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Proposed Co-Counsel to the Debtors and Debtors in Possession

**IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE EASTERN DISTRICT OF VIRGINIA
 ALEXANDRIA DIVISION**

| | | |
|------------------------------|---|----------------------------------|
| |) | |
| In re: |) | Chapter 11 |
| |) | |
| ENVIVA INC., <i>et al.</i> , |) | Case No. 24-10453 (BFK) |
| |) | |
| Debtors. ¹ |) | (Joint Administration Requested) |
| |) | |

**MOTION OF DEBTORS FOR ENTRY
 OF INTERIM AND FINAL ORDERS (I) AUTHORIZING
 THE DEBTORS TO (A) PAY PREPETITION WAGES, SALARIES, OTHER
 COMPENSATION, AND REIMBURSABLE EXPENSES AND (B) CONTINUE
 EMPLOYEE BENEFITS PROGRAMS, AND (II) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “*Debtors*”) file this *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and*

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



(B) *Continue Employee Benefits Programs, and (II) Granting Related Relief* (the “**Motion**”) and in support respectfully submit the following:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the Eastern District of Virginia (the “**Court**”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated August 15, 1984. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are sections 105(a), 362(d), 363(b), 507(a), and 541(b)(1) of title 11 of the United States Code (the “**Bankruptcy Code**”), Bankruptcy Rules 6003 and 6004, and rule 9013-1 of the Local Rules of the United States Bankruptcy Court for the Eastern District of Virginia (the “**Local Rules**”).

BACKGROUND

4. Enviva Inc. and its Debtor and non-Debtor subsidiaries (collectively, the “**Company**”) are the world’s largest producer of industrial wood pellets, a renewable and sustainable energy source produced by aggregating a natural resource—wood fiber—and processing it into a transportable form. The Company owns and operates ten industrial-scale wood pellet production plants located in Virginia, North Carolina, South Carolina, Georgia, Florida, and

Mississippi. The Company exports its wood pellets through owned and leased deep-water marine terminals to customers in the United Kingdom, the European Union, and Japan who purchase the wood pellets primarily through long-term, take-or-pay offtake contracts with the Company.

5. On the date hereof (the “*Petition Date*”), the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of this Motion, the Debtors filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). As of the Petition Date, no request for the appointment of a trustee or examiner has been made and no official committee of unsecured creditors has been appointed in these chapter 11 cases.

6. Additional information regarding the Debtors and these chapter 11 cases, including the Debtors’ business operations, capital structure, financial condition, and the reasons for and objectives of these chapter 11 cases, is set forth in the *Declaration of Glenn Nunziata in Support of Chapter 11 Petitions* (the “*Nunziata Declaration*”) and the *Declaration of Mark Rajceovich in Support of Chapter 11 Petitions and First-Day Motions* (the “*Rajceovich Declaration*,” and together with the Nunziata Declaration, the “*First Day Declarations*”), filed contemporaneously herewith and incorporated herein by reference.²

7. As set forth in the Nunziata Declaration, on March 12, 2024, the Debtors entered into that certain *Restructuring Support Agreement* with the ad hoc group of creditors (the “*Ad Hoc Group*”) party thereto, which represent approximately (a) 72% of the

² Capitalized terms used but not otherwise defined in this Motion shall have the meaning set forth in the First Day Declarations.

aggregate outstanding principal amount of loans arising under the Senior Secured Credit Facility (including both term loans and revolving credit loans), (b) 95% of the aggregate outstanding principal amount of the 2026 Notes, (c) 78% of the aggregate outstanding principal amount of the Epes Green Bonds, and (d) 45% of the aggregate outstanding principal amount of Bond Green Bonds. As further set forth in the Nunziata Declaration, on March 12, 2024, the Debtors entered into that certain *Restructuring Support Agreement* with creditors holding approximately 92% of the aggregate outstanding principal amount of the Bond Green Bonds.

RELIEF REQUESTED

8. By this Motion, the Debtors seek entry of an interim order (the “*Interim Order*”), substantially in the form attached hereto as **Exhibit A**, and subsequently a final order (the “*Final Order*”), substantially in the form attached hereto as **Exhibit B**, authorizing the Debtors to (a) pay prepetition wages, salaries, other compensation, and reimbursable expenses on account of the Compensation and Benefit Programs (as defined below) and (b) continue to administer the Compensation and Benefit Programs in the ordinary course of business, including payment of prepetition obligations related thereto. In addition, the Debtors request that the Court schedule a final hearing within approximately 25 days of the commencement of these chapter 11 cases to consider approval of this Motion on a final basis.

THE DEBTORS’ WORKFORCE

9. As of the Petition Date, the Debtors employ approximately 1,207 individuals on a full-time basis and approximately 3 individuals on a part-time basis. Approximately 819 employees are paid on an hourly basis (the “*Hourly Employees*”) and approximately 391 employees receive a salary (the “*Salaried Employees*,” and together with the Hourly Employees, the “*Employees*”). None of the Employees are represented by a union or collective bargaining

unit. Additionally, the Debtors utilize approximately 37 independent contractors (the “*Independent Contractors*” and together with the Employees, the “*Workforce*”).³

10. The Workforce performs a wide variety of functions critical to the Debtors’ operations, the administration of these chapter 11 cases, and the Debtors’ successful reorganization. Their skills, knowledge, and understanding of the Debtors’ operations and infrastructure are essential to preserving operational stability, safety, and efficiency. In many instances, these Employees and the Independent Contractors are highly trained personnel with specialized skills who are not easily replaced. Without the continued, uninterrupted services of the Workforce, the Debtors’ business operations and restructuring efforts will suffer immediate and irreparable harm.

11. The vast majority of the Workforce relies exclusively on their compensation and benefits from the Debtors to pay their daily living expenses and support their families. Thus, the Workforce will be exposed to significant financial constraints if the Debtors are not permitted to continue paying their compensation and providing benefits in the ordinary course. Consequently, the relief requested herein is necessary and appropriate.

COMPENSATION AND BENEFITS PROGRAM

12. To avoid immediate and irreparable harm to the Debtors’ business operations and restructuring efforts and to minimize the personal hardship the Workforce would suffer if the Debtors’ employee obligations are not paid when due or as expected, the Debtors are seeking authority to pay and honor certain prepetition claims relating to compensation and benefit

³ The Debtors also retain temporary workers (the “*Temporary Employees*”) from time to time from several staffing agencies (collectively, the “*Staffing Agencies*”) to fulfill certain duties on a short-term basis. The Debtors currently retain approximately 77 Temporary Employees, although this number fluctuates based on the Debtors’ specific needs at any given time. The Temporary Employees are a critical supplement to the efforts of the Debtors’ Workforce.

programs. Specifically, the Debtors are seeking authority to pay and honor certain prepetition claims relating to, among other things, wages, salaries, expense reimbursements, other compensation, federal and state withholding taxes and other amounts withheld (including Employees' share of insurance premiums, taxes, health savings accounts and flexible spending accounts contributions, and 401(k) contributions), health insurance, life and accidental death and dismemberment insurance, disability coverage, retirement benefits, workers' compensation benefits, paid time off, and other benefits that the Debtors have historically directly or indirectly provided to the Workforce in the ordinary course of business (collectively, the "***Compensation and Benefit Programs***," and such obligations arising therefrom, the "***Compensation and Benefit Obligations***"), as well as all incidental costs thereof.

13. Subject to the Court's approval of the relief requested herein, the Debtors intend to continue their prepetition Compensation and Benefit Programs in the ordinary course of business and consistent with past practice. Out of an abundance of caution, however, the Debtors request the right to modify, change, and discontinue certain of their Compensation and Benefit Programs and to implement new programs, policies, and benefits, in their discretion and in the ordinary course of business during these chapter 11 cases and without the need for further Court approval, subject to the terms of the Interim Order, the Final Order, and applicable law.

