file or record (and to execute in the name of the DIP Credit Parties, the Prepetition Secured Parties and the NMTC Participants (as applicable), as their true and lawful attorneys, with full power of substitution, to the maximum extent permitted by law) financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in any jurisdiction, or to take possession of securities, or to amend or modify security documents, or to enter into, amend or modify intercreditor agreements, or to subordinate existing liens and any other similar action in connection therewith in a manner not inconsistent herewith or take any other action in order to document, validate and perfect the liens and security interests granted to them hereunder the ("***Perfection Actions***"). Whether or not the DIP Secured Parties, the Prepetition Secured Parties and the NMTC Participants shall take such Perfection Actions, the liens and security interests granted under the Interim Order or hereunder shall be

deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute or subordination, at the time and on the date of entry of the Interim Order. Upon the request of the DIP Agent (acting with the consent or at the direction of the Required DIP Creditors) or the Prepetition Agent (acting at the direction of the Prepetition Required Lenders), each of the Prepetition Secured Parties, the DIP Credit Parties, and the NMTC Participants, as applicable, without any further consent of any party, and at the sole cost of the Debtors as set forth herein, was, by the Interim Order, and hereby is, authorized (in the case of the DIP Credit Parties) and directed (in the case of the Prepetition Secured Parties), and such direction was, by the Interim Order, and hereby is, deemed to constitute required direction under the applicable DIP Documents or Prepetition Senior Secured Credit Documents, to take, execute, deliver and file such actions, instruments and agreements (in each case, without representation or warranty of any kind) to enable the DIP Agent to further validate, perfect, preserve and enforce the DIP Liens in all jurisdictions required under the DIP Facility Agreement, including all local law documentation therefor determined to be reasonably necessary by the DIP Secured Parties; *provided* that no action need be taken in a foreign jurisdiction that would jeopardize the validity, priority (as provided for in this Final Order) and enforceability of the Prepetition Liens. All such documents will be deemed to have been recorded and filed as of the Petition Date. The Adequate Protection Liens shall be valid and enforceable against any trustee or other estate representative appointed in the Chapter 11 Cases, in any Successor Case, and/or upon the dismissal of any of the Chapter 11 Cases or Successor Cases. The Adequate Protection Liens shall not be subject to section 506(c), 510, 549 or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of any

Debtor's estate pursuant to section 551 of the Bankruptcy Code shall be made *pari passu* with or senior to the Adequate Protection Liens.

(b) A certified copy of the Interim Order or this Final Order may, as applicable, in the discretion of the DIP Agent (acting with the consent or at the direction of the Required DIP Creditors), the Prepetition Agent (acting at the direction of the Prepetition Required Lenders) and/or the NMTC Participants (as applicable), be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices were, by the Interim Order (as applicable), and hereby are, authorized and directed to accept a certified copy of the Interim Order or this Final Order for filing and/or recording, as applicable. The Automatic Stay shall be modified to the extent necessary to permit the DIP Agent (acting with the consent or at the direction of the Required DIP Creditors), the Prepetition Agent (acting at the direction of the Prepetition Required Lenders) and/or the NMTC Participants to take all actions, as applicable, referenced in this subparagraph(b) and the immediately preceding subparagraph (a).

15. *Preservation of Rights Granted Under this Final Order*.

(a) Other than the Carve-Out and other claims and liens expressly granted or permitted by the Interim Order or this Final Order, no claim or lien having a priority senior to or *pari passu* with those granted by the Interim Order or this Final Order to the DIP Secured Parties, the Prepetition Secured Parties or the NMTC Participants shall be permitted while any of the DIP Obligations or the Adequate Protection Obligations remain outstanding (it being understood, for the avoidance of doubt, that any Adequate Protection Obligations shall not cease to be outstanding at any time before the Prepetition Senior Secured Debt or the NMTC Loans, as applicable, have been indefeasibly paid in full), and, except as otherwise expressly provided in

or permitted under the Interim Order or this Final Order, the DIP Liens, the Prepetition Liens, the NMTC Liens and the Adequate Protection Liens shall not be subject or subordinate to or made *pari passu* with: (i) any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code; (ii) any other lien or security interest, whether under section 361, 363 or 364 of the Bankruptcy Code or otherwise; (iii) any liens arising after the Petition Date, including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other domestic or foreign governmental unit (including any regulatory body), commission, board or court for any liability of the DIP Credit Parties; or (iv) any intercompany or affiliate liens or security interests of the DIP Credit Parties.

(b) Upon an Event of Default, interest, including, where applicable, default interest, shall accrue and be paid as and to the extent set forth in the DIP Facility Agreement. Notwithstanding any order that may be entered dismissing any of the Chapter 11 Cases under section 1112 of the Bankruptcy Code or converting any of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code: (i) the DIP Superpriority Claims, the DIP Liens, the Prepetition Liens, the NMTC Liens, the Adequate Protection Claims, the Adequate Protection Liens and the other Adequate Protection Obligations, and any claims related to the foregoing shall continue in full force and effect and shall maintain their priorities as provided in this Final Order until all DIP Obligations and Adequate Protection Obligations shall have been paid in full (and such DIP Superpriority Claims, the DIP Liens, the Prepetition Liens, the NMTC Liens, the Adequate Protection Claims, the Adequate Protection Liens and the other Adequate Protection Obligations shall, notwithstanding such dismissal or conversion, remain binding on all parties in interest, including, without limitation, any appointed trustee); (ii) the other rights granted by this Final Order, including with respect to the Carve-Out, shall not be affected; and (iii) the Court shall retain

jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in this paragraph and otherwise in this Final Order.

(c) If any or all of the provisions of this Final Order are hereafter reversed, modified, vacated or stayed, such reversal, modification, vacatur or stay shall not affect: (i) the validity, priority or enforceability of any DIP Obligations or Adequate Protection Obligations incurred prior to the actual receipt of written notice by the DIP Agent, the Prepetition Agent or the NMTC Participants, as applicable, of the effective date of such reversal, modification, vacatur or stay; or (ii) the validity, priority or enforceability of the DIP Liens, the Adequate Protection Liens or the Carve-Out. Notwithstanding any such reversal, modification, vacatur or stay, any DIP Obligations, the DIP Liens, the Adequate Protection Claims, the Adequate Protection Liens or the other Adequate Protection Obligations incurred by the DIP Credit Parties and granted to the DIP Secured Parties, the Prepetition Secured Parties or the NMTC Participants, as the case may be, prior to the actual receipt of written notice by the DIP Agent, the Prepetition Agent or the NMTC Participants, as applicable, of the effective date of such reversal, modification, vacatur or stay shall be governed in all respects by the original provisions of this Final Order, and the DIP Secured Parties, the Prepetition Secured Parties and the NMTC Participants shall be entitled to, and are hereby granted, all the rights, remedies, privileges and benefits arising under sections 364(e) and 363(m) of the Bankruptcy Code and the DIP Documents with respect to all uses of Cash Collateral, DIP Obligations and Adequate Protection Obligations.

