

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

_____	)	
In re:	)	Chapter 11
	)	
TERRAVIA HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 17-_____ (___)
	)	
Debtors. <sup>1</sup>	)	Joint Administration Requested
	)	
_____	)	

**DECLARATION OF TYLER W. PAINTER IN SUPPORT OF DEBTORS’  
CHAPTER 11 PROCEEDINGS AND FIRST DAY PLEADINGS**

Tyler W. Painter declares and says:

1. I am Chief Financial Officer/Chief Operating Officer of TerraVia Holdings, Inc. (formerly known as Solazyme, Inc.) (“**TerraVia**”). I have been employed by TerraVia since October 2007, serving as the Chief Financial Officer since that time and Chief Operating Officer since July 1, 2014. Prior to joining TerraVia, from May 2007 through October 2007, I served as an interim Corporate Controller for PMC-Sierra (PMCS), a provider of broadband communications and internet infrastructure semiconductor solutions. From 2001 to 2007, I served as the Vice President of Finance and Investor Relations and Corporate Treasurer for Wind River Systems, Inc., a software company. Prior to joining Wind River Systems, Inc., I held a variety of positions in finance at CarsDirect, Inc., an online automobile sales company, and Gap, Inc., a retail clothing company. At TerraVia, among other things, I lead the teams responsible for the development of all budgets and forecasts related to TerraVia’s development and

---

<sup>1</sup> The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective Employer Identification Numbers, are as follows: TerraVia Holdings, Inc. (7078), Solazyme Brazil LLC (2839) and Solazyme Manufacturing 1, LLC (4172). The debtors’ mailing address is 225 Gateway Boulevard, South San Francisco, CA 94080.



production activities and I am a member of the executive management team. I have over 20 years of experience serving in a financial role at a variety of companies. I hold a Bachelor of Science in Business Administration/Finance from California Polytechnic State University, San Luis Obispo. I am familiar with the day-to-day operations, business and financial affairs of the Debtors (as defined below).

2. I submit this declaration (a) in support of the petitions of the Debtors for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”), (b) in support of the Debtors’ contemporaneously-filed requests for relief in the form of motions and applications (collectively, the “**First Day Motions**”) and (c) to assist the United States Bankruptcy Court for the District of Delaware (the “**Court**”) and other interested parties in understanding the circumstances giving rise to the commencement of the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”). I have reviewed the First Day Motions, or have otherwise had their contents explained to me, and it is my belief that the relief sought therein on an expedited basis is essential to the uninterrupted operation of the Debtors’ businesses.

3. Except as otherwise indicated, all of the facts set forth in this declaration (this “**Declaration**”) are based upon my personal knowledge, my review of the relevant documents, information provided to me by employees working under my supervision or my opinion based upon experience, knowledge and information concerning the operations of the Debtors and the consumer products industry as a whole. If called upon to testify, I would testify competently to the facts set forth in this Declaration. Unless otherwise indicated, the financial information contained herein is unaudited and provided on a consolidated basis.

### Commencement of Bankruptcy Proceedings

4. On August 2, 2017, (the “**Petition Date**”), TerraVia and its two wholly owned, direct U.S. subsidiaries that are debtors and debtors in possession (collectively, the “**Debtors**”) in the Chapter 11 Cases each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors intend to continue in the possession of their respective properties and the management of their respective businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

5. The Debtors commenced the Chapter 11 Cases in order to pursue the sale of all or substantially all of their assets pursuant to section 363 of the Bankruptcy Code (the “**Section 363 Asset Sale**”). Prior to the Petition Date, and following a thorough and competitive marketing process and arm’s length negotiations, the Debtors secured a stalking horse bid (the “**Stalking Horse Bid**”) from Corbion N.V. (the “**Stalking Horse Bidder**”) to purchase a significant portion of the Debtors’ assets for an aggregate purchase price of \$20 million (the “**Purchase Price**”) plus the assumption of certain liabilities on the terms and conditions set forth in that certain Stock and Asset Purchase Agreement, dated as of August 1, 2017, by and among the Debtors and the Stalking Horse Bidder (the “**Stalking Horse Agreement**”).<sup>2</sup> As described in further detail in the Bidding Procedures Motion, to ensure that the Stalking Horse Bid is in fact the highest or otherwise best offer for the purchase of the Debtors’ assets, the Debtors have developed bidding

---

<sup>2</sup> A copy of the Stalking Horse Agreement is attached as Exhibit B to the *Motion of Debtors for Entry of Orders (i)(a) Approving Bidding Procedures for Sale of Debtors’ Assets, (b) Approving Stalking Horse Bid Protections, (c) Scheduling Auction for, and Hearing To Approve, Sale of Debtors’ Assets, (d) Approving Form and Manner of Notices of Sale, Auction and Sale Hearing, (e) Approving Assumption and Assignment Procedures and (f) Granting Related Relief and (ii)(a) Approving Sale of Debtors’ Assets Free and Clear of Liens, Claims, Interests and Encumbrances, (b) Authorizing Assumption and Assignment of Executory Contracts and Unexpired Leases and (c) Granting Related Relief* (the “**Bidding Procedures Motion**”), filed contemporaneously herewith.

and auction procedures (the “**Bidding Procedures**”) that will allow interested parties to submit competing bids for the Debtors’ assets.

6. Speed is critical in the Chapter 11 Cases because the Debtors are projected to run out of access to liquidity in the event that the contemplated sale process extends beyond the time frame set forth in the Bidding Procedures. Moreover, as set forth in greater detail below, the Debtors conducted a fulsome, five-month marketing process prior to the Petition Date involving outreach to approximately 100 parties, during which time the Debtors made clear to all potentially interested parties that it was receptive to any value-maximizing strategic transaction, whether in the form of a sale, exchange offer, financing or otherwise, either in or out-of-court. Given the degree of information about the Debtors and their assets already known by parties who engaged in the marketing process prepetition, it is unlikely that a party who participates in the sale process post-petition will require a large amount of time in order to formulate a qualifying bid. As such, the Debtors have proposed the following timeline for their sale process, which appropriately balances the Debtors’ desire to conduct a robust sale and auction process with the need to consummate a transaction as quickly as practicable to avoid any potential diminution in the value of the Debtors’ assets:

<b>Event</b>	<b>Date</b>
Bidding Procedures Hearing	On or before August 17, 2017
Indication of Interest Deadline	August 24, 2017 at 6:00 p.m. (Prevailing Eastern Time)
Bid Deadline	August 31, 2017 at 6:00 p.m. (Prevailing Eastern Time)
Assumption and Assignment Objection Deadline	September 1, 2017 at 4:00 p.m. (Prevailing Eastern Time)
Sale Objection Deadline (if no Auction)	September 1, 2017 at 4:00 p.m. (Prevailing Eastern Time)
Sale Hearing (if no Auction)	September 5, 2017

Auction (if necessary)	September 6, 2017 at 10:00 a.m. (Prevailing Eastern Time)
Sale Objection Deadline (if Auction occurs)	September 12, 2017 at 4:00 p.m. (Prevailing Eastern Time)
Sale Hearing (if Auction occurs)	September 13, 2017

7. Section I of this Declaration describes the Debtors' businesses. Sections II and III describe the circumstances giving rise to the commencement of the Chapter 11 Cases and the Debtors' prepetition restructuring initiatives. Section IV sets forth the relevant facts in support of the First Day Motions.

## I.

### The Debtors' Businesses

#### A. Operations

8. TerraVia is a food, nutrition and specialty ingredients company that develops and produces algae-based oils, specialty fats and powdered ingredients for consumer use. Originally operating under the name of Solazyme, TerraVia was founded to leverage the power of microalgae to provide a source of renewable and sustainable biofuel. TerraVia has spent more than a decade investing in an algae-based technology platform and the development of a suite of algae-based products across industrial, nutrition and specialty ingredients markets, as well in building manufacturing facilities, obtaining regulatory approvals and commercializing products. Moreover, TerraVia and its employees have followed the mission to create products that are better for people and the planet.