14. The Debtors estimate that the prepetition amounts owed on account of the Compensation and Benefit Programs are as follows:⁴

⁴ This table is for illustrative purposes only and is qualified by the Motion and the Interim and Final Orders.

| Estimated Prepetition Liabilities | | |
|---|----------------|--------------|
| Category | Interim Amount | Final Amount |
| Compensation & Related Obligations | | |
| Employee Wages | \$1,356,800 | \$1,356,800 |
| Independent Contractors | \$338,600 | \$338,600 |
| Temporary Employees | \$1,394,900 | \$1,394,900 |
| Withholding Obligations | \$375,500 | \$375,500 |
| Expense Reimbursements | \$396,600 | \$431,400 |
| Human Resources Systems | \$7,400 | \$7,400 |
| Non-Insider Bonus | \$0 | \$2,495,500 |
| Benefit Programs | | |
| Health Insurance | \$982,100 | \$3,145,200 |
| Life, Disability, and Related Insurance | \$74,400 | \$74,400 |
| Workers' Compensation | \$30,000 | \$709,900 |
| 401(k) Plan | \$149,900 | \$149,900 |
| Additional Benefit Programs | \$43,200 | \$43,200 |

A. Compensation and Withholding Obligations

i. *Employee Wages*

15. In the ordinary course of business, the Debtors incur and pay the Employees' wages, salaries, and other compensation on a bi-weekly basis (collectively, the "***Employee Compensation***").⁵ The Debtors pay their Employees' wage and salary obligations (collectively, the "***Wages***") on either a salaried or hourly basis. On average, the Debtors pay approximately \$3,949,000 per bi-weekly pay period on account of Wages. The Debtors' most recent bi-weekly pay cycle ended on March 8, 2024. The Debtors use a third-party payroll processor, UKG Inc. (d/b/a Ultimate Software Group Inc.) ("***UKG***"), by which all Employee disbursements and withholdings (as set forth herein) are processed.

16. Because the Employees are paid in arrears, Employees are owed accrued but unpaid Wages as of the Petition Date. Wages also may be due and owing as of the Petition Date because

⁵ The Debtors also pay the wages, salaries, and other compensation of employees of certain non-Debtor affiliates in the ordinary course of business. Additional detail regarding such payment structure is provided in 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 Status for Postpetition Intercompany Claims, and (III) Granting Related Relief* (the "***Cash Management Motion***"), which is being filed contemporaneously herewith and seeks further relief regarding such payments to such non-Debtor affiliates.

of, among other things, potential discrepancies between the amounts paid and the amounts that Employees believe should have been paid, which, upon resolution, may reveal that additional amounts are owed to such Employees.

17. As of the Petition Date, the Debtors estimate that the amount of accrued but unpaid Wages is approximately \$1,356,800 (the “*Unpaid Wages*”), all of which will become due and owing in the first 21 days of these chapter 11 cases. The Debtors seek authority to pay the Unpaid Wages in the ordinary course of business and consistent with past practices, and to continue paying the Wages and any associated processing costs on a postpetition basis in the ordinary course of business.

18. The Debtors do not believe there are prepetition amounts owed to any individual on account of the Unpaid Wages that exceed \$15,150, the priority expense amount set forth in section 507(a)(4) of the Bankruptcy Code, and the Debtors are not seeking authority to pay Unpaid Wages (including, for purposes of this Motion, any commissions, vacation, severance, and sick leave pay earned by an individual) to any Employee in excess of such amount.

ii. *Independent Contractor Obligations*

19. In the ordinary course of business, the Debtors incur and pay the Independent Contractors compensation based on an hourly rate (the “*Independent Contractor Obligations*”). Amounts owed on behalf of Independent Contractor Obligations may be paid by the Debtors on a weekly, bi-weekly, or monthly basis, depending on the applicable Independent Contractor. In 2023, the Debtors paid approximately \$2,779,800 on account of Independent Contractor Obligations.

20. As of the Petition Date, the Debtors estimate that the amount of accrued but unpaid Independent Contractor Obligations is approximately \$338,600 (the “*Unpaid Independent Contractor Obligations*”), all of which will become due and owing in the first 21 days of these

chapter 11 cases. The Debtors seek authority to pay the Unpaid Independent Contractor Obligations in the ordinary course of business and consistent with past practices, and to continue paying the Independent Contractor Obligations on a postpetition basis in the ordinary course of business.

iii. *Temporary Employee Obligations*

21. From time to time, the Debtors rely on Temporary Employees in the ordinary course of business to perform services critical to the Debtors' operations, including, among other things, providing administrative support functions and additional day-to-day labor support as needed. The Debtors rely on the support of the Temporary Employees to complete discrete projects in furtherance of the Debtors' business and to fill short-term positions that are not economically feasible to employ on a full-time or part-time basis.

22. The Debtors engage the Staffing Agencies that provide the Temporary Employees to the Debtors, as needed. The Debtors either (a) pay the Temporary Employees directly or (b) pay a fee to the Staffing Agencies for certain Temporary Employees, and the Staffing Agencies in turn pay such Temporary Employees (collectively, the "*Temporary Employee Obligations*"). In 2023, the Debtors paid an aggregate of approximately \$7,463,100 on account of the Temporary Employee Obligations.

23. As of the Petition Date, the Debtors estimate that the amount of accrued but unpaid Temporary Employee Obligations is approximately \$1,394,900 (the "*Unpaid Temporary Employee Obligations*"), all of which will become due and owing in the first 21 days of these chapter 11 cases. The Debtors seek authority to pay the Unpaid Temporary Employee Obligations in the ordinary course of business and consistent with past practices, and to continue paying the Temporary Employee Obligations on a postpetition basis in the ordinary course of business.

iv. *Withholding Obligations*

24. During each applicable pay period, the Debtors, through UKG, routinely deduct and withhold certain amounts from Employees' paychecks for, among other things, garnishments, child support, and pre- or post-tax deductions payable pursuant to certain of the benefit programs (collectively, the "***Deductions***"). Certain of the Deductions are processed and forwarded to various third-party recipients. The Debtors also are required by U.S. law to withhold from Employee Compensation amounts related to, among other things, federal, state, and local income taxes, as well as Social Security and Medicare taxes (collectively, the "***Employee Payroll Taxes***") for remittance to the appropriate federal, state, and local taxing authorities. The Debtors must then match the Employee Payroll Taxes from their own funds and pay, based upon a percentage of gross payroll, additional amounts for state and federal unemployment insurance (together with the Employee Payroll Taxes, the "***Payroll Taxes***"). The Payroll Taxes generally are processed and forwarded to the appropriate taxing authority at the same time the Employees' payroll checks are disbursed.

25. As of the Petition Date, the Debtors estimate that the amount of accrued but unpaid Deductions and Payroll Taxes is approximately \$375,500 (the "***Unpaid Deductions and Payroll Taxes***"), all of which will become due and owing in the first 21 days of these chapter 11 cases. The Debtors seek authority to pay and/or remit the Unpaid Deductions and Payroll Taxes in the ordinary course of business and consistent with past practice, and to continue paying and/or remitting the Deductions and Payroll Taxes and any associated processing costs on a postpetition basis in the ordinary course of business.

v. *Expense Reimbursements*

26. In the ordinary course of business, the Debtors reimburse the Employees for reasonable and customary expenses that such Employees, as applicable, personally incur in the

scope of their employment. Expense reimbursements typically include expenses associated with travel, lodging, ground transportation, meals and other business-related expenses incurred in the course of an Employee's duties (the "**Expense Reimbursements**").⁶ Eligible travel expenses may be (a) personally incurred by an Employee and reimbursed by the Debtors or (b) incurred on a company-issued corporate credit card for which such Employee pays the monthly statements and is reimbursed by the Debtors.⁷ The Debtors contract with Concur Technologies Inc. ("**Concur**") to process and administer the Expense Reimbursements.

27. Employees may be held personally liable for any unpaid obligations even though the obligations were incurred for the Debtors' benefit. Thus, the Debtors' inability to reimburse their Employees with respect to any Expense Reimbursements likely would impose significant hardships on those Employees, as applicable.

28. Because of the irregular nature of requests for Expense Reimbursements, it is difficult for the Debtors to determine the amount of unpaid Expense Reimbursements at any given time, but historically, the Expense Reimbursements are approximately \$412,500 per month. As of the Petition Date, based on historical practice, the Debtors estimate that the amount of accrued but unpaid Expense Reimbursements, including Wellness Reimbursements, Educational Reimbursements, and Construction Relocation Benefits, is less than \$431,400 (the "**Unpaid Expense Reimbursements**"), a portion of which will become due and owing in the first 21 days of these chapter 11 cases. The Debtors seek authority to pay the Unpaid Expense Reimbursements

⁶ Unless stated otherwise herein, Expense Reimbursements are inclusive of any obligations owed on account of the Wellness Reimbursement Program, the Educational Reimbursement Program, and the Construction Relocation Benefits (each as defined below).