(d) Except as expressly provided in the DIP Documents, including this Final Order, the DIP Liens, the DIP Superpriority Claims, the Prepetition Liens, the NMTC Liens, the Adequate Protection Claims, the Adequate Protection Liens, the other Adequate Protection Obligations and all other rights and remedies of the DIP Secured Parties, the Prepetition Secured

Parties and the NMTC Participants (as applicable) granted by the provisions of this Final Order or the other DIP Documents and the Carve-Out shall survive, and shall not be modified, impaired or discharged by: (i) the entry of an order converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, dismissing any of the Chapter 11 Cases or terminating the joint administration of the Chapter 11 Cases or by any other act or omission; (ii) the entry of an order approving the sale of any DIP Collateral pursuant to section 363(b) of the Bankruptcy Code (except to the extent permitted by the DIP Documents); or (iii) the entry of an order confirming a chapter 11 plan in any of the Chapter 11 Cases and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the DIP Credit Parties have waived any discharge as to any remaining DIP Obligations or Adequate Protection Obligations. The terms and provisions of the DIP Documents shall continue in the Chapter 11 Cases (including if the Chapter 11 Cases cease to be jointly administered) and in any Successor Cases, and the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Claims, the Adequate Protection Liens and the other Adequate Protection Obligations and all other rights and remedies of the DIP Secured Parties, the Prepetition Secured Parties and the NMTC Participants (as applicable) granted by the provisions of the DIP Documents and this Final Order shall continue in full force and effect until the DIP Obligations and the Adequate Protection Obligations are indefeasibly paid in full in cash, as set forth herein and in the other DIP Documents, and the DIP Commitments have been terminated (and in the case of rights and remedies of the Prepetition Secured Parties, shall remain in full force and effect thereafter, subject to the terms of this Final Order), and the Carve-Out shall continue in full force and effect.

16. *Payment of Fees and Expenses*. The DIP Credit Parties were, by the Interim Order (as applicable), and hereby are, authorized to and shall pay the DIP Fees and Expenses, the

Prepetition Secured Parties Adequate Protection Fees and Expenses and the NMTC Adequate Protection Fees and Expenses, subject to paragraph 13(m) hereof. Subject to the review procedures set forth in this paragraph 16, payment of all DIP Fees and Expenses, the Prepetition Secured Parties Adequate Protection Fees and Expenses, the NMTC Adequate Protection Fees and Expenses and the Minority Lender Group Fee and Expense Reimbursement shall not be subject to allowance or review by the Court. Professionals for the DIP Agent, the Prepetition Agent, the NMTC Participants, the Minority Lender Group and the Ad Hoc Group shall not be required to comply with the U.S. Trustee fee guidelines; *provided* however, any time that such professionals seek payment of fees and expenses from the Debtors prior to confirmation of a chapter 11 plan, each professional, subject to the terms of any fee letter with the Debtors that may be then in effect, shall provide summary copies of its invoices with aggregate amounts of fees and expenses and total amount of time on a per-professional basis (which shall not be required to contain time detail and which may be redacted, summarized or modified to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, and the provision of such invoices shall not constitute any waiver of the attorney client privilege or of any benefits of the attorney work product doctrine or any other evidentiary privilege or protection recognized under applicable law) to the DIP Credit Parties, Vinson & Elkins LLP and Kutak Rock LLP as co-counsel to the DIP Credit Parties, Akin Gump Strauss Hauer & Feld LLP and Hirschler Flesicher, P.C. as co-counsel to the Creditors' Committee, and the U.S. Trustee (together, the "***Review Parties***"). Any objections raised by any Review Party with respect to such invoices must be in writing and state with particularity the grounds therefor and must be submitted to the applicable professional within fourteen (14) calendar days after the receipt by the Review Parties (the "***Review Period***"). If no

written objection is received by 12:00 p.m., prevailing Eastern Time, on the end date of the Review Period, the DIP Credit Parties shall pay such invoices within five (5) business days. If an objection to a professional's invoice is received within the Review Period, the DIP Credit Parties shall pay within five (5) business days of the end of the Review Period the undisputed amount of the invoice without the necessity of filing formal fee applications, regardless of whether such amounts arose or were incurred before or after the Petition Date, and the Court shall have jurisdiction to determine the disputed portion of such invoice if the parties are unable to resolve the dispute consensually. Notwithstanding the foregoing, the Debtors are authorized and directed to pay on the Closing Date any DIP Fees and Expenses, the Prepetition Secured Parties Adequate Protection Fees and Expenses, the NMTC Adequate Protection Fees and Expenses and any applicable portion of the Minority Lender Group Fee and Expense Reimbursement incurred on or prior to such date without the need for any professional to first deliver a copy of its invoice or other supporting documentation to the Review Parties (other than the Debtors). No attorney or advisor to the DIP Agent, the Prepetition Agent, the NMTC Participants, the Minority Lender Group or the Ad Hoc Group shall be required to file an application seeking compensation for services or reimbursement of expenses with the Court. Any and all fees, costs, and expenses paid prior to the Petition Date by any of the Debtors to or for the benefit of the DIP Secured Parties, the Prepetition Agent, the NMTC Participants, the Minority Lender Group or the Ad Hoc Group, in connection with or with respect to the DIP Financing or the Chapter 11 Cases, are hereby approved in full and shall not be subject to recharacterization, avoidance, subordination, disgorgement or any similar form of recovery by the Debtors or any other person; *provided*, that nothing in this paragraph 16 shall limit or modify paragraph 13(m) hereof or any Challenge rights set forth in paragraph 18 with respect to the Prepetition Senior Secured Debt or the Prepetition Senior Secured NMTC Debt.

17. *Maintenance of Collateral*. The DIP Credit Parties shall continue to maintain and insure the Prepetition Collateral and DIP Collateral in amounts and for the risks, and by the entities, as required under the Prepetition Senior Secured Credit Documents and the DIP Documents.

18. *Effect of Stipulations on Third Parties*. The Debtors' stipulations, admissions, agreements and releases contained in the Orders shall be binding upon the Debtors in all circumstances and for all purposes. The Debtors' stipulations, admissions, agreements and releases contained in the Orders shall be binding upon all other parties in interest, including, without limitation, any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases and any other person or entity acting or seeking to act on behalf of the Debtors' estates (including any trustee or examiner appointed or elected in the Chapter 11 Cases or any Successor Cases), in all circumstances and for all purposes unless: (a) such committee or any other party in interest with requisite standing (subject in all respects to any agreement or applicable law that may limit or affect such entity's right or ability to do so) has timely filed an adversary proceeding or contested matter (subject to the limitations contained herein, including, inter alia, in this paragraph) on or before the later of (i) as to the Creditors' Committee only, one hundred and five (105) calendar days after the appointment of the Creditors' Committee; *provided* that, if, prior to the applicable date set forth in this clause (i), the Creditors' Committee files a motion seeking standing and authority to commence litigation as a representative of the Debtors' estates and attaching to such motion a proposed complaint identifying and describing all claims and causes of action on behalf of the Debtors' estates for which the Creditors' Committee is seeking standing, and such motion is granted by the Court, then the Challenge Period for the Creditors' Committee with respect of the claims and causes of action described in the proposed complaint for which the Court granted standing shall be extended until the date that is three (3) business days from the

entry of a final order ruling on such standing motion, (ii) if the Chapter 11 Cases are converted to chapter 7 cases and a chapter 7 trustee or a chapter 11 trustee is appointed or elected prior to the end of sixty (60) calendar days after entry of the Interim Order, then the Challenge Period for any such chapter 7 trustee or chapter 11 trustee shall be extended (solely as to such chapter 7 trustee and chapter 11 trustee) to the date that is the later of (A) sixty (60) calendar days after entry of the Interim Order, and (B) thirty (30) calendar days after its appointment and (iii) as to all other parties in interest, seventy-five (75) calendar days after entry of the Interim Order, (the time period established by the foregoing clauses (i)–(iii), the "***Challenge Period***"); *provided* that prior to the end of the Challenge Period, any extension of the expiration date thereof may be (i) agreed to in writing by (A) the Required DIP Creditors (in all instances), (B) the Prepetition Required Lenders (under the Prepetition Senior Secured Credit Agreement with respect to the Prepetition Secured Parties, the Prepetition Senior Secured Debt or the Prepetition Liens), and (C) the applicable NMTC Participants (under the NMTC Loan Documents with respect to the NMTC Participants, the NMTC Transactions or the NMTC Liens) or (ii) ordered by the Court for cause upon a motion filed and served within any applicable period (x) objecting to or challenging the amount, validity, perfection, enforceability, priority or extent of the Prepetition Senior Secured Debt or the Prepetition Liens, (y) objecting to or challenging the amount, validity, perfection, enforceability, priority or extent of the loans pertaining to the NMTC Transactions or NMTC Liens or (z) otherwise asserting or prosecuting any action for preferences, fraudulent transfers or conveyances, other avoidance power claims or any other claims, counterclaims or causes of action, objections, contests or defenses (collectively, the "***Challenges***") against the Prepetition Secured Parties and/or NMTC Participants, as applicable, or their respective subsidiaries, affiliates, officers, directors, managers, principals, employees, agents, financial advisors, attorneys, accountants,