#### *Product Lines*

9. TerraVia has developed product lines derived from algae for specific market and customer needs. These product lines are aligned with at least four megatrends consumer industry

experts have witnessed in recent years: (i) a desire for nutrient-dense foods, (ii) a rise of the “Flexitarian” and the growing popularity of plant-based and plant-forward eating, (iii) a growing understanding of the differences between “good fats” and “bad fats” and (iv) the premium that consumers place on fewer and more natural ingredients, as well as products “free-from” known allergens. TerraVia’s current product lines include the following:

10. AlgaPrime™ DHA. AlgaPrime™ DHA was introduced in early 2016 and is a high quality, sustainable omega-3 rich algae ingredient that addresses the growing global demand for omega-3s in the aquaculture, pet and animal nutrition markets. Aquaculture is the biggest consumer of fishmeal and fish oil and has experienced an uptick in demand for feed during the past decade. However, the supply of fish oil is constrained due to fishing quotas, which in turn has led to the rise in fish oil prices. AlgaPrime™ DHA is the first algae-based fish oil alternative that contains very high levels of DHA and addresses the market need at scale. Beyond aquaculture, AlgaPrime™ DHA addresses a demand in large established markets for a consistent, sustainable source of omega-3 DHA, including pet care, animal nutrition (production animal and equine) and food and beverage markets. In 2016, TerraVia, through the SB Oils JV (as defined below), entered into a commercial relationship with BioMar AS, a global leader in providing feed to the aquaculture market, to help improve the omega-3 content of its feed with AlgaPrime™ DHA, which relationship was expanded in 2017.

11. AlgaVia® Whole Food Ingredients. AlgaVia® Whole Food Ingredients consist of two lines of vegan-friendly powdered products – (a) the Lipid Rich Whole Algae and (b) the Protein Rich Whole Algae – that deliver oil and protein in powdered form as a replacement for dairy fats, egg products and other existing sources of specialty oils or protein.

12. AlgaWise<sup>®</sup> Ingredients. AlgaWise<sup>®</sup> Ingredients can replace or improve upon conventional vegetable oils or specialty fats in major markets by providing customers with the opportunity for better nutrition and improved sustainability profiles. TerraVia's first commercially available AlgaWise<sup>®</sup> oil is high in monounsaturated fats and low in saturated and polyunsaturated fat content, which offers strong nutritional benefits and the improved culinary benefits of higher stability and smoke point. Today, TerraVia primarily sells this oil as Thrive<sup>®</sup> Culinary Algae Oil. In 2017, TerraVia's Thrive<sup>®</sup> Culinary Algae Oil received the Best New Product Award from the market research firm Brandspark International.

13. AlgaPur<sup>™</sup> Specialty Oil Ingredients. AlgaPur<sup>™</sup> Specialty Oil Ingredients are marketed to strategic customers interested in improving their product supply chains and helping to meet their global sustainability goals.

14. TerraVia develops its products through a fermentation process by which microalgae convert plant-based sugars (such as sugar beets, sugar cane, corn and cellulosic) into tailored oils and whole algae products. The controlled environment created within TerraVia's fermentation tanks allows TerraVia to carefully regulate the growth conditions to sustainably produce unique ingredients or products that meet specific market needs, including, for example, oils with a high concentration of omega-3s, a high flash point or low levels of saturated fat.

***Joint Venture with Bunge***

15. In 2012, TerraVia formed a joint venture with Bunge Global Innovation, LLC ("**Bunge**") to build, own and operate an algae oils production facility located in Brazil (the "**SB Oils Plant**"). The joint venture (the "**SB Oils JV**") is a Brazilian entity, Solazyme Bunge Produtos Renováveis Ltda. ("**SB Oils**"), which is wholly owned by Solazyme Bunge Renewable Oils Coöperatief U.A. ("**SB Oils Parent**"), a Dutch cooperative. TerraVia owns 50.1% of the

ownership interests in SB Oils Parent and Bunge owns the remaining 49.9% of ownership interests. The SB Oils Plant is adjacent to a sugar mill owned by Bunge and contains fermentation tanks with 625,000 liters of capacity, which enables SB Oils to achieve commercial-scale production of various algae-based products.

16. In May 2014, the SB Oils Plant produced its first commercial products. The ownership, operations and corporate governance of the SB Oils JV, among other things, is set forth in that certain Amended and Restated Joint Venture Agreement (as may be amended, restated or otherwise modified from time to time, the “**JV Agreement**”), entered into on October 27, 2015 by and among TerraVia, Bunge and certain other parties. Pursuant to the JV Agreement, TerraVia and Bunge agreed to expand the scope of the SB Oils JV to include new oil profiles and fields, including animal nutrition and food. TerraVia and an affiliate of Bunge fund capital contributions to the SB Oils JV and, through sales, marketing and the provision of supplies and expertise, support the operations of the SB Oils JV.

***TerraVia’s Manufacturing Capabilities***

17. Separate from the SB Oils Plant, TerraVia owns manufacturing capabilities located at a pilot plant in South San Francisco, California (the “**SSF Plant**”). The capability of the fermentation tanks at the SSF Plant – 600 and 1,000 liters – allows TerraVia to test samples of its algae-based products and experiment with new fermentation process conditions on a small scale. Additionally, Debtor Solazyme Manufacturing 1, LLC, a wholly-owned subsidiary of TerraVia, owns a manufacturing facility located in Peoria, Illinois (the “**Peoria Facility**”) with multiple 128,000 liter capacity fermentation tanks capable of supporting product development scale-up and commercial-scale production for certain products. In May 2017, TerraVia suspended operations at the Peoria Facility and, as a result, no production operations are



currently taking place at the Peoria Facility at this time. Although the operating staff responsible for running the Peoria Facility has been terminated, the Peoria Facility is maintained in a state of readiness that would enable its reactivation in a relatively short time frame.

***TerraVia's Joint Development Agreements***

18. Although the Debtors have generated revenue from the sale of their products, the majority of the Debtors' revenue historically has been derived from joint development agreements (collectively, the "JDAs") entered into with significant business partners, including Unilever, Mitsui & Co, Ltd. and Akzo Nobel. The Debtors have also entered into a JDA with the SB Oils Parent (whose obligations are funded by Bunge). Generally speaking, under the JDAs, TerraVia is paid by the applicable JDA counterparty to conduct research and development in exchange for granting to such JDA counterparty certain rights with respect to the ultimate technology that is developed. Excluding revenue from Algenist (as defined below), revenues from the JDAs and other research and development activities accounted for 81% of TerraVia's total revenue generated during fiscal year 2016, with the remaining 19% of revenue generated from the sale of the Debtors' products.

***TerraVia's Finances and Employees***

19. For the three months ended March 31, 2017, TerraVia reported total revenues of approximately \$4.5 million, which represent an approximately 9% decrease in revenue during the same three months during previous fiscal year. This decrease primarily reflected planned decrease from industrial product sales in previous years and the fact that new product sales are primarily focused in the SB Oils JV, which are not consolidated in TerraVia's financial reporting. Even though there has been growth in sales of products produced and sold through the SB Oils JV, such growth has not been sufficient to mitigate the financial situation at TerraVia. Like

many small-cap growth companies, TerraVia incurs substantial net losses, including a net loss of \$22.6 million during the three months ended March 31, 2017. As discussed in greater detail below, these net losses, combined with the costs associated with servicing TerraVia's debt, has created a challenging financial situation for the Debtors. In response to this situation, in the first quarter of 2016, TerraVia announced that it was focusing exclusively on producing products for the expanding markets for plant-based and sustainable food, nutrition and specialty ingredients, which includes expansion into animal nutrition and aquaculture markets.

20. TerraVia has a dedicated workforce of employees and independent contractors that has enabled it to continue to achieve its high standards of productivity and innovation. As of the Petition Date, TerraVia employed approximately 77 full- and part-time employees. These employees include chemists, biologists, engineers, research scientists, process technicians and laboratory specialists, many of whom have decades of experience in the biotechnology industry. Additionally, TerraVia benefits from the skills and expertise of a core team of industry veterans with a deep knowledge of the food and nutrition market landscape. None of TerraVia's employees is represented by a union. TerraVia and its employees take tremendous pride in the quality of the products TerraVia produces.

## **B. Corporate Structure**

21. TerraVia was founded as "Solazyme Inc." and incorporated in Delaware on March 23, 2003. TerraVia's initial public offering occurred in June 2011. TerraVia is listed on The NASDAQ Global Select Market ("**NASDAQ**") and shares of common stock of TerraVia are traded on NASDAQ under the symbol "TVIA." TerraVia's wholly owned subsidiaries are (a) Debtor Solazyme Brazil LLC ("**Solazyme Brazil**"), a Delaware limited liability company and

(b) Debtor Solazyme Manufacturing 1, LLC, a Delaware limited liability company, each of which is a Debtor in the Chapter 11 Cases.

22. In addition, TerraVia owns ownership interests in various non-debtor entities, including (a) a 19.9% ownership interest in Algenist Holdings, Inc., a Delaware corporation, (b) a 50% ownership interest in Solazyme Roquette Nutritionals, LLC, a Delaware limited liability company, (c) a 99% ownership interest in Solayzme Brazil Óleos Renováveis e Bioprodutos Ltda., a Brazilian entity (Solazyme Brazil owns the remaining 1% ownership interest, which is Solazyme Brazil's only asset) and (d) as described above, a 50.1% ownership interest in SB Oils Parent.