⁷ As of February 1, 2024, the Debtors have discontinued this company-issued corporate credit card; however, Employees may continue to seek reimbursement for payment of the monthly statements on account thereof.

in the ordinary course of business and consistent with past practice, and to continue paying the Expense Reimbursements on a postpetition basis in the ordinary course of business.

vi. *Corporate Credit Card Program*

29. The Debtors also provide certain eligible Employees with company paid corporate credit cards (the “*Corporate Credit Cards*”) that are primarily utilized to pay for certain non-travel, work-related expenses, including goods and services for business-related expenses or in emergency situations. Additional detail regarding the Corporate Credit Cards is provided in the Cash Management Motion, which is being filed contemporaneously herewith and includes a more fulsome description of the Corporate Credit Card program and seeks further relief regarding such program.

vii. *Human Resources Systems*

30. The Debtors utilize certain human resources information systems to manage the Workforce and provide human resources-related functions (collectively, the “*HR Systems*”). The HR Systems are in place to ensure the efficiency of various human resources-related functions and allow the Debtors to realize substantial cost savings with respect to the administration of the Compensation and Benefits Programs by not having to employ additional human resources professionals.

31. The Debtors’ third-party payroll processor, UKG, processes the Debtors’ payroll and federal W-2 tax forms and completes payroll tax filings, including federal, state, and local filings. UKG also provides timekeeping and attendance tracking solutions and leave management services, among other services. The Debtors pay UKG approximately \$172,000 in subscription fees on a quarterly basis. Concur provides the Debtors with total spend management solutions, including processing the Expense Reimbursements. The Debtors pay Concur approximately \$14,800 in subscription fees on a monthly basis. Docebo NA, Inc. (“*Docebo*”) provides the

Debtors with a range of training solutions geared toward the development of the Debtors' Workforce, including, among other things, onboarding, talent development, and compliance training. The Debtors pay Docebo approximately \$84,000 in subscription fees on an annual basis.

32. As of the Petition Date, the Debtors estimate that the total accrued but unpaid subscription fees arising in connection with the HR Systems is approximately \$7,400 (the "***Unpaid HR Systems Fees***"), all of which will become due and owing in the first 21 days of these chapter 11 cases. The Debtors seek authority to pay the Unpaid HR Systems Fees in the ordinary course of business and consistent with past practice, and to continue paying the HR Systems subscription fees on a postpetition basis in the ordinary course of business.

viii. *Severance Program*

33. In the ordinary course of business, the Debtors provide severance benefits to certain Employees (the "***Severance Program***"). Pursuant to the Severance Program, upon termination of employment by the Debtors without cause, Employees are entitled to a cash payment generally determined by a combination of the Employee's salary, job title, and length of time employed by the Debtors (the "***Severance Benefits***"). The maintenance of the Severance Program and satisfaction of the Severance Benefits are critical to maintaining Employee morale and loyalty. Failure to maintain the Severance Program will result in increased instability in the Debtors' operations.

34. The Debtors do not believe there are prepetition amounts owed to any Employees on account of the Severance Benefits, but seek authority, in the Final Order, to pay any unpaid Severance Benefits earned within 180 days before the Petition Date to non-Insider Employees in the ordinary course of business and consistent with past practice, not to exceed the priority expense amount set forth in section 507(a)(4) of the Bankruptcy Code, and to continue paying the

Severance Benefits to non-Insider (as defined below) Employees on a postpetition basis in the ordinary course of business.⁸

ix. *Incentive and Bonus Programs*

35. The Debtors maintain programs to incentivize and reward their Employees (collectively, the “*Incentive and Bonus Programs*”).⁹ The Incentive and Bonus Programs are an integral part of the Compensation and Benefit Programs. While certain Employees eligible for the Incentive and Bonus Programs may be considered insiders of the Debtors (as that term is defined in section 101(31) of the Bankruptcy Code) (“*Insiders*”) by this Motion, the Debtors are not seeking to honor the Incentive and Bonus Programs that are applicable to Insiders or make any payments to Insiders on account of such Incentive and Bonus Programs, but are seeking authority, in the Debtors’ discretion, to continue the Incentive and Bonus Programs only with respect to non-Insider Employees.

1. Quarterly Incentive Compensation Program

36. In the ordinary course of business, the Debtors provide a quarterly incentive compensation program (the “*Incentive Compensation Program*”) to eligible Employees. The Incentive Compensation Program is designed to reward approximately 399 exempt, corporate and non-corporate Employees for the achievement of certain company and personal performance targets. Under the Incentive Compensation Program, each eligible Employee has the potential to

⁸ In the interest of full disclosure, the Debtors’ former General Counsel continues to receive compensation for part-time services performed in the capacity of a senior advisor pursuant to a consulting agreement, which expires on May 1, 2024. The compensation received pursuant to such consulting agreement is separate and distinct from such individual’s Severance Benefits, which, for the avoidance of doubt, the Debtors are not seeking relief to pay pursuant to this Motion.

⁹ In the interest of full disclosure, the Debtors paid retention bonuses—which must be repaid if the recipient does not continue working for the Debtors for the specified retention period—to certain Insider and non-Insider Employees prior to the Petition Date. By this Motion, the Debtors do not seek approval or authorization from the Court or any other relief with respect to such payments.

earn a quarterly cash incentive award based upon a percentage of the Employee's salary (the "**Incentive Bonus**").¹⁰ The Incentive Bonus is paid two payroll cycles in arrears following the last day of each quarter. The Debtors paid an aggregate amount of approximately \$2,194,600 in Incentive Bonuses earned in the fourth quarter of 2023.

37. As of the Petition Date, the Debtors estimate that the amount of accrued but unpaid Incentive Bonus is up to approximately \$1,439,700 (the "**Unpaid Incentive Bonus**"), none of which will become due and owing in the first 21 days of these chapter 11 cases. The Debtors seek authority, in the Final Order, to pay the Unpaid Incentive Bonus to non-Insider Employees in the ordinary course of business and consistent with past practice, and to continue paying the Incentive Bonus to non-Insider Employees on a postpetition basis in the ordinary course of business.

2. Quarterly Production Bonus Program

38. In the ordinary course of business, the Debtors provide a quarterly production bonus program (the "**Production Bonus Program**") to eligible Employees. The Production Bonus Program is designed to reward approximately 801 non-exempt, non-corporate Employees for achieving specified production, quality, safety, and similar goals at the Debtors' various operating plant facilities and provides such Employees with the opportunity to earn a quarterly bonus (the "**Production Bonus**") in the amount of up to \$1,300 per Employee.¹¹ The Production Bonus is paid two payroll cycles in arrears following the last day of each quarter. The Debtors paid an aggregate of approximately \$1,728,400 in Production Bonuses earned in 2023.

¹⁰ Historically, the Incentive Compensation Program awards were paid to eligible Employees on an annual basis in the beginning of the calendar year for services provided during the previous calendar year. However, in 2023, the Debtors amended the Incentive Compensation Program so awards are instead paid on a quarterly basis in order to better align the Incentive Compensation Program with goals of the Debtors in the months leading up to, and through the pendency of, these chapter 11 cases.

¹¹ Historically, eligible Employees could earn a Production Bonus in the amount of \$2,000. However, in January 2024, the Debtors reduced the Production Bonus to the amount of \$1,000 with the potential to increase to \$1,300 for Employees who achieve a new quarterly production record.

39. As of the Petition Date, the Debtors estimate that the amount of accrued but unpaid Production Bonus is up to approximately \$1,055,800 (the “*Unpaid Production Bonus*”), none of which will become due and owing in the first 21 days of these chapter 11 cases. The Debtors seek authority, in the Final Order, to pay the Unpaid Production Bonus to non-Insider Employees in the ordinary course of business and consistent with past practice, and to continue paying the Production Bonus to non-Insider Employees on a postpetition basis in the ordinary course of business.

3. Long-Term Incentive Plan

40. In the ordinary course of business, the Debtors provide a long-term incentive plan (the “*LTIP*”) to select exempt, corporate and non-corporate Employees. The LTIP is designed to create incentives and rewards to motivate the eligible Employees to put forth maximum effort toward the success and growth of the Debtors and to enable the Debtors to attract and retain experienced individuals who by their position, ability, and diligence are able to make important contributions to the Debtors’ success. Each eligible Employee’s award under the LTIP is based on a target percentage of their annual salary, with such percentage varying depending on the Employee’s role and level within the Debtors’ business. The Debtors have historically maintained an equity-based LTIP; however, after reviewing the prior LTIP, market data, and historical compensation, the Debtors determined that it was appropriate to modify the existing, equity-based LTIP, including converting the equity-based payments to discounted cash payments for the approximately 201 non-Insider participants and changing the payment schedule from annual to quarterly installments.