investment bankers, consultants, representatives and other professionals and the respective successors and assigns thereof, in each case, in their respective capacity as such (each, a "***Representative***" and, collectively, the "***Representatives***") in connection with matters related to the Prepetition Debt Documents, the Prepetition Senior Secured Debt, the Prepetition Liens, the Prepetition Collateral, the NMTC Transactions, the NMTC Loan Documents, the NMTC Collateral and/or the NMTC Liens, as applicable; and (b) there is a final non-appealable order in favor of the plaintiff sustaining any such Challenge in any such timely filed adversary proceeding or contested matter; *provided* that any pleadings filed in connection with any Challenge as set forth in this paragraph 18 shall set forth with specificity the basis for such challenge or claim, and any challenges or claims not so specified prior to the expiration of the Challenge Period shall be deemed forever, waived, released and barred. If no such Challenge is timely and properly filed with respect to the Prepetition Senior Secured Debt, the Prepetition Liens, the Prepetition Collateral or the Prepetition Debt Documents prior to the expiration of the Challenge Period or such Challenge proceeding is withdrawn or an order is not entered in favor of the plaintiff (and, in each case, all applicable appeal rights of the plaintiff have been exhausted, waived or have otherwise lapsed), then the Debtors' stipulations, admissions, agreements and releases contained in the Orders shall be binding on all parties in interest, including any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases and any other person or entity acting or seeking to act on behalf of the Debtors' estates, including, without limitation, successor thereto (including any trustee or examiner appointed or elected in the Chapter 11 Cases or any Successor Cases), for all purposes in the Chapter 11 Cases and any Successor Case(s) and otherwise, including that (x) the obligations of the Debtors under the Prepetition Senior Secured Credit Documents, including the Prepetition Senior Secured Debt, shall constitute allowed claims

not subject to defense avoidance, reduction, setoff, recoupment, recharacterization, subordination (whether equitable, contractual or otherwise), disallowance, impairment, claim, counterclaim, cross-claim or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity, including any statutory or non-statutory committee, (y) the Prepetition Liens on the Prepetition Collateral shall be deemed to have been, as of the Petition Date, legal, valid, binding and properly perfected security interests and liens, not subject to defense, avoidance, reduction, setoff, recoupment, recharacterization, subordination (whether equitable, contractual or otherwise), disallowance, impairment, claim, counterclaim, cross-claim, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity, including any statutory or non-statutory committee and (z) any defense, avoidance, reduction, setoff, recoupment, recharacterization, subordination (whether equitable, contractual, or otherwise), disallowance, impairment, claim, counterclaim, cross-claim or any other challenge under the Bankruptcy Code or any applicable law or regulation by any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases or any other person or entity acting or seeking to act on behalf of the Debtors' estates, including, without limitation, any successor thereto (including any trustee or examiner appointed or elected in the Chapter 11 Cases or any Successor Cases), whether arising under the Bankruptcy Code or otherwise, against any of the Prepetition Secured Parties or their Representatives arising out of or relating to any of the Prepetition Debt Documents, the Prepetition Senior Secured Debt, the Prepetition Liens or the Prepetition Collateral shall be deemed forever waived, released and barred; *provided* that the protections set forth in this sentence (including in the foregoing clauses (x) through (z)) shall also apply with respect to the NMTC Liens, NMTC Collateral, NMTC Transactions, the NMTC Loan Documents, and the NMTC Participants in the event that no such Challenge is timely and properly filed with respect

thereto prior to the expiration of the Challenge Period or such Challenge proceeding is withdrawn or an order is not entered in favor of the plaintiff (and, in each case, all applicable appeal rights of the plaintiff have been exhausted, waived or have otherwise lapsed). If any such Challenge is timely filed during the Challenge Period, the stipulations, admissions, agreements and releases contained in the Orders shall nonetheless remain binding and preclusive (as provided in the foregoing provisions of this paragraph) on each other statutory or non-statutory committee appointed or formed in the Chapter 11 Cases and on any other person or entity, except (solely with respect to the party filing the Challenge) to the extent that such stipulations, admissions, agreements and releases were expressly and successfully challenged in such Challenge as set forth in a final, non-appealable order of a court of competent jurisdiction. Nothing in the Orders vests or confers on any Entity (as defined in the Bankruptcy Code), including any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases, standing or authority to pursue any claim or cause of action belonging to the Debtors or their estates, including, without limitation, Challenges with respect to the Prepetition Debt Documents, the Prepetition Senior Secured Debt the Prepetition Liens, the NMTC Loan Documents, the NMTC Transactions or the NMTC Liens and any ruling on standing (including any appeals thereof) shall not stay or otherwise delay the Chapter 11 Cases or confirmation of any plan of reorganization. Notwithstanding the absence of any specific references in this paragraph 18, (i) the rights to seek and assert Challenges within the Challenge Period in accordance with this paragraph 18 shall apply with respect to (a) any and all parties benefiting from the stipulations set forth in the entirety of paragraph G hereof (Debtors' Stipulations), (b) any and all claims and debt (including the validity and allowance thereof), liens (including the priority, perfection and validity of such liens) and guarantees purportedly held (or provided to) by all such parties referenced in such stipulations,

(c) any and all documents governing any of the foregoing and the obligations purportedly incurred by the Debtors pursuant thereto and (d) any and all other aspects of such stipulations and (ii) all aspects of, and rights provided pursuant to, this paragraph 18 shall apply with equal force with respect thereto.

19. *Release*. Subject to the Challenge Period in paragraph 18 hereof, each Debtor, on behalf of itself and its respective estate, on its own behalf and on behalf of its and their respective past, present and future predecessors, successors, heirs, subsidiaries and assigns, hereby (a) reaffirms the releases granted pursuant to paragraph 19 of the Interim Order and (b) absolutely, unconditionally and irrevocably releases and forever discharges and acquits the Prepetition Secured Parties, the DIP Secured Parties (in each case, solely in their capacities as such, and not in any capacity as a prepetition equity holder of the Debtors or any other capacity) and each of their respective Representatives (collectively, the "***Released Parties***") from any and all obligations and liabilities to the Debtors (and their successors and assigns) and from any and all claims, counterclaims, demands, defenses, offsets, debts, accounts, contracts, liabilities, actions and causes of action of any kind, nature or description, whether matured or unmatured, known or unknown, asserted or unasserted, foreseen or unforeseen, accrued or unaccrued, suspected or unsuspected, liquidated or unliquidated, pending or threatened, arising in law or equity, upon contract or tort or under any state or federal law or otherwise (collectively, the "***Released Claims***"), in each case arising out of or related to (as applicable) the DIP Documents, the negotiation thereof or of the transactions and agreements reflected thereby, or the financial or other obligations owing or made thereunder, in each case that the Debtors at any time had or now have, or that their predecessors, successors or assigns at any time had or may have against any of the Released Parties for or by reason of any act, omission, matter, cause or thing whatsoever arising at any time on or prior to

the date of this Final Order; *provided* that the Released Claims shall exclude, for the avoidance of doubt, any release of any claim or cause of action against any Released Party for such person's or such person's Representatives' willful misconduct, fraud, gross negligence or bad faith. For the avoidance of doubt, nothing in this paragraph shall relieve any party of (y) its obligations under the DIP Documents or (z) any rights or obligations it may have arising under that certain Restructuring Support Agreement, dated as of March 12, 2024 (the "***RSA***").