23. As of July 28, 2017, there were 108,510,762 shares of TerraVia's common stock issued and outstanding and, as of July 27, 2017, there were 11,750 shares of TerraVia's Series A preferred stock issued and outstanding. TerraVia is headquartered in South San Francisco, California and files annual reports with, and furnishes other information to, the Securities and Exchange Commission.

### C. Capital Structure<sup>3</sup>

#### *i. The Senior Notes*

24. In January 2013, TerraVia issued 6.00% Convertible Senior Subordinated Notes due 2018 (the "**2018 Notes**") in the aggregate principal amount of \$125.0 million pursuant to that certain Indenture, dated as of January 24, 2013, by and between TerraVia and Wilmington Trust, N.A., as successor trustee to Wells Fargo Bank, National Association (the "**2018 Indenture**"). The 2018 Notes are unsecured and mature on February 1, 2018. As of the Petition Date,

---

<sup>3</sup> The following summary is qualified in its entirety by reference to the operative documents and agreements.

approximately \$32.5 million in the aggregate principal amount remains outstanding on account of the 2018 Notes and approximately \$975,000 in outstanding unpaid interest is due under the 2018 Indenture. The interest payment dates for the 2018 Notes under the 2018 Indenture are February 1 and August 1 of each year.

25. On April 1, 2014, TerraVia issued 5.00% Convertible Senior Subordinated Notes due 2019 (collectively, the “**2019 Notes**” and, together with the 2018 Notes, the “**Senior Notes**”) in the aggregate principal amount of \$149.5 million pursuant to that certain Indenture, dated as of April 1, 2014, by and between TerraVia and GLAS Trust Company LLC, as successor trustee to Wells Fargo Bank, National Association (the “**2019 Indenture**”). The 2019 Notes are unsecured and mature on October 1, 2019. As of the Petition Date, approximately \$140.5 million in the aggregate principal amount remains outstanding on account of the 2018 Notes and approximately \$3.7 million in outstanding unpaid interest is due under the 2019 Indenture. The interest payment dates for the 2019 Notes under the 2019 Indenture are April 1 and October 1 of each year.

*ii. SVB Letter of Credit*

26. In February 2013, the SB Oils JV entered into a loan agreement with the Brazilian Development Bank (BNDES) (the “**BNDES Loan**”) under which SB Oils could borrow up to R\$245.7 million, or approximately \$78.4 million<sup>4</sup> based on exchange rates as of July 28, 2017 (as of March 31, 2017, approximately \$50 million remained outstanding under the BNDES Loan). TerraVia provided a bank guarantee (the “**Bank Guarantee**”) from Itaú Unibanco S.A. (“**Itaú**”) equal to 14.39% of the total original amount available under the BNDES Loan. The Bank Guarantee is supported by a letter of credit (the “**SVB L/C**”) issued by Silicon Valley Bank

---

<sup>4</sup> All dollar amounts refer to United States dollars unless otherwise noted.

(“**SVB**”) pursuant to that certain Amended and Restated Loan and Security Agreement (the “**Loan and Security Agreement**”), dated as of May 2, 2017, by and between SVB and TerraVia. The SVB L/C was issued in favor of Itaú in the amount of R\$35,356,000, or approximately \$11.3 million (based on exchange rates as of July 28, 2017). Pursuant to the Loan and Security Agreement, TerraVia is obligated to maintain (a) a restricted cash account at SVB that contains not less than 110% of the face amount of the SVB L/C (together with any other letters of credit issued under the Loan and Security Agreement) (the “**Restricted Cash Account**”) and (b) a bank account at SVB with a cash balance at all times of not less than \$5 million (together with the Restricted Cash Account, the “**SVB Accounts**”). Under the Loan and Security Agreement, TerraVia granted security interest in favor of SVB in all cash held in the SVB Accounts. The obligations of SVB to issue letters of credit under the Loan and Security Agreement expire on July 19, 2019.

*iii. Working Capital Facility*

27. On December 17, 2013, the SB Oils JV entered into that certain Loan Facility Agreement (the “**Working Capital Facility**”) with Bunge Fertilizantes S.A. (an affiliate of Bunge) (“**Bunge S.A.**”) pursuant to which Bunge S.A. agreed to advance certain loans to SB Oils in accordance with the terms and conditions of the Working Capital Facility. The loans under the Working Capital Facility matured on April 2, 2017, and Bunge S.A. has agreed to temporarily waive its right to repayment of such loans. As of April 27, 2017, Bunge S.A. asserted a right to payment under the Working Capital Facility in the amount of approximately R\$30.9 million, or \$9.9 million based on exchange rates as of July 28, 2017. TerraVia remains in discussions with Bunge S.A. to extend the maturity date of the Working Capital Facility.

Neither TerraVia nor any of the other Debtors is liable for the amounts owing under the Working Capital Facility.

## II.

### Events Leading to the Chapter 11 Cases

28. TerraVia, like many other emerging growth companies with a limited operating history, has incurred substantial net losses since its inception. Historically, TerraVia has invested heavily in research and development, sales and other operating expenses, with the cost of such investments exceeding revenues generated from the sale of TerraVia's products and the JDAs. For example, for the fiscal year ended in 2016, TerraVia's total revenues were approximately \$18.5 million as compared to operating expenses of approximately \$76.3 million. Likewise, for the fiscal year ended in 2015, TerraVia's total revenues were approximately \$22.9 million as compared to operating expenses of approximately \$115 million. SG&A and research and development expenses comprise the vast majority of TerraVia's operating expenses.

29. Moreover, TerraVia has been unable to generate positive cash flows from the sale of its commercially available products. In 2015, its gross margin for product revenues was -5%, and in 2016, its gross margin for product revenues was -51%, which means that the cost of producing products exceeded the revenue generated from the sale of such products. In spite of its best efforts to create economies of scale and rapidly commercialize and profit from its product lines, TerraVia's liquidity position has been affected by high operating costs and delays in successfully scaling up production.

30. Specifically, the operational focus of the SB Oils JV from inception through 2014 was primarily on supporting research and development, regulatory approvals and establishing manufacturing through the construction, ramp up and optimization of the SB Oils Plant. Delays in the construction and ramp-up of large-scale production facilities are not uncommon, and

construction and ramp-up delays occurred at the SB Oils Plant. Optimization and ramp up activities continue at the SB Oils Plant, and TerraVia and Bunge each make periodic equity contributions to SB Oils to help fund operations at the SB Oils Plant.

31. In addition to high operating costs and production delays, throughout 2015 and 2016, the price of petroleum and other plant-based oils experienced a persistent and protracted decline. This macro-economic trend hindered TerraVia's near-term ability to compete with low-cost alternative products in the oils market.

32. The foregoing financial, production and macroeconomic situation has created a strain on TerraVia's liquidity. In 2016, TerraVia's total cash and cash equivalents decreased by \$33.9 million, from approximately \$98 million to approximately \$64 million. In the first quarter of 2017, TerraVia's total cash and cash equivalents decreased by approximately \$19 million, from approximately \$64 million to approximately \$44 million as of March 31, 2017. TerraVia's declining liquidity has made servicing interest payments under the Senior Notes more difficult. As described in detail below, in the past year, as it became clear that its liquidity situation was unsustainable, TerraVia undertook several cost-cutting and restructuring initiatives. While these initiatives improved TerraVia's financial position, they did not fully resolve the underlying issues that burden TerraVia's finances.

### **III.**

#### **Prepetition Restructuring Initiatives**

33. TerraVia's management team has taken numerous actions in response to the challenges described above in order to enhance its operations, as well as to improve its liquidity profile and deleverage its balance sheet.

**A. Operational Initiatives**

34. From an operational perspective, in light of its relatively high operating expenses as compared to the revenues it generates, TerraVia has taken steps to reduce its operating costs. During 2016, TerraVia helped streamline operations by reducing its workforce by approximately 20%. Additionally, in 2017, as part of its overall effort to downsize, the Debtors terminated the employment of an additional 31 employees. Personnel related cost reductions reduced TerraVia's SG&A expenses by \$4.9 million in 2016.

35. Additionally, TerraVia took measures to reduce costs by terminating certain production capabilities. In 2015, TerraVia decided to terminate manufacturing agreements at the ADM Clinton and American Natural Processors (ANP) Galva facilities, which allowed TerraVia to minimize its production costs. In 2017, TerraVia elected to suspend operations at the Peoria Facility and explore the divestiture of the Peoria Facility to downsize production and focus on the SB Oils JV's production at the SB Oils Plant.