41. The Debtors do not believe there are prepetition amounts owed to any Employees on account of the LTIP, but seek authority, in the Final Order, to pay any unpaid LTIP amounts to non-Insider Employees in the ordinary course of business and consistent with past practice, not to

exceed the priority expense amount set forth in section 507(a)(4) of the Bankruptcy Code, and to continue paying the LTIP to non-Insider Employees on a postpetition basis in the ordinary course of business.

B. Employee Benefit Programs¹²

i. *Health and Welfare Programs*

1. Health Insurance Programs

42. The Debtors offer their Employees the opportunity to participate in a number of health benefit plans, including the Medical Plans and associated Stop-Loss Insurance, the HSA and FSA, the Dental Plan, and the Vision Plan (each, as defined below and collectively, including their respective administrative costs, the “*Health Insurance Programs*”).

a. The Medical Plans

43. The Debtors offer medical coverage (the “*Medical Plans*”) to their benefit-eligible Employees. The Medical Plan is a self-insured program administered by Care First, which utilizes the national BlueCross BlueShield network. Under the Medical Plans, the Debtors assume liability for, and initially pay, certain medical claims, rather than paying premiums for independent insurance coverage. Employees are provided with three plan options that each have various required premiums. Employees, as well as their spouses, children, and/or eligible dependents may be covered under the Medical Plans. As part of the Medical Plans, the Debtors offer a prescription drug coverage plan, which is administered by CVS Caremark in collaboration with PrudentRx LLC. As of the Petition Date, approximately 1,100 Employees participate in the Medical Plans. After taking applicable Deductions, the Debtors pay approximately \$1,454,300 per month with respect to the Medical Plans, including associated administrative fees.

¹² Employees working at least 30 hours per week are eligible to receive the various benefits described herein.

44. Employees may also purchase supplemental health insurance (the “*Supplemental Health Insurance*”) through Voya Financial Inc. (“*Voya*”).¹³ The Debtors do not make any contributions on account of the Supplemental Health Insurance. As of the Petition Date, approximately 898 Employees maintain Supplemental Health Insurance.

45. In connection with the Medical Plans, the Debtors maintain stop-loss insurance (the “*Stop-Loss Insurance*”) through Stealth Partner Group. The Debtors pay approximately \$101,100 per month on account of Stop-Loss Insurance premiums.

b. Health Savings and Flexible Spending Accounts

46. Employees who participate in the high deductible health plan may contribute a portion of their compensation into an optional health savings account (the “*HSA*”), administered by WEX Health Inc. (“*WEX*”), which may be used for qualified medical expenses. Participating Employees can make contributions to the HSA through payroll deductions on a pre-tax basis to cover reimbursements under the program up to the maximum amount permitted by the Internal Revenue Service. The Debtors match up to \$500 of each Employee’s contribution to an HSA. The Debtors pay such matching contribution on the first payroll cycle in January of each calendar year or, in the case of new hires, on the first payroll cycle following the applicable hire date. As of the Petition Date, approximately 443 Employees maintain an HSA. The Debtors contributed approximately \$191,700 on account of the HSA prior to the Petition Date.

47. The Debtors also provide Employees with access to an optional dependent care flexible spending account (the “*FSA*”), administered by WEX. Participating Employees can make contributions to the FSA to cover certain eligible out-of-pocket dependent child and elderly care

¹³ Voya features a number of add-on benefits available to Employees at no extra cost to the Debtors, including an employee assistance program, college tuition benefit, travel assistance program, ID theft assistance, and Enviva associate discount program.

expenses. As of the Petition Date, approximately 27 Employees maintain an FSA. The Debtors contribute approximately \$12,900 per month on account of the FSA.

48. After giving effect to the applicable Deductions, the Debtors pay approximately \$5,900 in administrative fees to WEX on a monthly basis for administrative services with respect to the HSA, FSA, and Cobra Rights (as defined below).

c. Dental Plans

49. The Debtors offer self-insured dental coverage (the “*Dental Plan*”) to their Employees through Guardian Life Insurance Co. Employees are provided with one plan option. Employees, as well as their spouses, children, and/or eligible dependents may be covered under the Dental Plan. As of the Petition Date, approximately 1,033 Employees participate in the Dental Plan. After taking applicable Deductions, the Debtors pay approximately \$60,000 per month with respect to the Dental Plans, including associated administrative fees.

d. Vision Plan

50. The Debtors offer fully-insured vision coverage (the “*Vision Plan*”) to their Employees through Eye Med. The Vision Plan provides coverage or discounts for exams, prescription eyeglasses, and contact lenses. Employees, as well as their spouses, children, and/or eligible dependents may be covered under the Vision Plan. As of the Petition Date, approximately 922 Employees participate in the Vision Plan. After taking applicable Deductions, the Debtors pay approximately \$7,800 per month with respect to the Vision Plan, including associated administrative fees.

e. COBRA Rights

51. The Debtors provide their former Employees coverage under the Consolidated Omnibus Budget Reconciliation Act (“*COBRA*”), which provides former Employees who lose their health coverage the right to continue benefits for a limited period of time (the “*COBRA*”).

Rights”). The COBRA Rights are administered by WEX. As of the Petition Date, 25 former Employees participate in the COBRA Rights.

52. As of the Petition Date, the Debtors estimate that the amount of total accrued but unpaid obligations arising under the Health Insurance Programs, including associated administrative fees, is approximately \$3,145,200 (the “**Unpaid Health Insurance Program Obligations**”), a portion of which will become due and owing in the first 21 days of these chapter 11 cases. The Debtors seek authority to pay the Unpaid Health Insurance Program Obligations in the ordinary course of business and consistent with past practice, and to continue paying the Health Insurance Programs obligations on a postpetition basis in the ordinary course of business.

2. Life, Disability, and Related Insurance Programs

53. The Debtors offer their Employees the opportunity to participate in a number of life, AD&D, disability, and related benefit programs, including the Basic Life and AD&D Insurance, the Supplemental Life and AD&D Insurance, the Executive Life Insurance, the Short-Term Disability Benefits, the Long-Term Disability Benefits, and the Related Insurance Programs (each, as defined below and collectively, including their respective administrative costs, the “**Life, Disability, and Related Insurance Programs**”).

a. Life and AD&D Insurance Programs

54. The Debtors offer fully-insured life and accidental death and dismemberment insurance coverage (the “**Basic Life and AD&D Insurance**”) to their Employees through Voya, which provides maximum coverage of up to 100 percent to 200 percent of the applicable Employee’s annual earnings (not to exceed \$500,000) in the event of an Employee’s death, accidental death, or dismemberment. Employees do not make any contributions on account of the

Basic Life and AD&D Insurance. The Debtors pay approximately \$6,800 per month with respect to the Basic Life and AD&D Insurance, including associated administrative fees.

55. Employees may also purchase supplemental life and accidental death and dismemberment insurance (the “*Supplemental Life and AD&D Insurance*”) through Voya. As of the Petition Date, approximately 596 Employees maintain Supplemental Life and AD&D Insurance. The Debtors pay approximately \$22,700 per month with respect to the Supplemental Life and AD&D Insurance, including associated administrative fees.

56. Executive Employees may also purchase additional whole-life insurance (the “*Executive Life Insurance*”) through Ameritas Life Insurance Corp. (“*Ameritas*”). While the Executive Life Insurance is in the name of the applicable executive, the Debtors pay the policy premium annually and subsequently record such payment on the following payroll cycle for the applicable executive. As of the Petition Date, approximately one executive Employee maintains Executive Life Insurance. In 2023, the Debtors paid the aggregate amount of approximately \$12,900 on account of the Executive Life Insurance for three executive Employees.

b. Disability Benefit Programs

57. The Debtors provide certain Employees with fully-insured short- and long-term disability benefits (the “*Disability Benefits*”) through Voya. Employees are eligible for the Disability Benefits as of their date of hire.

58. Under the short-term disability benefits program, in the event of a qualified non-work related illness or injury, Employees are entitled to continuation of 66.67 percent of their salary (up to a weekly limit of \$3,500) for up to 90 days (the “*Short-Term Disability Benefits*”). Employees do not make any contributions on account of Short-Term Disability Benefits. The Debtors pay approximately \$41,700 per month for the Short-Term Disability Benefits, including associated administrative fees.

59. Under the long-term disability benefits program, Employees are entitled to continuation of 60 percent of their salary (up to a monthly limit of \$10,000) for a period of time dependent on the Employee's ability to perform their duties and when the disability begins (the "**Long-Term Disability Benefits**"). Employees do not make any contributions on account of Long-Term Disability Benefits. The Debtors pay approximately \$24,700 per month for the Long-Term Disability Benefits, including associated administrative fees.

c. Related Insurance Programs

60. The Debtors offer Employees accident insurance, critical illness insurance, and absence insurance (collectively, the "**Related Insurance Programs**"). The Related Insurance Programs are administered by Voya. The Debtors pay approximately \$20,800 per month with respect to the Related Insurance Programs, including associated administrative fees. As of the Petition Date, approximately 898 Employees participate in the Related Insurance Programs.