20. *Limitation on Use of DIP Financing Proceeds and Collateral*. Notwithstanding any other provision of the Orders or any other order entered by the Court, no portion or proceeds of the DIP Loans and Notes, DIP Collateral, Prepetition Collateral (including Cash Collateral) or the Carve-Out, may be used directly or indirectly, including, without limitation, through reimbursement of professional fees, disbursements, costs or expenses of any non-Debtor party, in connection with: (a) the investigation, threatened initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation (i) against any of the DIP Secured Parties, the Prepetition Secured Parties or their respective predecessors-in-interest or Representatives, in each case in their respective capacities as such, or any action purporting to do the foregoing in respect of the DIP Obligations, DIP Liens, DIP Superpriority Claims, Prepetition Senior Secured Debt, Prepetition Liens, NMTC Transactions, NMTC Liens and/or the Adequate Protection Claims, Adequate Protection Liens and other Adequate Protection Obligations granted to the Prepetition Secured Parties and the NMTC Participants, as applicable, or (ii) challenging the amount, validity, perfection, priority or enforceability of or asserting any defense, counterclaim or offset with respect to the DIP Obligations, the Prepetition Senior Secured Debt or the NMTC Transactions and/or the liens, claims, rights or security interests granted under the DIP Documents or the Prepetition Debt Documents in respect of the DIP Obligations or the

Prepetition Senior Secured Debt, including, in the case of each (i) and (ii), without limitation, for lender liability or pursuant to section 105, 510, 544, 547, 548, 549, 550 or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise (*provided* that, notwithstanding anything to the contrary herein, the proceeds of the DIP Loans and Notes and/or DIP Collateral (including Cash Collateral) may be used by the Creditors' Committee to investigate (but not to prosecute or initiate the prosecution of, including the preparation of any complaint or standing motion in respect thereof), on account of (x) the claims and liens of the Prepetition Secured Parties and the NMTC Participants and (y) potential claims, counterclaims, causes of action or defenses against the Prepetition Secured Parties and the NMTC Participants, up to an aggregate cap of no more than $400,000); (b) attempts to prevent, hinder or otherwise delay or interfere with the NMTC Participants', the Prepetition Secured Parties' or the DIP Secured Parties', as applicable, enforcement or realization on the NMTC Loans, the NMTC Collateral, the Prepetition Senior Secured Debt, the Prepetition Collateral, the DIP Obligations, the DIP Collateral and the liens, claims and rights granted to such parties under the Interim Order or Final Order, as applicable, each in accordance with the DIP Documents and the Prepetition Debt Documents; (c) attempts to seek to modify any of the rights and remedies granted to the NMTC Participants, the Prepetition Secured Parties or the DIP Secured Parties under the NMTC Loan Documents, the Prepetition Debt Documents or the DIP Documents, as applicable, other than in accordance with this Final Order; (d) to apply to the Court for authority to approve superpriority claims or grant liens (other than the liens and claims granted hereunder or permitted pursuant to the other DIP Documents) or security interests in the DIP Collateral or any portion thereof that are senior to, or on parity with, the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Claims, the Adequate Protection Liens or the other Adequate Protection Obligations; or (e) to pay or to seek to pay any

amount on account of any claims arising prior to the Petition Date unless such payments are agreed to in writing by the Required DIP Creditors or are expressly permitted under the DIP Documents or unless all DIP Obligations, NMTC Loans, Prepetition Senior Secured Debt, Adequate Protection Obligations and claims granted to the DIP Secured Parties, the Prepetition Secured Parties and the NMTC Participants under the Orders have been refinanced or paid in full in cash (including the cash collateralization of any letters of credit). For the avoidance of doubt, this paragraph 20 shall not limit the Debtors' right to use DIP Collateral to contest whether an Event of Default has occurred and/or is continuing or has been cured pursuant to and consistent with paragraph 7 of this Final Order.

21. *Indemnification*. The Prepetition Secured Parties and the DIP Secured Parties (in each case, solely in their capacities as such, and not in any capacity as a prepetition equity holder of the Debtors or any other capacity) have acted in good faith and without negligence, misconduct or violation of public policy or law, in respect of all actions taken by them in connection with or related in any way to negotiating, implementing, documenting, or obtaining requisite approvals of the DIP Financing and the use of Cash Collateral, including in respect of the granting of the DIP Liens and the Adequate Protection Liens, any challenges or objections to the DIP Financing or the use of Cash Collateral, the DIP Documents, the equity participation election rights provided pursuant to the DIP Documents, and all other documents related to the DIP Financing. Accordingly, without limitation to any other right to indemnification, the Prepetition Secured Parties and DIP Secured Parties shall be and hereby are indemnified to the extent set forth in the Prepetition Senior Secured Credit Documents and the DIP Documents, as applicable, including, without limitation, Section 9.05 of the DIP Facility Agreement and Section 9.05 of the Prepetition Senior Secured Credit Agreement; *provided* that no such person will be indemnified for costs,

expenses or liabilities to the extent determined by a final, non-appealable judgment of a court of competent jurisdiction to have been incurred solely by reason of the actual fraud, gross negligence or willful misconduct of such person (or their related persons); *provided, further* that, without modifying or limiting the terms of Section 9.05 of the Prepetition Senior Secured Credit Agreement or the rights of the Prepetition Secured Parties provided in such section, other than to the extent set forth in the first sentence of this paragraph 21, the foregoing shall not be deemed waive the rights of the Creditors' Committee to object to any claim for indemnity that may asserted by any Prepetition Secured Parties pursuant to such section, on the basis that such claim for indemnity is not due or owing pursuant to the terms thereof. The Debtors agree that no exception or defense in contract, law or equity exists as of the date of this Final Order to any obligation set forth, as the case may be, in this paragraph 21 or otherwise in the DIP Documents, or in the Prepetition Senior Secured Credit Documents to indemnify and/or hold harmless any DIP Secured Party or any Prepetition Secured Party, as the case may be, and any such defenses are hereby waived. Notwithstanding anything to the contrary herein, this paragraph 21 shall not apply for the benefit of any person that, as of the Petition Date, is an insider of the Debtors, except solely to the extent of such person's capacity as a Prepetition Secured Party or a DIP Secured Party and not in any other capacity, including, for the avoidance of doubt, as a prepetition equity holder of the Debtors.

22. *Letters of Credit*. The Debtors and any applicable letter of credit providers, including any Prepetition Secured Parties, were, by the Interim Order, and hereby are, authorized (but not required) to extend, renew or replace any Letters of Credit issued prior to the Petition Date that may expire during the Chapter 11 Cases or issue new letters of credit during the Chapter 11 Cases in accordance with the terms of the Prepetition Senior Secured Credit Agreement, the

DIP Documents and any related letter of credit agreements with any applicable letter of credit providers, including any Prepetition Secured Parties, and may take any reasonable related actions, including the transfer of cash collateral in support of any such Letters of Credit or new letters of credit and granting any related security interests and pay any related fees.