**B. Liquidity Initiatives**

36. On August 16, 2016, TerraVia sold its Algenist skincare business ("**Algenist**") to TCP Algenist LLC, an affiliate of Tengram Capital Partners, and Algenist Holdings, Inc., in exchange for \$20.2 million in cash (before \$1.4 million in closing costs), 19.9% of the fully diluted equity of Algenist Holdings, Inc. and the assumption of substantially all of the liabilities related to the Algenist. The closing of the sale of Algenist provided additional liquidity to TerraVia.

37. As a result of these efforts by management, TerraVia achieved a certain amount of cost savings and liquidity enhancement. However, in light of the prolonged liquidity



challenges facing TerraVia and costs associated with servicing interest payments under the Senior Notes, it became clear that material changes to its balance sheet were necessary.

**C. Restructuring Initiatives**

38. Effective as of January 1, 2017, the Debtors engaged Rothschild Inc. (“**Rothschild**”) as their financial advisor. The Debtors directed Rothschild to assist them with respect to (a) the restructuring or refinancing of a substantial portion of the Senior Notes, (b) raising additional capital via a combination of the issuance of new equity, the issuance of new debt or the entrance into a partnership for the Debtors’ AlgaVia<sup>®</sup> food powders and/or Thrive<sup>®</sup> consumer businesses or (c) the potential sale of certain or all of the Debtors’ assets. Beginning in February 2017, the Debtors engaged with their outside counsel, Davis Polk & Wardwell LLP (“**Davis Polk**”), to provide assistance with respect to the foregoing potential restructuring initiatives.

39. At the outset, in early 2017, the strategy of the Debtors and TerraVia’s Board of Directors (the “**Board**”) was to pursue a potential asset sale transaction or transactions and a restructuring of the Senior Notes in parallel as part of a dual-track negotiation process. Between February 2017 and the Petition Date, Rothschild and TerraVia contacted and/or received inbound interest from approximately 100 entities, including 35 potential strategic buyers, 38 potential financial buyers and 27 potential capital providers. Based on discussions with those entities, approximately 31 parties were provided with confidential information regarding TerraVia’s businesses after such parties executed Non-Disclosure Agreements with TerraVia. Several of such parties, including the Stalking Horse Bidder, expressed serious interest in consummating a transaction with TerraVia and were granted access to a data room containing additional confidential information regarding the Assets.

40. With respect to a restructuring of the Senior Notes, in March and April 2017, the Debtors, Davis Polk and Rothschild began discussions in earnest with an ad hoc consortium of holders of the Senior Notes (the “**Consortium**”) represented by Brown Rudnick LLP and GLC Advisors & Co., LLC, and proposed a potential out-of-court transaction to the Consortium. On April 3, 2017, the Debtors elected not to make an interest payment of approximately \$3.5 million due under the 2019 Notes Indenture, which commenced a 30-day grace period in which to make such payment. On May 3, 2017, TerraVia executed a forbearance agreement (the “**Forbearance Agreement**”) with members of the Consortium, pursuant to which members of the Consortium agreed, among other things, to forbear from exercising any remedies available to them under the Senior Notes on account of the missed interest payment through June 28, 2017. In addition, pursuant to the Forbearance Agreement, TerraVia agreed, among other things, in connection with its marketing process, to establish May 31, 2017 as a firm deadline for the delivery of non-binding indications of interest.

41. On or around May 31, 2017, TerraVia received six indications of interest to pursue various forms of transactions, including indications of interest to purchase overlapping and non-overlapping assets of the Debtors, such as the Peoria Facility, related inventory and other real and personal property. Although certain parties expressed interest in pursuing an out-of-court equity transaction, such a transaction would have required the consents of various parties and the Debtors lacked the requisite liquidity runway to allow them sufficient time to consummate such a transaction. Moreover, such parties did not reach a resolution on the material terms of such an out-of-court equity transaction.

42. In June and July 2017, TerraVia negotiated the terms of potential asset purchase agreements with certain parties while, at the same time, it negotiated with the Consortium the

terms of a potential standalone restructuring transaction. During this time period, TerraVia worked assiduously to formulate an actionable restructuring transaction. To that end, TerraVia hosted an in-person meeting at its headquarters in South San Francisco with certain members of the Consortium and its advisors, and regularly hosted site visits and diligence meetings both in South San Francisco and at the SB Oils Plant with various interested purchasers. On June 28, 2017, the Consortium agreed to extend the termination date of the Forbearance Agreement to July 17, 2017, and thereafter the Consortium agreed to multiple extensions of the termination date of the Forbearance Agreement, culminating in a final extension to August 1, 2017. Although certain parties continued to express interest in pursuing an equity transaction in conjunction with a debt restructuring throughout June and July, such a transaction would have required the consents of various parties and such parties could not reach a resolution on the material terms of such an equity and debt restructuring transaction.

43. After considering a wide-range of potential strategic alternatives and negotiating with all relevant stakeholders and counterparties, the Debtors and the Board ultimately determined that pursuing an asset sale transaction with the Stalking Horse Bidder, subject to higher or otherwise better offers in accordance with the Bidding Procedures, would be the best way to maximize value for the benefit of the Debtors' creditors and other key constituencies.

**D. The Terms of the Section 363 Asset Sale**

44. The terms of the Section 363 Asset Sale and the Bidding Procedures are set forth in detail in the Bidding Procedures Motion. The Stalking Horse Agreement represents a binding bid to purchase a substantial portion of the Debtors' assets for \$20 million plus certain assumed liabilities, subject to a limited and standard set of closing conditions set forth in the Stalking Horse Agreement. Under the Stalking Horse Agreement, the Stalking Horse Bidder is provided

with standard stalking horse protections, including (a) the payment of a break-up fee in an amount equal to two-and-one-half percent (2.5%) of the Purchase Price (*i.e.*, \$500,000) and (b) reimbursement of up to \$300,000 for reasonable and documented costs and expenses incurred by the Stalking Horse Bidder in connection with, among other things, the negotiation and execution of, and the carrying out of its obligations under, the Stalking Horse Agreement. The Stalking Horse Agreement includes various customary representations, warranties and covenants by and from the Debtors and the Stalking Horse Bidder. The Bidding Procedures are designed to promote a competitive and expedient sale process.

45. In support of the Section 363 Asset Sale, certain members of the Consortium have agreed to enter into a \$10 million senior secured, multi-draw DIP financing facility (the “**DIP Financing**”) with the Debtors. The proposed DIP Financing will fortify the Debtors’ balance sheet during the Chapter 11 Cases and provide them with sufficient liquidity to operate until the consummation of the Section 363 Asset Sale. The proposed DIP Financing is conditioned upon the Debtors’ compliance with certain milestones with respect to progress in the Chapter 11 Cases.

#### IV.

#### **First Day Motions**

46. The Debtors filed the First Day Motions concurrently with the filing of their chapter 11 petitions. The Debtors request that each of the First Day Motions be granted, as each constitutes a critical element in achieving a successful and smooth transition to chapter 11.

47. For a more detailed description of the First Day Motions than the description set forth below, I would respectfully refer the Court to the respective First Day Motions. To the extent that this Declaration and the provisions of any First Day Motion are inconsistent, the terms of such First Day Motion shall control. Capitalized terms that are used in this Part IV but

not otherwise defined in this Declaration shall have the meanings ascribed to them in the relevant First Day Motion.

**A. Administrative Motions**

- i. *Motion of Debtors for Entry of an Order Directing Joint Administration of Chapter 11 Cases (the “**Joint Administration Motion**”)*

48. The Debtors seek entry of an order, pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Rule 1015-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), directing the joint administration of the Chapter 11 Cases for procedural purposes only. Specifically, the Debtors request that the Court maintain one file and one docket for all of the Chapter 11 Cases under the case of TerraVia Holdings, Inc. and that the Chapter 11 Cases be administered under a consolidated caption. The Debtors also request that a docket entry be entered on the docket in each of the Chapter 11 Cases (other than the Chapter 11 Case of TerraVia Holdings, Inc.) to reflect the joint administration of the Chapter 11 Cases. In addition, the Debtors request that the Court waive the requirement of section 342(c)(1) of the Bankruptcy Code and Bankruptcy Rule 2002(n) for the inclusion of the Debtors’ full tax identification numbers in the captions for the Debtors’ filings with the Court and notices sent to creditors.