61. As of the Petition Date, the Debtors estimate that the amount of total accrued but unpaid obligations arising under the Life, Disability, and Related Insurance Programs, including associated administrative fees, is approximately \$74,400 (the "**Unpaid Life, Disability, and Related Insurance Program Obligations**"), all of which will become due and owing in the first 21 days of these chapter 11 cases. The Debtors seek authority to pay the Unpaid Life, Disability, and Related Insurance Program Obligations in the ordinary course of business and consistent with past practice, and to continue paying the Life, Disability, and Related Insurance Programs obligations on a postpetition basis in the ordinary course of business.

ii. *Workers' Compensation Program*

62. The Debtors maintain workers' compensation insurance (the "**Workers' Compensation Program**") for Employees at the level required by law in the states in which the Debtors operate for claims arising from or related to their employment with the Debtors and to

satisfy the Debtors' obligations arising under or related to the Workers' Compensation Program (the "*Workers' Compensation Obligations*").

63. The Debtors maintain third-party insurance for Workers' Compensation Obligations through Hartford Financial Services. All Employees are entitled to participate in the Workers' Compensation Program. The Debtors pay an annual premium of approximately \$407,200. As of the Petition Date, approximately 22 individuals are receiving benefits on account of the Workers' Compensation Obligations and there are 12 open claims.

64. The Debtors must continue the claim assessment, determination, adjudication, and payment process pursuant to the Workers' Compensation Program without regard to whether such liabilities are outstanding before the Petition Date to ensure that the Debtors comply with applicable workers' compensation laws and requirements during the pendency of these chapter 11 cases.

65. As of the Petition Date, the Debtors estimate that the amount of total accrued but unpaid Workers' Compensation Obligations is approximately \$709,900 (the "*Unpaid Workers' Compensation Obligations*"), a portion of which will become due and owing in the first 21 days of these chapter 11 cases. The Debtors seek authority to pay the Unpaid Workers' Compensation Obligations in the ordinary course of business and consistent with past practice, and to continue paying the Unpaid Workers' Compensation Obligations on a postpetition basis in the ordinary course of business.

66. To the extent any Employee asserts new claims arising under the Workers' Compensation Program, the Debtors request that the Court modify the automatic stay under section 362 of the Bankruptcy Code to permit the Employees to proceed with their claims under the

Workers' Compensation Program. This required modification of the automatic stay pertains solely to claims under the Workers' Compensation Program.

iii. *Paid Leave*

67. The Debtors maintain certain paid leave benefit programs for Employees, providing paid leave for PTO and Other Leave (each as defined below, and collectively, the "*Leave Benefits*").

68. In the ordinary course of business, the Debtors provide paid time off ("*PTO*") to Employees. PTO accrues at a specified rate based on the Employee's length of employment and employment status. Non-exempt, non-corporate Employees accrue between 80 and 160 hours of PTO each year and, provided they use at least 40 hours of PTO in such year, may carry over up to 40 hours of accrued but unused PTO into the next calendar year at the end of any calendar year. Upon termination or following the end of each calendar year, taking into account the used and/or carry-over PTO hours, non-exempt, non-corporate Employees may receive cash payments for up to 80 hours of accrued but unused PTO (the "*PTO Cash-Out Obligations*"). Exempt, corporate Employees accrue between 120 and 160 hours of minimum PTO each year and are not entitled to carry over any accrued but unused PTO into the next calendar year at the end of any calendar year, nor are such Employees entitled to receive cash payments for accrued but unused PTO.

69. As of the Petition Date, the Debtors do not believe that any unpaid PTO Cash-Out Obligations are outstanding. Out of an abundance of caution, the Debtors seek authority to pay any outstanding prepetition PTO Cash-Out Obligations and to continue offering and honoring PTO Cash-Out Obligations on a postpetition basis and in the ordinary course of business.

70. In the ordinary course of business, the Debtors provide certain other paid and unpaid leave, including holidays, bereavement, civic duty leave, military leave, leave provided for

under the Family Medical Leave Act, and all legally required leaves (collectively, the “*Other Leave*”). Employees are not entitled to any cash payments in connection with the Other Leave.

71. The Debtors believe that the continuation of the Leave Benefits in the ordinary course of business and consistent with past practice is essential to maintaining Employee morale during these chapter 11 cases. Further, the policies are broad-based programs upon which all Employees have come to depend. As a result, the Debtors seek authority to continue offering and honoring the Leave Benefits on a postpetition basis and in the ordinary course of business.

iv. *401(k) Plan*

72. The Debtors provide all Employees with the ability to participate in a defined contribution 401(k) plan (the “*401(k) Plan*”), which is administered by Fidelity Investments. Employees are eligible to participate in a 401(k) Plan immediately upon their date of hire. The 401(k) Plan generally provides for pre-tax deductions¹⁴ of compensation up to limits set by the Internal Revenue Code, as well as for certain post-tax deductions. Employee contributions to the 401(k) Plan are deducted automatically from each paycheck and transferred to a trust established under the 401(k) Plan (collectively, the “*401(k) Deductions*”). The Debtors match Employees’ 401(k) Plan contributions up to three percent of each participating Employee’s annual salary (collectively, the “*401(k) Contributions*”). The Debtors pay approximately \$97,700 on account of the 401(k) Contributions per bi-weekly pay period. As of the Petition Date, approximately 1,195 Employees contribute to the 401(k) Plan.

73. As of the Petition Date, the Debtors estimate that the amount of accrued but unpaid obligations due on account of the 401(k) Plan is approximately \$149,900 (the “*Unpaid 401(k)*”).

¹⁴ The Debtors withhold approximately \$350,000 per bi-weekly pay period on account of 401(k) related deductions from Employee Wages.

Obligations”), all of which will become due and owing in the first 21 days of these chapter 11 cases. The Debtors seek authority to pay the Unpaid 401(k) Obligations in the ordinary course of business, consistent with past practices, and to continue paying the 401(k) Obligations on a postpetition basis in the ordinary course of business.

C. Additional Benefit Programs

i. *Wellness Reimbursement Program*

74. The Debtors provide eligible Employees the ability to participate in the wellness reimbursement program (the “*Wellness Reimbursement Program*”), which is designed to encourage and support a well-rounded healthy lifestyle for Employees by reimbursing expenses for a variety of eligible wellness activities, including gym memberships, fitness classes, and nutritional counseling. The Debtors reimburse up to \$25 per month per Employee, to a maximum of \$300 annually (the “*Wellness Reimbursements*”). The Wellness Reimbursement Program is administered by WEX and the Wellness Reimbursements are processed through Concur as Expense Reimbursements. Because of the irregular nature of requests for Wellness Reimbursements, it is difficult for the Debtors to determine the amount of unpaid Wellness Reimbursements at any given time; however, the amount of unpaid Wellness Reimbursements may be up to \$37,700 per month.

75. As of January 1, 2024, the Debtors have discontinued the Wellness Reimbursement Program; however, Employees may continue to seek Wellness Reimbursements incurred in 2023 for up to 60 days following January 1, 2024. Accordingly, to the extent that there are accrued but unpaid Wellness Reimbursements due on as of the Petition Date, the Debtors seek authority to pay such obligations as an Unpaid Expense Reimbursement in the ordinary course of business, consistent with past practices.

ii. *Educational Reimbursement Program*

76. The Debtors offer eligible Employees an education reimbursement program (the “*Educational Reimbursement Program*”). To be eligible for the Education Reimbursement Program, among other requirements, the Employee must be pursuing a degree, seeking licensure or certification, or advancing professional development, in each case related to the Employee’s job or a probable future assignment in the Debtors’ business. The Educational Reimbursement Program provides Employees with annual reimbursement of up to \$5,250 per calendar year for qualifying tuition and related expenses, provided that certain criteria are met (the “*Educational Reimbursements*”). The Educational Reimbursements are processed through Concur as Expense Reimbursements. In 2023, the Debtors paid approximately \$240,600 of Educational Reimbursements.