23. *Final Order Governs*. In the event of any inconsistency between the provisions of this Final Order, the Interim Order, the other DIP Documents (including, but not limited to, with respect to the Adequate Protection Obligations and the Carve-Out) or, as applicable, the Prepetition Debt Documents or the NMTC Loan Documents, the provisions of this Final Order shall govern. Notwithstanding the relief granted in any other order by the Court, (a) all payments and actions by any of the Debtors pursuant to the authority granted therein shall be consistent with and subject to this Final Order, including compliance with the Approved Budget (subject to any permitted variances) and all other terms and conditions hereof, and (b) to the extent there is any inconsistency between the terms of such other order and this Final Order, this Final Order shall control, in each case, except to the extent expressly provided otherwise in such other order.

24. *Binding Effect; Successors and Assigns*. The DIP Documents, including all findings herein, shall be binding upon all parties in interest in the Chapter 11 Cases, including, without limitation, the DIP Secured Parties, the Prepetition Secured Parties, the NMTC Participants, any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases, the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors) and shall inure to the benefit of the DIP Secured Parties, the Prepetition Secured Parties,

the NMTC Participants and the Debtors and their respective successors and assigns; *provided* that the DIP Secured Parties, the Prepetition Secured Parties and the NMTC Participants shall, as applicable, have no obligation to permit the use of the Prepetition Collateral or NMTC Collateral (including Cash Collateral) by, or to extend any financing to, any chapter 7 trustee, chapter 11 trustee or similar responsible person appointed for the estates of the Debtors.

25. *No Liability*. Nothing in the DIP Documents, the Prepetition Debt Documents, the NMTC Loan Documents or any other documents related to the transactions contemplated hereby shall in any way be construed or interpreted to impose or allow the imposition upon any DIP Secured Party, Prepetition Secured Party or NMTC Participant of any liability for any claims arising from the prepetition or postpetition activities of the Debtors in the operation of their businesses, or in connection with their restructuring efforts. The DIP Secured Parties, the Prepetition Secured Parties or the NMTC Participants, as applicable, shall not, in any way or manner, be liable or responsible for (a) the safekeeping of the DIP Collateral, Prepetition Collateral or NMTC Collateral, as applicable, (b) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (c) any diminution in the value thereof or (d) any act or default of any carrier, servicer, bailee, custodian, forwarding agency or other person, and all risk of loss, damage or destruction of the DIP Collateral, Prepetition Collateral or NMTC Collateral shall be borne by the Debtors. Notwithstanding anything to the contrary herein, this paragraph 25 shall not apply for the benefit of any person that, as of the Petition Date, is an insider of the Debtors except solely to the extent of such person's capacity as an NMTC Participant, Prepetition Secured Party or a DIP Secured Party.

26. *Limitation of Liability*. In determining to extend loans, purchase notes or make other extensions of credit under the DIP Documents, to permit the use of the DIP Collateral,

Prepetition Collateral or NMTC Collateral (including, as applicable, Cash Collateral) or in exercising any rights or remedies as and when permitted pursuant to the DIP Documents, the Prepetition Senior Secured Credit Documents, the NMTC Loan Documents or this Final Order, none of the DIP Secured Parties, the Prepetition Secured Parties or the NMTC Participants (in each case, in their capacities as such) shall (a) have any liability to any third party or be deemed to be in "control" of the operations of the Debtors, (b) owe any fiduciary duty to the Debtors, their respective creditors, shareholders or estates, or constitute or be deemed to constitute a joint venture or partnership with any of the Debtors or (c) be deemed to be acting as a "Responsible Person" or "Owner" or "Operator" or "managing agent" with respect to the operation or management of any of the Debtors or their respective business (as such terms or similar terms are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.*, as amended, or any other federal or state statute, including the Internal Revenue Code). Furthermore, nothing in the Orders shall in any way be construed or interpreted to impose or allow the imposition upon any of the DIP Secured Parties or the Prepetition Secured Parties (in each case in their capacities as such) of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors and their respective affiliates (as defined in section 101(2) of the Bankruptcy Code).

27. *Master Proof of Claim*. None of the Prepetition Secured Parties or the NMTC Participants shall be required to file a proof of claim in the Chapter 11 Cases or any Successor Case in order to assert claims on behalf of themselves or other Prepetition Secured Parties or NMTC Participants for payment of Prepetition Senior Secured Debt or Prepetition Senior Secured NMTC Debt arising under the Prepetition Senior Secured Credit Documents or NMTC Loan Documents, respectively, including, without limitation, any principal, unpaid interest, fees,

expenses and other amounts under the Prepetition Senior Secured Credit Documents, NMTC Loan Documents or the Adequate Protection Obligations arising under the DIP Documents. The statements of claim in respect of such indebtedness set forth in the Interim Order and this Final Order and presented at the Interim Hearing and the Final Hearing are deemed sufficient to and do constitute proofs of claim in respect of such debt and such secured status. Any order entered by the Court in relation to the establishment of a bar date for any claim (including, without limitation, administrative claims) in any of the Chapter 11 Cases or any Successor Cases shall (a) not apply to the Prepetition Secured Parties with respect to the Prepetition Senior Secured Debt or the Adequate Protection Obligations and (b) not apply to the NMTC Participants with respect to the Prepetition Senior Secured NMTC Debt or the Adequate Protection Obligations. However, in order to facilitate the processing of claims, to ease the burden upon the Court and to reduce an unnecessary expense to the Debtors' estates, the Prepetition Agent (acting at the direction of the Prepetition Required Lenders) was, by the Interim Order, and the NMTC Participants are, authorized, but not directed or required, to file in the Debtors' lead chapter 11 case *In re Enviva Inc.*, Case No. 24-10453 (BFK), a single master proof of claim on behalf of its respective Prepetition Secured Parties and the NMTC Participants (as applicable) on account of any and all of their respective claims against any of the Debtors arising under the applicable Prepetition Senior Secured Credit Documents or NMTC Loan Documents, respectively, and hereunder (any such proof of claim, a "***Master Proof of Claim***"). Upon the filing of a Master Proof of Claim by the Prepetition Agent (acting at the direction of the Prepetition Required Lenders) or NMTC Participants, each shall be deemed to have filed a proof of claim in the amount set forth therein in respect of its claims against each of the Debtors of any type or nature whatsoever with respect to the Prepetition Senior Secured Credit Documents or NMTC Loan Documents, and the

claim of each applicable Prepetition Secured Party (and each of its respective successors and assigns) and NMTC Participant specified in their respective Master Proofs of Claim shall be treated as if they had filed a separate proof of claim in each of the Chapter 11 Cases. A Master Proof of Claim shall not be required to identify whether any Prepetition Secured Party or NMTC Participant acquired its claim from another party or the identity of any such party or to be amended to reflect a change in the holders of the claims set forth therein or a reallocation among the holders of the claims asserted therein resulting from the transfer of all or any portion of such claims. The provisions of this paragraph 27 and each Master Proof of Claim are intended solely for the purpose of administrative convenience and shall not affect the right of each Prepetition Secured Party or NMTC Participant (or their respective successors in interest) to vote (to the extent so permitted) separately on any plan proposed in the Chapter 11 Cases. A Master Proof of Claim shall not be required to attach any instruments, agreements or other documents evidencing the obligations owing by each of the Debtors to the applicable Prepetition Secured Parties or NMTC Participants, which instruments, agreements or other documents will be provided upon written request to counsel to the Prepetition Agent or counsel to the NMTC Participants, respectively. The DIP Secured Parties shall similarly not be required to file proofs of claim with respect to any DIP Obligations or other obligations existing under the DIP Documents, and the evidence presented with the DIP Motion and the record established at the Interim Hearing and the Final Hearing are deemed sufficient to, and do, constitute proofs of claim with respect to their obligations, secured status and priority.