49. Given the provisions of the Bankruptcy Rules and the Local Rules and the Debtors’ affiliations, joint administration of the Chapter 11 Cases is warranted and will provide significant administrative convenience without harming the substantive rights of any party in interest. Joint administration will avoid the preparation, replication, service and filing, as applicable, of duplicative notices, applications and orders, thereby saving the Debtors considerable expense and resources. The Debtors’ financial affairs and business operations are

closely related. Many of the motions, hearings and orders in the Chapter 11 Cases will affect each Debtor and its respective estate. The rights of creditors will not be adversely affected, as this Motion requests only administrative, and not substantive, consolidation of the estates. Moreover, each creditor can still file its claim against a particular estate. In fact, all creditors will benefit by the reduced costs that will result from the joint administration of the Chapter 11 Cases. The Court also will be relieved of the burden of entering duplicative orders and maintaining duplicative files. Finally, supervision of the administrative aspects of the Chapter 11 Cases by the Office of the United States Trustee for the District of Delaware will be simplified.

50. Moreover, it is appropriate to waive the requirement of section 342(c)(1) of the Bankruptcy Code and Bankruptcy Rule 2002(n) for the inclusion of the Debtors' full tax identification numbers in the captions for the Debtors' filings with the Court and notices sent to creditors, as this information is available on all of the Debtors' chapter 11 petitions. Waiver of this requirement is purely procedural in nature and will ease the administrative burden on the Debtors.

51. I believe that the relief requested in the Joint Administration Motion is in the best interests of the Debtors' estates, their creditors and all other parties in interest and constitutes a critical element in achieving a successful and smooth transition to chapter 11. Accordingly, on behalf of the Debtors, I respectfully submit that the relief requested in the Joint Administration Motion should be granted.

**B. Operational Motions Requesting Immediate Relief**

- i. *Motion of Debtors for Entry of Interim and Final Orders Authorizing (i) the Debtors To Continue To Maintain Existing Cash Management System, Bank Accounts and Business Forms and (ii) Financial Institutions To Honor and Process Related Checks and Transfers (the “Cash Management Motion”)*

52. The Debtors seek entry of interim and final orders, pursuant to sections 105(a), 345 and 363(c)(1) of the Bankruptcy Code, (a) authorizing, but not directing, the Debtors, in their sole discretion, to (i) continue to operate their prepetition cash management system (the “**Cash Management System**”), (ii) maintain their existing bank accounts (collectively, and together with any accounts opened after the Petition Date, the “**Bank Accounts**” and each, a “**Bank Account**”) located at certain banks and financial institutions (collectively, the “**Banks**”), (iii) maintain their Credit Card Program (as defined below) and (iv) maintain their existing Business Forms (as defined in the Cash Management Motion) and (b) waiving the requirements of section 345(b) of the Bankruptcy Code on an interim basis.

53. In the ordinary course of business, the Debtors utilize the Cash Management System to collect and disburse funds generated by the sale of their products or received pursuant to various research and development agreements. The Cash Management System also enables the Debtors to monitor the collection and disbursement of funds and maintain control over the administration of their Bank Accounts. Additionally, the Debtors maintain a credit card program (the “**Credit Card Program**”) with SVB. The Credit Card Program is used by approximately 27 employees of the Debtors to pay for authorized expenses incurred by such employees in the ordinary course of the Debtors’ businesses. The Debtors pay any outstanding balance under the Credit Card Program to SVB at the end of each month.

54. The Cash Management System is integrated with the Debtors’ accounting processes and software that produce the Debtors’ financial statements and enables the Debtors,

as well as other interested parties in the Chapter 11 Cases, to trace funds through the Cash Management System, which requires the dedicated efforts of a significant number of the Debtors' employees. If the Debtors were required to dismantle the Cash Management System, it would disrupt the Debtors' day-to-day operations and their accounting processes and software. Dismantling the Cash Management System would also impair the Debtors' ability to generate timely reports of transactions and balances, as well as annual and quarterly SEC filings.

55. It would also be very time consuming, difficult and costly for the Debtors to establish an entirely new system of accounts, credit card program and cash management system. The attendant delays from opening new Bank Accounts, establishing a new credit card program, revising cash management procedures and instructing their commercial counterparties and countless other entities to redirect payments would negatively impact the Debtors' ability to operate their businesses. Under the circumstances, maintenance of the Cash Management System, as well as the Credit Card Program, is essential and clearly in the best interest of the Debtors' estates. Furthermore, preserving the "business as usual" atmosphere and avoiding the unnecessary and costly distractions that would inevitably be associated with any substantial disruption to the Cash Management System will facilitate the Debtors' efforts to maximize the value of their estates in the Chapter 11 Cases.

56. It is also important that the Debtors be permitted to continue to maintain the Bank Accounts with the same account numbers following the commencement of the Chapter 11 Cases, subject to a prohibition against honoring checks issued or dated before the Petition Date absent a prior order of the Court, to avoid delays in payments to administrative creditors, to ensure as smooth a transition into chapter 11 as possible with minimal disruption and to aid in the Debtors' efforts to preserve and enhance the value of the Debtors' estates. By avoiding the disruption and



delay to the Debtors' disbursements that would necessarily result from closing the Bank Accounts and opening new Bank Accounts, all parties in interest, including employees, vendors and counterparties, will be best served by preserving business continuity. The benefit to the Debtors, their business operations and all parties in interest will be considerable. The confusion that would ensue absent the relief requested herein would substantially hinder the Debtors' restructuring efforts.

57. To minimize expenses, the Debtors also seek to continue to use their correspondence and business forms, including, but not limited to, purchase orders, letterhead, checks, invoices, sales order acknowledgements and other business forms (collectively, the "**Business Forms**"), in each case substantially in the form existing immediately before the Petition Date, without reference to their status as debtors in possession. As a result of the Notice of Commencement issued by the Debtors and other press coverage, parties doing business with the Debtors undoubtedly will be aware of the Debtors' status as debtors in possession. Once the Debtors' existing checks have been used, the Debtors will, when reordering checks, ensure that the designation "Debtor in Possession" and the corresponding bankruptcy case number will be printed on all checks. With respect to electronic checks and checks that the Debtors or their agents print themselves, the Debtors will begin printing the "Debtor in Possession" legend on such items within ten days of the date of entry of the interim order approving the relief requested in the Cash Management Motion.

58. If the Debtors are not permitted to maintain and use the Bank Accounts and continue to use their existing Business Forms as set forth herein, the resulting prejudice will include (a) disruption of the ordinary financial affairs and business operations of the Debtors, (b) delay in the administration of the Debtors' estates, (c) compromise of the Debtors' internal

controls and accounting system and (d) costs to the Debtors' estates to set up new systems, open new Bank Accounts and print new Business Forms. Without the relief requested, the Debtors would have great difficulty maintaining their operations, which could cause harm to the Debtors and their estates.

59. Cause also exists to waive the investment and deposit restrictions of section 345(b) of the Bankruptcy Code on an interim basis to the extent that the Debtors' cash management deposits do not comply with those restrictions. The Banks at which the Debtors maintain Bank Accounts are financially stable banking institutions and are FDIC insured (up to an applicable unit per account). Because the Debtors do not and do not plan to have any investments other than cash, the Debtors do not believe that any additional guaranties or sureties are necessary.

60. I believe that the relief requested in the Cash Management Motion is in the best interests of the Debtors' estates, their creditors and all other parties in interest and constitutes a critical element in achieving a successful and smooth transition to chapter 11. Accordingly, on behalf of the Debtors, I respectfully submit that the relief requested in the Cash Management Motion should be granted.

- ii. *Motion of Debtors for Entry of Interim and Final Orders Authorizing (i) the Debtors To (a) Pay Prepetition Employee Obligations and (b) Maintain Employee Benefits Programs and Pay Related Administrative Obligations, (ii) Current and Former Employees to Proceed with Outstanding Workers' Compensation Claims and (iii) Financial Institutions to Honor and Process Related Checks and Transfers (the "Wages and Benefits Motion")*

61. The Debtors seek entry of interim and final orders, pursuant to sections 105(a), 362(d), 363(b), 363(c), 507(a)(4), 507(a)(5) and 541 of the Bankruptcy Code, (a) authorizing, but not requiring, the Debtors to (i) pay or cause to be paid, in their sole discretion, all of the prepetition amounts owing (and associated costs) under or related to Wages, Sales Commissions,

the Withholding Obligations, the Reimbursement Obligations, the Relocation Obligations, the Health and Welfare Plan Obligations, the Disability Benefits, the COBRA obligations, the PTO and Sick Leave Obligations, the Workers' Compensation Obligations, the Contingent Workers Obligations, the Severance Obligations, the Retention Payments, the Non-Insider EIP Obligations, the Cash Bonus Program Obligations and the Other Benefits Programs (each as individually defined in the Wages and Benefits Motion and, collectively, the "**Prepetition Employee Obligations**"), (ii) maintain, pay and honor, in their sole discretion, their plans, practices, programs and policies for their current and former Employees (collectively, the "**Employee Programs**"), as applicable, as those Employee Programs were in effect as of the Petition Date and as may be modified, terminated, amended or supplemented from time to time by the Debtors, in their sole discretion and (iii) make post-petition payments pursuant to the Employee Programs in the ordinary course of business, as well as to pay related administrative obligations, (b) permitting current and former Employees holding outstanding claims under the Workers' Compensation Program to proceed with such claims in the appropriate judicial or administrative forum and (c) authorizing and directing applicable banks and other financial institutions to receive, process, honor and pay any and all checks drawn on the Debtors' general disbursement account and other transfers to the extent that those checks or transfers relate to any of the foregoing.