77. Because of the irregular nature of requests for Educational Reimbursements, it is difficult for the Debtors to determine the amount of unpaid Educational Reimbursements at any given time. To the extent that there are accrued but unpaid Educational Reimbursements due as of the Petition Date, the Debtors seek authority, in the Final Order, to pay such obligations as an Unpaid Expense Reimbursement in the ordinary course of business, consistent with past practices, and to continue offering the Educational Reimbursement Program and paying Educational Reimbursements on a postpetition basis in the ordinary course of business.

iii. *Fleet Vehicle Program*

78. The Debtors assign company-leased vehicles to (i) certain Employees to meet transportation needs while conducting business and (ii) specific plant or port sites for the performance of business operations (collectively, the “*Fleet Vehicle Program*”). The Fleet Vehicle Program is offered through Enterprise Fleet Management (“*EFM*”). As of the Petition Date, approximately 85 Employees participate in the Fleet Vehicle Program. The Debtors pay

approximately \$86,300 per month to EFM on account of the Fleet Vehicle Program (the “*Fleet Vehicle Obligations*”), which includes the cost to lease, repair, and maintain the vehicles.

79. The Debtors provide Fleet Vehicle Program participants with company-paid corporate credit cards (the “*Gas Cards*”) that are exclusively used to purchase fuel for the company-leased vehicles. Additional detail regarding the Gas Cards is provided in the Cash Management Motion, which is being filed contemporaneously herewith and includes a more fulsome description of the Gas Card program and seeks further relief regarding such program.

80. As of the Petition Date, the Debtors estimate that the amount of accrued but unpaid Fleet Vehicle Obligations is approximately \$43,200 (the “*Unpaid Fleet Vehicle Obligations*”), all of which will become due and owing in the first 21 days of these chapter 11 cases. The Debtors seek authority to pay the Unpaid Fleet Vehicle Obligations in the ordinary course of business, consistent with past practices, and to continue paying the Fleet Vehicle Obligations and any associated costs on a postpetition basis in the ordinary course of business.

iv. *Construction Relocation Policy*

81. In the ordinary course of business, the Debtors pay or reimburse certain Employees for relocation expenses incurred at the Debtors’ request or for the Debtors’ benefit pursuant to established written policies (the “*Construction Relocation Benefits*”). Employees who are asked to deploy to a construction site for a defined period of time are eligible to receive Construction Relocation Benefits. The Construction Relocation Benefits generally include amounts incurred for temporary lodging and housing, moving expenses, per diem allowance, in addition to other expenses incurred during construction deployment. The Construction Relocation Benefits are processed through Concur as Expense Reimbursements. In 2023, the Debtors paid approximately \$20,400 on account of the Construction Relocation Benefits.

82. Because of the irregular nature of requests for Construction Relocation Benefits, it is difficult for the Debtors to determine the amount of unpaid Construction Relocation Benefits at any given time. To the extent that there are accrued but unpaid Construction Relocation Benefits due as of the Petition Date, the Debtors seek authority, in the Final Order, to pay such obligations as an Unpaid Expense Reimbursement in the ordinary course of business, consistent with past practices, and to continue offering and paying the Construction Relocation Benefits on a postpetition basis in the ordinary course of business.

BASIS FOR RELIEF REQUESTED

A. Sufficient Cause Exists to Authorize the Debtors to Honor the Compensation and Benefits Obligations.

i. *Certain Compensation and Benefits Obligations are Entitled to Priority Treatment.*

83. Sections 507(a)(4) and (a)(5) of the Bankruptcy Code entitle certain claims on account of the Compensation and Benefits Obligations owed to the Employees to priority treatment. 11 U.S.C. §§ 507(a)(4) and (a)(5). As priority claims, the Debtors are required to pay these claims in full to confirm a chapter 11 plan. 11 U.S.C. § 1129(a)(9)(B) (requiring payment in full of certain allowed unsecured claims for (a) wages, salaries, or commissions, including severance, and sick leave pay earned by an individual, and (b) contributions to an employee benefit plan). The Debtors submit that any such payments, if made pursuant to this Motion, would only affect the timing of payments to Employees.

ii. *Payment of Certain Compensation and Benefits Obligations is Required by Law.*

84. The Debtors seek authority to pay the Withholding Obligations to the appropriate third-party entities. These amounts principally represent Employee or Independent Contractor earnings that governments, Employees, Independent Contractors, and judicial authorities have designated for deduction and withholding from the Workforce's paychecks.

85. Certain Withholding Obligations are not property of the Debtors' estates because the Debtors have withheld such amounts from the Workforce's paychecks on another party's behalf. *See* 11 U.S.C. §§ 541(b)(1) and (d); *see also Begier v. IRS*, 496 U.S. 53, 66–67 (1990) (concluding that withholding taxes are property held by a debtor in trust for another and are therefore not property of the debtor's estate). Furthermore, federal and state laws require that the Debtors withhold certain tax payments from the Workforce's paychecks and pay such amounts to the appropriate taxing authority. 26 U.S.C. §§ 6672, 7501(a); *see also In re FirstPay, Inc.*, 773 F.3d 583, 595 (4th Cir. 2012) (holding that the payment of taxes to the government "is not a transfer of estate property but rather a transfer of funds held in trust for payment to the government"). Because the Withholding Obligations may not be property of the Debtors' estates, the Debtors request that the Court authorize them to transmit the Withholding Obligations on account of the Workforce to the proper parties in the ordinary course of business. The Debtors therefore request that the Court recognize that the Withholding Obligations are not property of the Debtors' estates and, regardless of whether the Debtors collected the amounts prior to the Petition Date, authorize the Debtors to transmit such monies to the proper parties in the ordinary course of business.

B. Payment of the Compensation and Benefits Obligations is Proper Pursuant to Section 363(b) of the Bankruptcy Code.

86. Section 363 of the Bankruptcy Code provides, in relevant part, that "[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Under section 363(b) of the Bankruptcy Code, courts require only that the debtor "show that a sound business purpose" justifies the proposed use of property. *See In re W.A. Mallory Co.*, 214 B.R. 834, 836 (Bankr. E.D. Va. 1997) ("This Court follows the 'sound business purpose' test when examining § 363(b) sales." (citing *In re WBQ*

P'ship, 189 B.R. 97, 102 (Bankr. E.D. Va. 1995)); *see also In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999). Moreover, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) (“Overcoming the presumptions of the business judgment rule on the merits is a near-Herculean task.”). Thus, if a transaction satisfies the business judgment rule, it should be approved under section 363(b) of the Bankruptcy Code.

87. Furthermore, section 105(a) of the Bankruptcy Code provides that a court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions” of the Bankruptcy Code, pursuant to the “doctrine of necessity.” 11 U.S.C. § 105(a). The “doctrine of necessity” functions in a chapter 11 case as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code, and further supports the relief requested herein. *See In re United Am., Inc.*, 327 B.R. 776, 781 (Bankr. E.D. Va. 2005) (acknowledging the doctrine of necessity “is a necessary deviation because otherwise there will be no reorganization and no creditor will have an opportunity to recoup any part of its pre-petition claim”); *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (“Under [section 105(a)] the court can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor.”); *see also In re Lehigh & New End England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (stating a court may authorize payment of prepetition claims when there “is the possibility that the creditor will employ an immediate economic sanction, failing such payment”).

88. The necessity of payment doctrine is designed to foster a debtor's rehabilitation, which courts have recognized is "the paramount policy and goal of Chapter 11." *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989); *see also In re Just for Feet, Inc.*, 242 B.R. 821, 826 (D. Del. 1999) (finding that payment of prepetition claims to certain trade vendors was "essential to the survival of the debtor during the chapter 11 reorganization"); *In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) ("[P]ayment by a debtor-in-possession of pre-petition claims outside of a confirmed plan of reorganization is generally prohibited by the Bankruptcy Code," but "[a] general practice has developed . . . where bankruptcy courts permit the payment of certain pre-petition claims, pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such payment"); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of prepetition unsecured claims of toolmakers as "necessary to avert a serious threat to the Chapter 11 process").

89. Additionally, Bankruptcy Rule 6003 implies that the payment of prepetition obligations may be permissible within the first 21 days of a case where doing so is "necessary to avoid immediate and irreparable harm." Fed. R. Bankr. P. 6003.

90. Payment of the Compensation and Benefits Obligations is warranted under this authority and the facts of these chapter 11 cases. The Workforce will be exposed to significant financial difficulties if the Debtors are not permitted to honor unpaid Compensation and Benefits Obligations. Additionally, continuing ordinary course benefits will help maintain morale and minimize the adverse effect of the commencement of these chapter 11 cases on the Debtors' ongoing business operations.