28. *Insurance*. To the extent that the Prepetition Agent or any other creditor of the Debtors is listed as loss payee under any of the Debtors' insurance policies, the DIP Agent is also deemed to be the loss payee under such insurance policies (in any such case with the same priority

of liens and claims thereunder relative to the priority (with respect to any Prepetition Collateral) of (x) the Prepetition Liens and Adequate Protection Liens and (y) the DIP Liens, as set forth herein) and the Prepetition Agent (acting at the direction of the Prepetition Required Lenders) or the DIP Agent (acting with the consent or at the direction of the Required DIP Creditors), of any other applicable creditor, as applicable, shall act in that capacity and distribute any proceeds recovered or received in respect of such insurance policies in accordance with such priorities until the indefeasible payment in full of the DIP Obligations, the Prepetition Senior Secured Debt, and any such other indebtedness, as applicable, (other than contingent indemnification obligations as to which no claim has been asserted) and termination of the DIP Commitments; *provided* that the protections set forth in this paragraph 28 shall also apply, solely to the extent applicable, with respect to the NMTC Collateral and the NMTC Adequate Protection Liens.

29. *Credit Bidding*. Subject to the lien priorities set forth herein, (a) the DIP Agent (acting with the consent or at the direction of the Required DIP Creditors), on behalf of itself and the other DIP Secured Parties, shall have the right to credit bid, in accordance with the DIP Documents, up to the full amount of the DIP Obligations in any sale of the DIP Collateral (or any portion thereof) and (b) the Prepetition Agent (acting at the direction of the Prepetition Required Lenders) shall have the right to credit bid up to the full amount of the Prepetition Senior Secured Debt in the sale of the applicable Prepetition Collateral (or any portion thereof), without the need for further Court order authorizing the same and whether any such sale is effectuated through section 363(k), 1123 or 1129(b) of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise; *provided* that (x) the DIP Obligations may not be credit bid in any disposition of any Prepetition Collateral unless such sale provides for indefeasible payment in full in cash of all Prepetition Senior Secured Debt, and (y) none of the

Prepetition Senior Secured Debt may be credit bid in any disposition of any DIP Collateral that is not Prepetition Collateral unless such sale provides for the indefeasible payment in full in cash of all DIP Obligations and the termination of the DIP Commitments; *provided* further that, none of the DIP Obligations nor the Prepetition Senior Secured Debt may be credit bid in any disposition of any NMTC Collateral unless (i) the NMTC Participants consent to such sale or (ii) such sale provides for the indefeasible payment in full at closing in cash of all obligations owed to the NMTC Participants (or such payment has otherwise occurred) under the NMTC Transactions. Nothing in the Orders or the DIP Documents shall impair or adversely affect (i) the right of the Creditors' Committee or the U.S. Trustee to object to any credit bid for cause under section 363(k) of the Bankruptcy Code or (ii) the rights of the Creditors' Committee pursuant to paragraph 18 hereof.

30. *Treatment of DIP Claims.* On the Termination Date, all then outstanding unpaid DIP Obligations shall be paid in cash pursuant to the provisions of the DIP Documents, except as expressly set forth in the DIP Documents with respect to any "cashless roll" or similar mechanism pertaining to exit financing.

31. *DIP Syndication*. The syndication of the Company Allocated Portion of the DIP Financing, pursuant to the Syndication Materials, is approved. The Debtors, the Information Agent, and the other parties involved in the syndication of the Company Allocated Portion of the DIP Financing are hereby authorized to take all actions they deem to be reasonably necessary or advisable to syndicate the Company Allocated Portion of the DIP Financing, including pursuant to the Syndication Materials.

32. *Equity Participation Election Rights*. Any Acceptable Plan of Reorganization (or any other plan of reorganization in the Chapter 11 Cases that provides for equity to be issued pursuant to an equity rights offering or similar arrangement and/or through the equitization of

claims) shall provide each DIP Creditor holding Tranche A Loans and/or Tranche A Notes with the right, exercisable prior to the disclosure statement hearing for such plan, and established by and conditioned upon the consummation of such plan (which consummation shall occur only following approval by the Court), to subscribe for the purchase of equity in the reorganized Debtors on the effective date of such plan at a price equivalent to the price established pursuant to the equity rights offering (or similar arrangement, as applicable), and subject to the same dilution terms as such equity rights offering shares, up to the principal amount of any Tranche A Loans and/or Tranche A Notes held by such DIP Creditor, and with the purchase price for such equity to be satisfied by offset against repayment of the applicable portion of the principal amount of such Tranche A Loans and/or Tranche A Notes. Nothing herein shall constitute a waiver of any and all rights of the Creditors' Committee (and all rights are expressly preserved) to object to any terms of any equity rights offering (or similar arrangement), including, but not limited to, with respect to (a) the price (including any discount) of such equity rights offering (or similar arrangement, as applicable), (b) the valuation of the reorganized Debtors utilized in connection with any such equity rights offering (or similar arrangement, as appliable), (c) the dilution terms of such equity rights offering (or similar arrangement) shares and (d) any backstop, commitment or other fees proposed to be paid (whether in cash, equity or other form of consideration) in connection with any such equity rights offering (or similar arrangement), all terms of which shall be subject to a further order of the Court.

33. *Leased Equipment*. Notwithstanding anything in the DIP Documents (including the Interim Order and this Final Order) to the contrary, the liens and security interests granted hereunder shall not encumber any assets to the extent not the property of the Debtors, including for the avoidance of doubt, any equipment and/or other personal property leased to the Debtors

("***Leased Equipment***") by Caterpillar Financial Services Corporation or its affiliates that does not constitute property of the Debtors; *provided, however*, that (a) except as expressly set forth in the DIP Documents, the liens and security interests hereunder shall encumber any leasehold or other property interest that the Debtors may have in such Leased Equipment (and in any leases, contracts or other instruments pertaining thereto) under applicable law and (b) to the extent any such Leased Equipment is determined in a final, non-appealable order entered by the Court to be the property of the Debtors, rather than property of any lessors, including Caterpillar Financial Services Corporation or its affiliates, such property shall be subject to any liens and/or security interests granted to the DIP Lenders as provided herein and in accordance with the priorities set forth herein.

34. *Enviva Wilmington Holdings.* Notwithstanding anything to the contrary in this Final Order, the Non-Debtor Wilmington Entities[22] are not DIP Credit Parties, have not pledged any DIP Collateral and are Excluded Subsidiaries (as defined in the DIP Facility Agreement). No liens granted hereby shall be senior to or pari passu with the first priority lien and security interest pledged and granted by Enviva, LP to John Hancock Life Insurance Company (U.S.A.) ("***John Hancock***") in Enviva, LP's shares of common equity in Enviva Wilmington Holdings, LLC pursuant to the Pledge Agreement dated April 2, 2019, by and among Enviva, LP and John Hancock. Further, the Debtors, the DIP Credit Parties and John Hancock each reserve all of their respective rights regarding the Non-Debtor Wilmington Entities' status as "subsidiaries" under the DIP Facility Agreement prior to the amendment of such term.

35. *Preservation of CDE Reserve Accounts.* Notwithstanding anything herein or in the Motion to the contrary but in all instances subject to paragraph 18 of this Final Order and subject

[22] The "Non-Debtor Wilmington Entities" are, collectively, Enviva Wilmington Holdings, LLC and Enviva Pellets Hamlet, LLC.

to the Carve-Out, the CDE Reserve Accounts shall be preserved for the benefit of, (i) in the cases of the Muni Reserve Account, MuniStrategies Sub-CDE#41, LLC and (ii) in the case of the NIF Reserve Account, NIF SUB IV, LLC in accordance with the applicable Prepetition Senior Secured NMTC QLICI Loan Documents.