62. I believe that many of the Prepetition Employee Obligations constitute priority claims under sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code. To the extent such Prepetition Employee Obligations constitute priority claims, the Debtors will be required to pay such claims in full to confirm a chapter 11 plan. Thus, granting the relief sought in the Wages

and Benefits Motion would only cause such Employee claims to be paid in the initial stages of the Chapter 11 Cases, rather than at the plan confirmation stage.

63. Any delay in paying the Prepetition Employee Obligations or failure to maintain the Employee Programs and pay related administrative obligations will adversely impact the Debtors' relationships with their Employees and could irreparably impair Employees' morale, dedication, confidence and cooperation. The Debtors' businesses hinge on their ability to develop and commercialize food, nutrition and specialty ingredients and products. The Employees' support for the Debtors' restructuring efforts in the Chapter 11 Cases is critical to the success of those efforts. At this early stage, the Debtors simply cannot risk the substantial damage to their businesses that would inevitably accompany any decline in their Employees' morale attributable to the Debtors' failure to pay the Prepetition Employee Obligations.

64. Absent an order granting the relief requested in the Wages and Benefits Motion, many Employees would undoubtedly suffer hardship and, in many instances, serious financial difficulties, as the amounts in question are needed to enable certain Employees to meet their own personal financial obligations. Without the requested relief, the stability of the Debtors would be undermined, perhaps irreparably, by the possibility that otherwise loyal Employees will seek other employment alternatives. Consequently, all of the Debtors' creditors will benefit if the requested relief is granted.

65. It is also crucial for Employee morale and for the Debtors' operations that the Debtors be able to continue to (a) pay workers' compensation benefits and (b) honor the Workers' Compensation Obligations under the Workers' Compensation Program described in the Wages and Benefits Motion. To the extent that any current or former Employees hold claims pursuant to the Workers' Compensation Program, the Debtors seek authorization under section 362(d) of

the Bankruptcy Code to permit such current or former Employees, in the Debtors' sole discretion, to proceed with such claims in the appropriate judicial or administrative fora. I believe that cause exists to grant them authority to modify the automatic stay, where the Debtors deem it appropriate to do so, because staying such claims could have a detrimental effect on the financial and medical well-being and morale of their Employees.

66. I believe that the relief requested in the Wages and Benefits Motion is in the best interests of the Debtors' estates, their creditors and all other parties in interest and constitutes a critical element in achieving a successful and smooth transition to chapter 11. Accordingly, on behalf of the Debtors, I respectfully submit that the relief requested in the Wages and Benefits Motion should be granted.

iii. *Motion of Debtors for Entry of Interim and Final Orders Authorizing (i) the Debtors To Honor Prepetition Customer Obligations and Otherwise Continue Customer Practices and (ii) Financial Institutions to Honor and Process Related Checks and Transfers (the "Customer Obligations Motion")*

67. The Debtors seek entry of interim and final orders, pursuant to sections 105(a), 363(b) and 363(c) of the Bankruptcy Code, (a) authorizing, but not directing, the Debtors, in their sole discretion, to (i) fulfill and honor the Customer Obligations as they deem appropriate and (ii) continue, renew, replace, implement new and terminate any existing customer practices as they deem appropriate, in the ordinary course of business without further application to the Court and (b) authorizing and directing applicable banks and other financial institutions to receive, process, honor and pay any and all checks drawn on the Debtors' general disbursement accounts and other transfers to the extent those checks and transfers relate to any of the foregoing.

68. Before the Petition Date and in the ordinary course of their businesses, the Debtors incurred various obligations related to their Thrive<sup>®</sup> Culinary Algae Oil ("**Thrive**"), AlgaWise<sup>®</sup> Algae Oils ("**AlgaWise**") and AlgaVia<sup>®</sup> Whole Algae Ingredients ("**AlgaVia**" and,

together with Thrive and AlgaWise, the “**Customer Products**”) products sold under various contracts and arrangements to customers and distributors, including through sales online and in grocery and other stores. These obligations include obligations arising in connection with credits, refunds, marketing programs, charge backs/bill backs, rebates and other customer programs (collectively, the “**Customer Obligations**”). The Debtors seek authority to satisfy, in their sole discretion, those Customer Obligations that they deem beneficial and cost-effective to their businesses.

69. I believe such relief is necessary to preserve the Debtors’ critical business relationships and customer satisfaction for the benefit of their estates, and for this and the other reasons set forth herein, it is essential and in the best interests of the Debtors, their estates and their creditors that the Debtors be permitted to honor their prepetition and post-petition Customer Obligations and to continue or implement new customer practices in the ordinary course of the Debtors’ businesses as the Debtors deem necessary.

70. With respect to its Customer Products, the Debtors operate in a highly competitive market for food, nutrition and specialty ingredients and products, where alternate suppliers of similar products are available to the same demographic that consumes the Debtors’ Customer Products. This competition makes retaining the Debtors’ relationship with their retailers and customers critically important. Without expanding their Customer Products’ brand and reaching direct consumers at online and physical marketplaces, the profitability of the Debtors’ Customer Products would be reduced. It is essential, therefore, that the Debtors maintain their current customers (*e.g.*, specialty stores, grocery stores and distributors) through this challenging period. Fulfilling the Customer Obligations accomplishes this goal by ensuring customer satisfaction and generating repeat business and net revenue increases.

71. I believe that the failure to satisfy the Customer Obligations could have a material adverse impact on the day-to-day operations of the Debtors' businesses and cause an irreparable loss of customer support and confidence. If the Debtors are prohibited from honoring the Customer Obligations and maintaining their customer practices consistent with their past business practices, retailers or distributors may lose confidence in the Debtors' ability to honor orders. Ultimately, the damage from refusing to honor the Customer Obligations far exceeds the cost associated with honoring prepetition obligations and continuing these practices.

72. I believe that the relief requested in the Customer Obligations Motion is in the best interests of the Debtors' estates, their creditors and all other parties in interest and constitutes a critical element in achieving a successful and smooth transition to chapter 11. Accordingly, on behalf of the Debtors, I respectfully submit that relief requested in the Customer Obligations Motion should be granted.

- iv. *Motion of Debtors for Entry of Interim and Final Orders Authorizing (i) the Debtors To Continue and Renew Their Liability, Property, Casualty and Other Insurance Programs and Honor All Obligations in Respect Thereof and (ii) Financial Institutions to Honor and Process Related Checks and Transfers (the "Insurance Motion")*

73. The Debtors seek entry of interim and final orders, pursuant to sections 105(a), 363(b)(1) and 363(c)(1) of the Bankruptcy Code, (a) authorizing, but not directing, the Debtors, in their sole discretion, to maintain, continue and renew their various liability, casualty, property and other insurance programs in the ordinary course of their businesses (collectively, the "**Insurance Programs**") through several private insurance carriers (collectively, the "**Insurance Carriers**") on an uninterrupted basis and in accordance with the same practices and procedures as were in effect before the Petition Date and (b) authorizing and directing applicable banks and other financial institutions to receive, process, honor and pay any and all checks drawn on the Debtors' general disbursement account and other transfers to the extent such checks and transfers

relate to any of the foregoing. The Debtors submit that the foregoing relief would include (y) paying all amounts arising under the Insurance Programs (collectively, the “**Insurance Obligations**”), including, but not limited to, any Broker’s Fees (as defined in the Insurance Motion), whether due and payable before, on or after the Petition Date and (z) renewing or obtaining new insurance policies as needed in the ordinary course of business.

74. The Debtors maintain various Insurance Programs through Insurance Carriers. The Insurance Programs include coverage for, among other things, personal injury, property damage, products liability, operation of automobiles, workers’ compensation, crime, business interruption, breach of duty by officers or directors and various other property-related and general liabilities. All of the Insurance Programs are essential to the ongoing operation of the Debtors’ businesses and the preservation of the value of the Debtors’ estates.