91. Moreover, the Workforce provides the Debtors with services necessary to conduct the Debtors' businesses, and the Debtors believe that absent the payment of the obligations owed

to the Workforce, the Debtors may experience turnover and instability at this critical time in these chapter 11 cases. The Debtors believe that without these payments, the Workforce may become demoralized and unproductive because of the potential significant financial strain and other hardships the Workforce may face. The Workforce may then elect to seek alternative employment opportunities. Additionally, a significant portion of the value of the Debtors' businesses is tied to the skills of the Workforce, which cannot be replaced without significant efforts, and which efforts may not be successful given the overhang of these chapter 11 cases. Enterprise value may be materially impaired to the detriment of all stakeholders in such a scenario. The Debtors therefore believe that (i) payment of the prepetition Compensation and Benefits Obligations and (ii) continuation of payment of the same on a postpetition basis is a necessary and critical element of the Debtors' efforts to preserve value and will give the Debtors the greatest likelihood of retaining their Workforce throughout these chapter 11 cases.

92. Courts in this district have granted similar relief to that requested in this Motion in previous chapter 11 cases. *See, e.g., In re Nordic Aviation Capital Designated Activity Company*, No. 21-33693 (KRH) (Bankr. E.D. Va. Jan. 13, 2022) (authorizing debtors to continue compensation and benefit programs and pay certain prepetition obligations related thereto); *In re Paper Source, Inc.*, No. 21-30660 (KLP) (Bankr. E.D. Va. Mar. 30, 2021) (same); *In re Alpha Media Holdings LLC*, No. 21-30209 (KRH) (Bankr. E.D. Va. Feb. 11, 2021) (same); *In re Le Tote, Inc.*, No. 20-33332 (KLP) (Bankr. E.D. Va. Aug. 27, 2020) (same); *In re Ascena Retail Group, Inc.*, No. 20-33113 (KRH) (Bankr. E.D. Va. Aug. 27, 2020) (same); *In re Intelsat S.A.*, No. 20-32299 (KLP) (Bankr. E.D. Va. June 9, 2020) (same); *In re Pier 1 Imports, Inc.*, No. 20-30805 (KRH) (Bankr. E.D. Va. Mar. 13, 2020) (same). Accordingly, the Debtors respectfully request

that the Court authorize the Debtors to pay and continue paying the Compensation and Benefits Obligations in the ordinary course of business.

C. A Limited Waiver of the Automatic Stay for the Workers' Compensation Program is Appropriate in these Chapter 11 Cases.

93. Section 362(a) of the Bankruptcy Code operates to stay “the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title” 11 U.S.C. § 362(a)(1).

94. Section 362 of the Bankruptcy Code, however, permits a debtor or other parties in interest to request a modification or termination of the automatic stay for “cause.” *Id.* at § 362(d)(1). Cause exists here to modify the automatic stay to permit the Employees and/or the Independent Contractors to proceed with workers' compensation claims in the appropriate judicial or administrative forum. Staying the workers' compensation claims could have a detrimental effect on the financial well-being and morale of the Workforce. Further, if the Debtors fail to maintain the Workers' Compensation Program, state laws may prohibit the Debtors from operating in those states.

D. The Debtors' Banks Should Be Authorized to Honor Checks, Wire Transfers, and Electronic Fund Transfers.

95. The Debtors have sufficient liquidity to pay the amounts described in this Motion in the ordinary course of business. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks, wire transfers, or electronic fund transfer requests as relating to an authorized payment in respect of the Compensation and Benefits Obligations. Accordingly, the Debtors believe that there is minimal risk that checks, wire transfers, and electronic fund transfer requests that the Court has not authorized will be honored inadvertently.

The Debtors respectfully request that the Court authorize and direct all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks, wire transfers, or electronic fund transfer requests in respect of the relief requested in this Motion. Further, the Debtors also seek authority to issue new postpetition checks, wire transfers, or electronic fund transfer requests to replace any prepetition checks, wire transfers, or funds transfers that may be dishonored or rejected as a result of the commencement of these chapter 11 cases.

REQUEST FOR IMMEDIATE RELIEF

96. Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the Petition Date “to the extent that relief is necessary to avoid immediate and irreparable harm.” For the reasons discussed herein and in the First Day Declarations, authorizing the Debtors to pay the above-described prepetition obligations on account of the Compensation and Benefit Programs in the ordinary course of business and continue to administer the Compensation and Benefit Programs, as well as granting the other relief requested herein, is critical to enabling the Debtors to effectively transition to operating as chapter 11 debtors. Failure to receive such authorization and other relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors’ operations and significantly impact the Debtors’ ability to reorganize swiftly and efficiently. As such, the relief requested is necessary in order for the Debtors to operate their businesses in the ordinary course and preserve the ongoing value of the Debtors’ operations and maximize the value of their estates for the benefit of all stakeholders. Accordingly, the Debtors submit that they have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

WAIVER OF BANKRUPTCY RULE 6004(a) AND 6004(h)

97. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

RESERVATION OF RIGHTS

98. Unless specifically provided herein, and notwithstanding any actions taken hereunder, nothing in this Motion is intended to be, nor should it be construed as (a) an implication or admission as to the validity or priority of any claim or lien against the Debtors, (b) an impairment or waiver of the Debtors' or any other party in interest's rights to contest or dispute any such claim or lien, (c) a promise or requirement to pay any prepetition claim, (d) an implication or admission that any particular claim is of a type specified or defined in this Motion or any proposed order, or (e) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law. In addition, nothing in this Motion or the relief requested herein should be interpreted as the assumption or rejection of any executory contract or unexpired lease under section 365 of the Bankruptcy Code.

NOTICE

99. Notice of this Motion has been provided by delivery to the following parties or their counsel, as applicable: (a) the Assistant United States Trustee for the Eastern District of Virginia; (b) the Debtors' 30 largest unsecured creditors (on a consolidated basis); (c) Davis Polk & Wardwell LLP as co-counsel to the Ad Hoc Group; (d) McGuireWoods LLP as co-counsel to the Ad Hoc Group; (e) McDermott Will & Emery LLP as counsel to the agent under the DIP Facility; (f) Cahill Gordon & Reindel LLP as counsel to the agent under the Senior Secured Credit Facility; (g) Kilpatrick Townsend & Stockton LLP as counsel to the indenture trustee under the 2026 Notes; (h) Kramer Levin Naftalis & Frankel LLP as counsel to the indenture trustees under

the Bond Green Bonds and the Epes Green Bonds; (i) those persons who have formally appeared in these chapter 11 cases and requested service pursuant to Bankruptcy Rule 2002; (j) the United States Attorney's Office for the Eastern District of Virginia; (k) the Securities and Exchange Commission; (l) the Internal Revenue Service; and (m) all applicable government agencies or other parties to the extent required by the Bankruptcy Rules or the Local Rules (collectively, the "*Notice Parties*"). In light of the nature of the relief requested in this Motion, the Debtors submit that no further notice is necessary.

NO PRIOR REQUEST

100. No prior motion for the relief requested herein has been made to this Court or any other court.

The Debtors respectfully request that the Court enter the Interim Order and the Final Order, substantially in the forms attached hereto as **Exhibits A** and **B**, respectively, and grant them such other and further relief to which the Debtors may be justly entitled.

Richmond, Virginia
Dated: March 12, 2024

/s/ Jeremy S. Williams

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Proposed Co-Counsel for the Debtors and Debtors in Possession

EXHIBIT A

Proposed Interim Order

on account of the Compensation and Benefit Programs and (b) continue to administer the Compensation and Benefits Programs in the ordinary course of business, including payment of prepetition obligations related thereto and (ii) granting related relief. all as more fully set forth in the Motion and in the First Day Declarations; and the Court having jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated August 15, 1984; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having reviewed the Motion and the First Day Declarations; and the Court having found that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates, as contemplated by Bankruptcy Rule 6003; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors and their respective estates, creditors, and other parties in interest; and the Court having found that proper and adequate notice of the Motion and hearing thereon has been given and that no other or further notice is necessary; and the Court having found that good and sufficient cause exists for the granting of the relief requested in the Motion after having given due deliberation upon the Motion and all of the proceedings had before the Court in connection with the Motion, it is HEREBY ORDERED THAT:

1. The final hearing (the “*Final Hearing*”) on the Motion shall be held on _____, 2024, at __: __ .m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 5:00 p.m., prevailing Eastern Time, on _____, 2024, and shall be served on the Notice Parties.