36. *Effectiveness*. Notwithstanding Bankruptcy Rules 4001(a)(3) and 6004(h), any Local Rule, or rule 62(a) of the Federal Rules of Civil Procedure, this Final Order shall be immediately effective and enforceable upon its entry and there shall be no stay of its execution or effectiveness.

37. *Certain DIP Facility Agreement Matters*. The DIP Facility Agreement shall be deemed amended hereby as follows (and the Debtors and other parties in interest shall (unless otherwise agreed by the Debtors, the Committee, and the Required DIP Creditors) undertake commercially reasonable efforts, as appropriate, to document amendments and modifications in respect of such amendments):

(a) Any default in respect of Sections 5.04, 5.05(b) and 5.05(c) of the DIP Facility Agreement shall not result in the occurrence of an immediate Event of Default under Article VII(d) of the DIP Facility Agreement and shall instead result in the occurrence of an Event of Default only after expiration of the cure period set forth in Article VII(e) thereof;

(b) (i) Any Event of Default under the DIP Facility Agreement occurring solely as a result of or (ii) any Event of Default under the DIP Facility Agreement occurring as a direct result of the termination of the RSA, due to the occurrence of a Consenting 2026 Noteholder Termination Event that arises solely as a result of any Debtor, without the express written consent of the Required DIP Creditors, (A) making a filing with the Court seeking or supporting the approval of debtor-in-possession financing other than the DIP Financing (an "***Alternative DIP***

Financing"), (B) reaching agreement to pursue or enter into any Alternative DIP Financing or (C) taking any public step in furtherance of the approval of or entry into an Alternative DIP Financing, shall be deemed not to occur immediately upon the occurrence of the circumstances set forth in the foregoing clauses (A) through (C) and shall instead be deemed to occur only if (x) at least 30 days have passed following the earliest such occurrence of an Event of Default above and (y) an Alternative DIP Financing has not been approved by the Court and consummated, with all DIP Obligations (including, without limitation, all principal, interest, fees, premiums, expenses and other amounts) having been paid indefeasibly, in full and in cash at the time of such consummation, it being understood that nothing in this paragraph shall or shall be deemed to expand the Events of Default.

(c) Any Event of Default under the DIP Facility occurring solely as a result of the termination of the RSA, due to the occurrence of any Consenting 2026 Noteholder Termination Event that occurs for any reason other than as set forth in clause (ii) of the foregoing paragraph 37(b), shall not be deemed to occur immediately upon the occurrence of such termination of the RSA and shall instead be deemed to occur only if (i)(A) at least seven days have passed following such termination of the RSA and (B) the Debtors have not filed a motion with the Court seeking approval of an Alternative DIP Financing or (ii) within seven (7) days of such termination the Debtors have filed a motion seeking approval of an Alternative DIP Financing, (A) at least 30 days have passed following such termination of the RSA and (B) an Alternative DIP Financing has not been approved by the Court and consummated, with all DIP Obligations (including, without limitation, all principal, interest, fees, premiums, expenses and other amounts) having been paid indefeasibly, in full and in cash at the time of such consummation; *provided*, that the foregoing shall not apply with respect to (and there shall be no Event of Default under the DIP Facility as a

result of) a termination of the RSA due to the Debtors' acceptance of a Successful Toggle Bid (as defined, and set forth, in Annex A (as defined below)), which termination shall not give rise to an Event of Default under the DIP Facility Agreement. For the avoidance of doubt, nothing herein shall be deemed to waive any rights of any parties in interest with respect to any objection or opposition to any Alternative DIP Financing, and the rights of all parties to grant or withhold consent in respect of the Debtors' use of cash collateral and/or adequate protection in connection with such Alternative DIP Financing shall be fully reserved; and

(d) (i) the DIP Facility Agreement shall be modified and supplemented to effectuate the terms set forth in the appended **Annex A**, which modifications and supplements shall be in form and substance reasonably acceptable to the Debtors, the Committee and the Required DIP Creditors and (ii) the Debtors and the other parties to the RSA shall amend, modify and supplement the RSA as appropriate to effectuate such terms, which amendments, modifications and supplements shall be in form and substance reasonably acceptable to the Committee, and the Debtors are authorized to enter into such amendments without further order of the Court. Each of the Debtors, the Committee and the Ad Hoc Group reserve their rights to seek further relief or hearing from the Court with respect to such matters, including in the event that such amendments or modifications (i) are not or cannot be entered into within a reasonable period of time following the date hereof and (ii) do not comport with the consent rights set forth in this paragraph.

38. *Headings*. Section headings used herein are for convenience only and are not to affect the construction of, or to be taken into consideration in interpreting this Final Order.

39. *Payments Held in Trust*. Except as expressly permitted in this Final Order or the other DIP Documents and except with respect to the DIP Credit Parties, in the event that any person

or entity receives any payment on account of a security interest in or lien on DIP Collateral, receives any DIP Collateral or any proceeds of DIP Collateral or receives any other payment with respect thereto from any other source, in each case, prior to indefeasible payment in full in cash of all DIP Obligations and termination of all DIP Commitments in accordance with the DIP Documents, such person or entity shall be deemed to have received, and shall hold, any such payment or proceeds of DIP Collateral in trust for the benefit of the DIP Secured Parties and shall immediately turn over the proceeds to the DIP Agent, or as otherwise instructed by the Court, for application in accordance with the DIP Documents, including this Final Order. Except as expressly permitted in this Final Order or the other DIP Documents and except with respect to the DIP Credit Parties, in the event that any person or entity receives any payment on account of a security interest in or lien on Prepetition Collateral and/or NMTC Collateral, receives any Prepetition Collateral and/or NMTC Collateral or any proceeds of Prepetition Collateral and/or NMTC Collateral or receives any other payment with respect thereto from any other source, in each case, prior to indefeasible payment in full in cash of all Prepetition Senior Secured Debt or the NMTC Loans, as applicable, such person or entity shall be deemed to have received, and shall hold, as applicable, any such payment or proceeds of Prepetition Collateral or NMTC Collateral in trust for the benefit of the Prepetition Secured Parties and/or the NMTC Participants, as applicable, and shall immediately turn over the proceeds to the Prepetition Agent or the NMTC Participants, or as otherwise instructed by the Court, for application in accordance with the Prepetition Senior Secured Credit Agreement and this Final Order.

40. *Amendments*. The DIP Documents may from time to time be amended, restated, amended and restated, supplemented or otherwise modified, in each case, in accordance with the provisions of the DIP Documents governing amendments thereto, by the parties thereto, each

without further application to or order of the Court; *provided* that notice of any amendment to the DIP Facility Agreement that (a) shortens the maturity of the DIP Loans and Notes, (b) increases the aggregate commitments thereunder, or (c) increases the rate of interest payable with respect thereto (each, a "***Material DIP Amendment***") shall be provided (which may be by email) to the U.S. Trustee or the Creditors' Committee, each of which shall have five (5) business days from the date of such notice within which to object, in writing to the Material DIP Amendment. If the U.S. Trustee or the Creditors' Committee timely objects to the Material DIP Amendment (a) the Material DIP Amendment shall only be permitted pursuant to an order of the Court and (b) the Debtors may seek such approval from the Court of a Material DIP Amendment on an expedited basis. The Debtors shall provide the Creditors' Committee with five (5) days' advance notice (or as soon as reasonably practicable if a shorter period is reasonably required under the circumstances) of any other amendment, waiver, supplement or other modification (each, an "***Other DIP Amendment***") of the DIP Facility Agreement or any other DIP Document, and the Creditors' Committee shall have five (5) days (or such shorter period) from the date of such notice within which to object, in writing to the Other DIP Amendment. If the Creditors' Committee timely objects to the Other DIP Amendment, (a) the Other DIP Amendment shall only be permitted pursuant to an order of the Court and (b) the Debtors may seek such approval from the Court of an Other DIP Amendment on an expedited basis. In the event any proposed amendment would materially impact the rights of the Prepetition Secured Parties or the NMTC Participants (solely as to the use of NMTC Cash Collateral and Adequate Protection hereunder or the disposition of the NMTC Collateral or the priority of the NMTC Liens thereon) or affect, in any way, Prepetition Collateral, as applicable, then solely, the consent of the Prepetition Required Lenders or, solely to the extent applicable, the NMTC Participants, shall also be required.