75. The Debtors employ Aon Risk Services West, Inc. (“**Aon**”) and Barney & Barney, LLC (“**B&B**” and, together with Aon, the “**Brokers**”) to assist them with the procurement and management of the Insurance Programs. Specifically, Aon assists the Debtors with the procurement of all of the Insurance Programs other than the Insurance Programs related to workers’ compensation and B&B assists the Debtors with the procurement of the Insurance Programs related to workers’ compensation. The Brokers receive compensation from the Debtors in the form of cash payments paid by the Debtors quarterly, in the case of B&B, or semi-annually, in the case of Aon. The employment of the Brokers allows the Debtors to obtain and manage the Insurance Programs in a reasonable and prudent manner and to realize considerable savings in the procurement of such policies. I believe that it is in the best interests of the Debtors’ creditors and estates for the Debtors to continue their business relationships with the Brokers.



76. The nature of the Debtors' businesses makes it essential for the Debtors to maintain their Insurance Programs on an ongoing and uninterrupted basis. The non-payment of any premiums, deductibles or related fees under the Insurance Programs could result in one or more of the Insurance Carriers terminating or declining to renew their insurance policies or refusing to enter into new insurance policies with the Debtors in the future. If any of the Insurance Programs lapse without renewal, the Debtors could be in violation of state and/or federal law and be exposed to substantial liability for personal and/or property damages, to the detriment of all parties in interest.

77. Moreover, pursuant to contractual obligations with numerous third party property owners, customers, suppliers, distributors, contractors and lenders, the Debtors are obligated to remain current with respect to certain of the Insurance Programs. Furthermore, the Debtors must maintain the Insurance Programs to comply with the operating guidelines of the Office of the United States Trustee for Region 3. Thus, in order for the Debtors to maintain their operations in compliance with various legal and contractual obligations, the Debtors must be able to continue the Insurance Programs without disruption.

78. Even where coverage is not expressly required by applicable law, the Debtors are nevertheless compelled by sound business practice to maintain essential insurance coverage. Any interruption in such coverage would expose the Debtors to a variety of risks, including the possible (a) incurrence of direct liability for the payment of claims that otherwise would have been covered by the Insurance Programs, (b) incurrence of material costs and other losses that otherwise would have been reimbursed, such as attorneys' fees for certain covered claims, (c) inability to obtain similar types and levels of insurance coverage, (d) incurrence of higher costs for reestablishing lapsed policies or obtaining new insurance coverage and (e) incurrence of

potential liability arising from the breach of certain contractual obligations to maintain insurance coverage.

79. The Debtors' ability to maintain and honor their Insurance Programs in a timely manner is critical to the ongoing operation of their businesses, and, therefore, necessary to maximize the value of the Debtors' estates. I believe that any prepetition amounts that the Debtors would pay in respect of Insurance Programs would be small relative to the size of the Debtors' estates and the critical benefits provided by the Insurance Programs. As noted above, interruption of the Debtors' insurance coverage could, among other things, cause the Debtors to violate state and/or federal law and expose the Debtors to direct liability for significant claims that otherwise would be covered by insurance, thus potentially substantially diminishing the value of the Debtors' estates. For the Debtors to pay what would be relatively small prepetition amounts under the Insurance Programs to avoid such an occurrence is in the best interests of the Debtors, their estates and all of the Debtors' stakeholders and other parties in interest. Thus, I believe that the continuation of the Insurance Programs and the payment of prepetition Insurance Premiums, including any payments to the Brokers, would benefit, rather than prejudice, the Debtors' creditors by preserving the property of the Debtors' estates.

80. I believe that the relief requested in the Insurance Motion is in the best interests of the Debtors' estates, their creditors and all other parties in interest and constitutes a critical element in achieving a successful and smooth transition to chapter 11. Accordingly, on behalf of the Debtors, I respectfully submit that the relief requested in the Insurance Motion should be granted.

- v. *Motion of Debtors for Entry of Interim and Final Orders (i) Prohibiting Utilities From Altering, Refusing or Discontinuing Service, (ii) Deeming Utilities Adequately Assured of Future Performance and (iii) Establishing Procedures for Determining Requests for Additional Adequate Assurance (the “Utilities Motion”)*

81. The Debtors seek entry of interim and final orders, pursuant to sections 105 and 366 of the Bankruptcy Code, (a) prohibiting the Utilities from altering, refusing or discontinuing any Utility Services on account of prepetition amounts outstanding or on account of any perceived inadequacy of the Debtors’ proposed adequate assurance, (b) determining that the Utilities have been provided with adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code by virtue of the Proposed Adequate Assurance and (c) approving the Adequate Assurance Procedures as proposed herein.

82. In connection with the operation of their businesses and management of their properties, the Debtors obtain utility services, including electricity, natural gas, telephone, mobile phone, internet and fax, web hosting, sewage, waste removal, water and other similar services (collectively, “**Utility Services**”) from dozens of utilities, as that term is used in section 366 of the Bankruptcy Code (collectively, the “**Utilities**”).

83. Uninterrupted Utility Services are essential to the Debtors’ ongoing operations and, therefore, the preservation of the value of the Debtors’ estates. The Debtors operate food, nutrition and specialty ingredients businesses that are supported by a corporate office located in South San Francisco, California and the Peoria Facility each of which depends on reliable delivery of power and other Utility Services. Should any Utility alter, refuse or discontinue service, even for a brief period, the Debtors’ operations could be severely disrupted. The impact of this disruption on the Debtors’ business operations and revenue would be harmful and could jeopardize the value of the Debtors’ estates.

84. The relief requested in the Utilities Motion will ensure that the Debtors' operations will not be disrupted. Furthermore, the relief requested provides the Utilities with a fair and orderly procedure for addressing requests for additional or different adequate assurance. Without the Adequate Assurance Procedures, the Debtors could be forced to address numerous requests by the Utilities in a disorganized manner at a critical period in the Chapter 11 Cases and during a time when the Debtors' efforts could be more productively focused on the continuation of the Debtors' operations for the benefit of all parties in interest.

85. I believe that the Utilities will have "adequate assurance of payment" even without the proposed Adequate Assurance Deposit. The Debtors' DIP Financing will enable them to pay their operating costs, including any utility costs, as they come due. In addition, the Debtors' reliance on Utility Services for the operation of their businesses provides them with a powerful incentive to stay current on their utility obligations. Notwithstanding the foregoing, I believe that the Adequate Assurance Deposit and the Adequate Assurance Procedures are reasonable, satisfy the requirements of section 366 of the Bankruptcy Code and are necessary for the Debtors to carry out their restructuring efforts. If they are not approved, the Debtors could be forced to address payment requests by any Utility, which would distract management from focusing on the Debtors' operations. Moreover, on the 30th day following the Petition Date, the Debtors could be surprised by a Utility unilaterally (a) deciding that it is not adequately protected, (b) discontinuing service or (c) making an exorbitant demand for payment to continue service. Such discontinuation of Utility Service could put the Debtors' sales and marketing efforts in jeopardy.

86. I believe that the relief requested in the Utilities Motion is in the best interests of the Debtors' estates, their creditors and all other parties in interest and constitutes a critical

element in achieving a successful and smooth transition to chapter 11. Accordingly, on behalf of the Debtors, I respectfully submit that the relief requested in the Utilities Motion should be granted.

- vi. *Motion of the Debtors for Entry of an Order (i) Granting Administrative Expense Status to the Debtors' Undisputed Obligations to Vendors Arising From the Post-Petition Delivery of Goods Ordered Prepetition, (ii) Authorizing the Debtors To Pay Those Obligations in the Ordinary Course of Business, (iii) Authorizing the Debtors To Return Goods and (iv) Authorizing Financial Institutions To Honor and Process Related Checks and Transfers (the "**Prepetition Goods Motion**")*

87. The Debtors seek entry of an order, pursuant to sections 363(c), 503(b), 507(a)(2) and 546(h) of the Bankruptcy Code, (a) granting the Vendors (as defined below) administrative priority status under sections 503(b) and 507(a)(2) of the Bankruptcy Code for undisputed obligations arising from the Debtors' outstanding prepetition purchase orders and other longer term contracts (collectively, the "**Prepetition Orders**") for certain Goods (as defined below) received and accepted by the Debtors on or after the Petition Date, (b) authorizing, but not directing, the Debtors, in their sole discretion, to pay such obligations in the ordinary course of business under section 363(c) of the Bankruptcy Code, (c) authorizing the Debtors, in their sole discretion, under section 546(h) of the Bankruptcy Code, to return Goods purchased from Vendors by the Debtors prior to the Petition Date, for credit against such Vendors' prepetition claims and (d) authorizing and directing all applicable banks and other financial institutions to receive, process, honor and pay any and all checks drawn on the Debtors' general disbursement account and other transfers to the extent those checks and transfers relate to any of the foregoing.