2. The Debtors are authorized to pay and honor prepetition amounts related to the Compensation and Benefits Programs and to continue paying amounts related to the Compensation and Benefits Programs in the ordinary course of business; *provided* that the Debtors shall not honor any prepetition obligations related to the Compensation and Benefits Programs owed to any member of the Workforce, as applicable, that exceeds the priority amounts set forth in sections 507(a)(4) and (a)(5) of the Bankruptcy Code.

3. The Debtors are authorized to continue the Compensation and Benefits Programs in the ordinary course of business during these chapter 11 cases and without the need for further Court approval, subject to applicable law; *provided* that pending entry of the Final Order, the Debtors are not authorized to honor obligations or pay amounts under the Incentive and Bonus Programs, specifically, the Quarterly Incentive Compensation Program, Quarterly Bonus Program, and Long-Term Incentive Plan.

4. The Debtors are authorized to modify, change, and discontinue the Compensation and Benefits Programs, and to implement new programs, policies, and benefits.

5. For the avoidance of doubt, the Debtors shall not directly or indirectly pay any amounts to “insiders” of the Debtors, as that term is defined in section 101(31) of the Bankruptcy Code, in violation of section 503(c) of the Bankruptcy Code. Nothing herein shall be deemed to authorize the payment of any amounts in violation of section 503(c) of the Bankruptcy Code.

6. Pursuant to section 362(d) of the Bankruptcy Code: (a) the Workforce is authorized to proceed with their workers’ compensation claims, if any, in the appropriate judicial or administrative forum under the Workers’ Compensation Program, and the Debtors are authorized to pay all undisputed prepetition amounts relating thereto in the ordinary course of business; and (b) the notice requirements pursuant to Bankruptcy Rule 4001(d) with respect to clause (a) are

waived. This modification of the automatic stay pertains solely to claims under the Workers' Compensation Program, and any such claims must be pursued in accordance with the applicable Workers' Compensation Program. Payment on account of any recoveries obtained in connection with a claim brought pursuant to this paragraph is limited to the terms and conditions of the applicable Workers' Compensation Program, including with regard to any policy limits or caps.

7. Nothing contained herein is intended or should be construed to create an administrative priority claim on account of any prepetition obligations owed under the Employee Compensation and Benefits Programs.

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

9. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order.

10. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any Compensation and Benefits Programs.

11. Unless specifically provided herein, and notwithstanding any actions taken hereunder, nothing contained in the Motion or this Interim Order or any payment made pursuant to this Interim Order shall constitute, nor is it intended to constitute, an implication or admission

as to the validity or priority of any claim or lien against the Debtors, a waiver of the Debtors', or any party in interest's, rights to subsequently dispute such claim or lien, a promise or requirement to pay any prepetition claim, an implication or admission that any particular claim is of a type specified or defined in the Motion or any proposed order, a waiver of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law, or the assumption or adoption of any agreement, contract, or lease under section 365 of the Bankruptcy Code.

12. Notwithstanding the relief granted in this Interim Order, all authorizations herein and all payments and actions pursuant hereto shall be subject to each interim and final order entered by the Court in respect of the *Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Superpriority Administrative Expense Claims, (III) Granting Adequate Protection to Prepetition Secured Parties, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief*, filed contemporaneously herewith (collectively, such interim and final orders, the "**DIP Order**"), including compliance with any budget or cash flow forecast in connection therewith and any other terms and conditions thereof. Nothing herein is intended to modify, alter, or waive, in any way, any terms, provisions, requirements, or restrictions of the DIP Order or the DIP Documents (as defined in the DIP Order). To the extent there is any inconsistency between the terms of the DIP Order or the DIP Documents and the terms of this Interim Order or any action taken or proposed to be taken hereunder, the terms of the DIP Order or the DIP Documents, as applicable, shall control.

13. Bankruptcy Rule 6003(b) has been satisfied.

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

15. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order shall be immediately effective and enforceable upon entry of this Interim Order.

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

17. The Court retains exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Interim Order.

Dated: _____
Alexandria, Virginia

UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

/s/

Michael A. Condyles (VA 27807)

Peter J. Barrett (VA 46179)

Jeremy S. Williams (VA 77469)

KUTAK ROCK LLP

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Proposed Co-Counsel to the Debtors and Debtors in Possession

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

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

/s/

EXHIBIT B

Proposed Final Order

account of the Compensation and Benefit Programs and (b) continue to administer the Compensation and Benefits Programs in the ordinary course of business, including payment of prepetition obligations related thereto and (ii) granting related relief, all as more fully set forth in the Motion and in the First Day Declarations; and the Court having jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated August 15, 1984; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having entered the Interim Order; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors and their respective estates, creditors, and other parties in interest; and the Court having found that proper and adequate notice of the Motion and hearing thereon has been given and that no other or further notice is necessary; and the Court having found that good and sufficient cause exists for the granting of the relief requested in the Motion after having given due deliberation upon the Motion and all of the proceedings had before the Court in connection with the Motion, it is HEREBY ORDERED THAT:

1. The Debtors are authorized to pay and honor prepetition amounts related to the Compensation and Benefits Programs and to continue paying amounts related to the Compensation and Benefits Programs in the ordinary course of business; *provided* that the Debtors shall not honor any prepetition obligations related to the Compensation and Benefits Programs owed to any member of the Workforce, as applicable, that exceeds the priority amounts set forth in sections 507(a)(4) and (a)(5) of the Bankruptcy Code.

2. The Debtors are authorized to continue the Compensation and Benefits Programs in the ordinary course of business during these chapter 11 cases and without the need for further Court approval, subject to applicable law.

3. The Debtors are authorized to modify, change, and discontinue the Compensation and Benefits Programs, and to implement new programs, policies, and benefits.

4. For the avoidance of doubt, the Debtors shall not directly or indirectly pay any amounts to “insiders” of the Debtors, as that term is defined in section 101(31) of the Bankruptcy Code, in violation of section 503(c) of the Bankruptcy Code. Nothing herein shall be deemed to authorize the payment of any amounts in violation of section 503(c) of the Bankruptcy Code.

5. Pursuant to section 362(d) of the Bankruptcy Code: (a) the Workforce is authorized to proceed with their workers’ compensation claims, if any, in the appropriate judicial or administrative forum under the Workers’ Compensation Program, and the Debtors are authorized to pay all undisputed prepetition amounts relating thereto in the ordinary course of business; and (b) the notice requirements pursuant to Bankruptcy Rule 4001(d) with respect to clause (a) are waived. This modification of the automatic stay pertains solely to claims under the Workers’ Compensation Program, and any such claims must be pursued in accordance with the applicable Workers’ Compensation Program. Payment on account of any recoveries obtained in connection with a claim brought pursuant to this paragraph is limited to the terms and conditions of the applicable Workers’ Compensation Program, including with regard to any policy limits or caps.

6. Nothing contained herein is intended or should be construed to create an administrative priority claim on account of any prepetition obligations owed under the Employee Compensation and Benefits Programs.

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

8. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.

9. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any Compensation and Benefits Programs.

10. Unless specifically provided herein, and notwithstanding any actions taken hereunder, nothing contained in the Motion or this Final Order or any payment made pursuant to this Final Order shall constitute, nor is it intended to constitute, an implication or admission as to the validity or priority of any claim or lien against the Debtors, a waiver of the Debtors', or any party in interest's, rights to subsequently dispute such claim or lien, a promise or requirement to pay any prepetition claim, an implication or admission that any particular claim is of a type specified or defined in the Motion or any proposed order, a waiver of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law, or the assumption or adoption of any agreement, contract, or lease under section 365 of the Bankruptcy Code.

11. Notwithstanding the relief granted in this Final Order, all authorizations herein and all payments and actions pursuant hereto shall be subject to each interim and final order entered by the Court in respect of the *Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral,*

(II) Granting Liens and Providing Superpriority Administrative Expense Claims, (III) Granting Adequate Protection to Prepetition Secured Parties, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief, filed contemporaneously herewith (collectively, such interim and final orders, the “**DIP Order**”), including compliance with any budget or cash flow forecast in connection therewith and any other terms and conditions thereof. Nothing herein is intended to modify, alter, or waive, in any way, any terms, provisions, requirements, or restrictions of the DIP Order or the DIP Documents (as defined in the DIP Order). To the extent there is any inconsistency between the terms of the DIP Order or the DIP Documents and the terms of this Final Order or any action taken or proposed to be taken hereunder, the terms of the DIP Order or the DIP Documents, as applicable, shall control.

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

13. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order shall be immediately effective and enforceable upon entry of this Final Order.

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

15. The Court retains exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Final Order.

Dated: _____
Alexandria, Virginia

UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

/s/

Michael A. Condyles (VA 27807)

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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/