41. *Bankruptcy Rules*. The requirements of Bankruptcy Rules 4001 and 6004, in each case to the extent applicable, are satisfied by the contents of the DIP Motion.

42. *No Third-Party Rights*. Except as explicitly provided for herein, this Final Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect or incidental beneficiary.

43. *Necessary Action*. The Debtors, the DIP Secured Parties, the Prepetition Secured Parties, the NMTC Participants and, in each case, their agents are authorized to take all reasonable actions as are necessary or appropriate to implement the terms of this Final Order. In addition, the Automatic Stay is modified to permit subsidiaries of the Debtors who are not debtors in the Chapter 11 Cases (including, without limitation, EWH) and their agents to take all actions as are necessary or appropriate to implement the terms of this Final Order.

44. *Retention of Jurisdiction*. The Court shall retain jurisdiction to enforce the provisions of this Final Order, and this retention of jurisdiction shall survive the confirmation and consummation of any chapter 11 plan for any one (1) or more of the Debtors notwithstanding the terms or provisions of any such chapter 11 plan or any order confirming any such chapter 11 plan.

45. For the avoidance of doubt, nothing in the Orders shall improve the lien position of any Prepetition Secured Party.

46. The Debtors shall promptly serve copies of this Final Order (which shall constitute adequate notice of the Final Hearing) to the parties having been given notice of the Final Hearing and to any party that has filed a request for notices with the Court in the Chapter 11 Cases.

Dated: May 3 2024
Alexandria, Virginia

/s/ Brian F Kenney
THE HONORABLE BRIAN F. KENNEY
UNITED STATES BANKRUPTCY JUDGE

Entered On Docket:May 3, 2024

WE ASK FOR THIS:

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CERTIFICATION OF ENDORSEMENT UNDER LOCAL RULE 9022-1(C)

Pursuant to Local Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/*Jeremy S. Williams*

Annex A

Overbid Process

- The RSA will be revised to provide for an overbid toggle mechanism (the "**Overbid Process**"), to begin upon the filing of the Plan and Disclosure Statement in accordance with the existing RSA (the "**RSA Restructuring Plan**"), or any earlier date on which the Debtors have obtained all executed commitments for the committed debt/equity financing contemplated by the RSA Restructuring Plan.

- In parallel with, and as part of, pursuing confirmation of the RSA Restructuring Plan, the Overbid Process will obligate the Debtors to actively market offers for alternative transactions (which may be implemented through one or more reorganizations or sales) (1) that provide for repayment in cash in full of the DIP Financing (including all principal, interest, fees, expenses and other amounts owing thereunder), any backstop/commitment fees in connection with commitments provided for the RSA Restructuring Plan and all other administrative and priority claims, as well as all prepetition funded debt claims or (2) that are otherwise acceptable to Majority Consenting 2026 Noteholders under the existing RSA.

    - The Overbid Process will be run as a toggle component of the RSA Restructuring Plan.

    - Subject to the foregoing, bids may propose to treat other prepetition claims in the discretion of the bidder (but will be assessed on the value/quality/Bankruptcy Code compliance of that treatment).

    - The Overbid Process will include procedures to protect the Debtors' commercially sensitive information that are acceptable to the Debtors in consultation with the Committee and the Ad Hoc Group.

- The Overbid Process will include other customary bid qualifications (e.g., wherewithal to fund, no financing contingencies or time-intensive regulatory contingencies, good faith deposit) and must be reasonably expected to be consummated prior to the plan effective date milestone in the RSA (subject to extensions, if necessary, for customary regulatory approvals); provided that non-conforming bids may be deemed qualified with the consent of the Debtors, the Committee and the requisite majority of DIP creditors.

- Bidding will be subject to an agreed bidding timeline that will provide for bids to be solicited and for the Debtors (in consultation with the Committee and the Ad Hoc Group) to make a determination prior to the plan objection deadline, of whether to (1) accept a qualified bid (the "**Successful Toggle Bid**") and, if applicable, select a backup bidder or (2) determine that there is no qualified bid that is higher and better than the RSA Restructuring Plan and decline to exercise the toggle.

- If there is no Successful Toggle Bid, the RSA Restructuring Plan moves forward with no changes to timeline.

- If there is a Successful Toggle Bid, then:

    - The Debtors may extend the plan confirmation milestone in the RSA (with a corresponding extension of the plan effective date milestone) by up to 15 days to facilitate any plan amendments/limited resolicitation (if necessary) with respect to Successful Toggle Bid and may further extend the plan effective date milestone if necessary for customary regulatory approvals. The Debtors shall seek, and the Ad Hoc Group shall consider in good faith, an extension of the final maturity of the DIP Financing of up to 30 days if the only outstanding condition to closing the transactions with respect to a Successful Toggle Bid is the receipt of customary regulatory approvals (or the expiration of customary regulatory waiting periods).

    - The RSA parties will have the right to terminate the RSA with requisite creditor consents as a result of Debtors' acceptance of Successful Toggle Bid.

    - Commitment parties under any applicable exit financing will also have the right to terminate any financing commitments with respect to RSA Restructuring Plan (with commitment/backstop fees fully earned).

    - The DIP Financing will remain in place and not be subject to an event of default resulting from the Debtors' pursuit or acceptance of a Successful Toggle Bid (including in the event the RSA parties terminate the RSA as a result thereof), subject to ongoing satisfaction of other covenants and plan confirmation and effective date milestones (subject to the extensions noted above).

- If the Debtors move forward with any Alternative Transaction (as defined in the RSA) that is not a qualified bid or not otherwise acceptable to Majority Consenting 2026 Noteholders under the existing RSA, then all applicable rights and terms under the DIP Financing and the RSA, including all applicable events of default and termination rights, will remain in place and shall not be modified hereby, but shall be subject to paragraph 37(b) of the Final DIP Order.

- Notwithstanding anything to the contrary herein, with respect to any backstop/commitment fees or premiums that have been agreed to by the Debtors in connection with the RSA Restructuring Plan: (a) unless and until such fees or premiums have been approved by the Court, the rights of the Committee shall be fully reserved to (i) object to the approval of such proposed fees or premiums and/or (ii) seek an expedited hearing of the Court regarding such proposed fees or premiums; (b) unless approval thereof has been denied by the Court (including as a result of an objection raised and/or expedited hearing held in accordance the foregoing clause (a)) or the Court orders otherwise, including in connection with any motion to approve bidding

procedures), such fees and premiums shall be included as amounts required to be paid in full, in cash, pursuant to any qualified bid in the Overbid Process; (c) in connection with any motion or proposed order (e.g., a confirmation order or sale order or motion seeking the entry thereof) in connection with a Successful Toggle Bid the Debtors shall be permitted to seek approval in full of such fees or premiums (with all rights of the Committee to object to such approval fully reserved); and (d) payment of such fees or premiums shall be subject to approval by the Court.