88. In connection with the normal operation of their businesses, the Debtors rely on numerous vendors and suppliers (collectively, the "**Vendors**") to provide the Debtors with parts, inventory, supplies and equipment, including raw materials and packaging materials for the Debtors' Thrive<sup>®</sup> Culinary Algae Oil product, lab consumables and equipment replacement parts

for use in the regular operation of the Debtors' food, nutrition and specialty ingredients and products businesses. These Goods are generally shipped on an as-needed basis directly to the Debtors' operations, all as directed by the Debtors.

89. As a consequence of the commencement of the Chapter 11 Cases, I believe that many of the Vendors may be concerned that they will not be paid for the delivery or shipment of Goods after the Petition Date if such delivery or shipment was based on a Prepetition Order, or that their claims arising from the Prepetition Orders will be treated as general unsecured claims. Accordingly, Vendors may refuse to provide Goods to the Debtors (or may recall shipments thereof) unless the Debtors issue substitute purchase orders post-petition or obtain an order of the Court (a) providing that all undisputed obligations of the Debtors arising from the post-petition delivery of Goods subject to Prepetition Orders are afforded administrative expense priority under section 503(b) of the Bankruptcy Code and (b) authorizing the Debtors, in their sole discretion, to satisfy those obligations in the ordinary course of their businesses. I believe that the relief requested in the Prepetition Goods Motion will merely confirm the treatment of such obligations under the Bankruptcy Code and assure the Vendors that they will be paid for Goods received and accepted by the Debtors post-petition in the ordinary course of business.

90. I believe that the relief requested in the Prepetition Goods Motion is in the best interests of the Debtors' estates, their creditors and all other parties in interest and constitutes a critical element in achieving a successful and smooth transition to chapter 11. Accordingly, on behalf of the Debtors, I respectfully submit that the relief requested in the Prepetition Goods Motion should be granted.

- vii. *Motion of Debtors for Entry of Interim and Final Orders Authorizing (i) the Debtors To Pay Certain Prepetition Claims of Shippers, Warehousemen and Service Providers and (ii) Financial Institutions To Honor and Process Related Checks and Transfers (the “**Shippers and Warehousemen Motion**”)*

91. The Debtors seek entry of interim and final orders, pursuant to sections 105(a) and 363 of the Bankruptcy Code, (a) authorizing, but not directing, the Debtors, in their sole discretion, to pay all or a portion of the Shipping, Warehousing and Servicing Claims (as defined in the Shippers and Warehousemen Motion) and (b) authorizing and directing applicable banks and other financial institutions to receive, process, honor and pay any and all checks drawn on the Debtors’ general disbursement account and other transfers to the extent such checks and transfers relate to any of the foregoing.

92. In operating their businesses, the Debtors use and make payments to (a) common carriers, movers, delivery services, trucking companies, distributors and other third party service providers (collectively, the “**Shippers**”) that transport, store and otherwise facilitate the movement of the Debtors’ algae-derived food, nutrition and specialty ingredients and products, operating supplies, equipment or other items to and from the Debtors’ operating sites, (b) certain storage providers and other vendors (collectively, the “**Warehousemen**”) to whom finished products, ingredients, packaging components and materials and other items (collectively, the “**Stored Items**”) are delivered through established distribution networks to store when such Stored Items are not in use and (c) contractors, mechanics and service providers (collectively, the “**Service Providers**”) that support the research and development laboratories, repair, maintain, equip, supply and otherwise service necessary equipment and machinery, or who package or downstream process the Debtors’ food, nutrition and specialty ingredients products on behalf of the Debtors.

93. If the Debtors fail to pay any of the Shippers or Warehousemen for charges incurred in connection with the transport of goods, the Shippers or Warehousemen may be permitted by law or otherwise to assert possessory liens against any of the Goods. Further, if shipping and warehousing charges are not paid, Shippers and Warehousemen may refuse to perform additional services for the Debtors. In such event, the Debtors would incur significant additional expenses, such as premium replacement shipping and warehousing costs, that would likely exceed the amount of unpaid prepetition shipping and warehousing charges that the Debtors request the authority to pay hereunder. In some cases, the Shippers and Warehousemen are irreplaceable and represent the only means to transport and store the Debtors' Goods. For example, the Debtors' businesses depend critically on their relationships with several trucking and other transport companies for which there are no adequate or available substitutes in the market.

94. The Debtors also seek to pay the prepetition charges of the Service Providers who, like the Shippers and the Warehousemen, under applicable law have the potential to assert statutory liens against property of the Debtors if the Debtors fail to pay for goods provided or services rendered to them before the Petition Date. The Service Providers provide, among other things, on-site maintenance and equipment installation, packaging and downstream processing (*e.g.*, high oleic oil bleaching and deodorization) services. Any disruption in the flow of the aforementioned services would immediately affect on-time delivery, research and development activities and production volume of the Debtors' products.

95. I believe that the relief requested in the Shippers and the Warehousemen Motion represents a sound exercise of the Debtors' business judgment and is necessary to avoid immediate and irreparable harm. The relief sought in the Shippers and the Warehousemen



Motion is amply justified by the critical need for the continued receipt and distribution of Goods that Shippers, Warehousemen or Service Providers may hold on the Petition Date. The prompt payment of Shipping, Warehousing and Servicing Claims, which may be necessary to obtain delivery of the Goods in the possession of Shippers, Warehousemen or Service Providers, is within the Debtors' ordinary course of business and crucial for the orderly and efficient operation of the Debtors' businesses. Unless the Debtors have the authority to pay for these essential services, their businesses will suffer irreparable harm.

96. Because the Debtors are dependent on many third party Shippers, Warehousemen and Service Providers, it is essential that the commencement of the Chapter 11 Cases not give any third party Shippers, Warehousemen or Service Providers reason or excuse to cease performing services or to retain products, equipment or other Goods. Further, the Debtors propose that they may, in their sole discretion, condition payment of any such Shipping, Warehousing and Servicing Claims upon an agreement to continue to supply goods or services to the Debtors on such creditor's Customary Trade Terms.

97. I believe that the relief requested in the Shippers and Warehousemen Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest and constitutes a critical element in achieving a successful and smooth transition to chapter 11. Accordingly, on behalf of the Debtors, I respectfully submit that the relief requested in the Shippers and Warehousemen Motion should be granted.

**C. Tax Motions Requesting Immediate Relief**

- i. *Motion of Debtors for Entry of Interim and Final Orders Authorizing (i) Debtors To Pay Certain Prepetition Taxes, Governmental Assessments and Fees and (ii) Financial Institutions To Honor and Process Related Checks and Transfers (the “Taxes and Fees Motion”)*

98. The Debtors seek entry of interim and final orders, pursuant to sections 105(a), 363(b), 507(a)(8) and 541 of the Bankruptcy Code, (a) authorizing, but not directing, the Debtors, in their sole discretion, to pay Covered Taxes and Fees, whether asserted prior to, on or after the commencement of the Chapter 11 cases and (b) authorizing and directing applicable banks and financial institutions to receive, process, honor and pay any and all checks drawn on the Debtors’ general disbursement account and other transfers to the extent these checks and transfers relate to any of the foregoing. For the avoidance of doubt, the Debtors are not seeking to prepay any Covered Taxes and Fees.

99. In the ordinary course of the Debtors’ businesses, the Debtors collect, withhold and incur (a) Environmental and Safety Fees and Assessments, (b) Sales and Use Taxes, (c) Employment and Wage-Related Taxes, (d) Franchise Taxes and Fees, (e) Property Taxes, (f) Fuel and Excise Taxes and (g) Other Taxes (collectively, the “**Covered Taxes and Fees**”). The Debtors remit the Covered Taxes and Fees to various federal, state and local governmental authorities, including taxing and licensing authorities (collectively, the “**Governmental Authorities**”).

100. I believe that many of the Covered Taxes and Fees were collected before the Petition Date and must be turned over to the relevant Governmental Authorities. Moreover, failure to pay such amounts may give rise to priority or secured claims that would, in any event, be entitled to payment in full.

101. The Debtors also seek to pay prepetition Covered Taxes and Fees in order to forestall the Governmental Authorities from taking actions that might interfere with the Debtors' businesses, such as blocking the receipt or renewal of permits required for the Debtors' continued operations or possibly bringing personal liability actions against the Debtors' directors, officers and other employees in connection with non-payment of the Covered Taxes and Fees. I believe that actions against the Debtors' directors, officers and other employees would likely distract key personnel, whose full-time attention to the Chapter 11 Cases is required, and would likely cause potential business disruptions. Any such business disruptions would likely erode the Debtors' business reputation and negatively affect the Chapter 11 Cases. I believe that, as of the Petition Date, none of the Covered Taxes and Fees is past due or delinquent and, after entry of the Proposed Orders, intend to pay such amounts as they come due in the ordinary course of business.

102. I believe that the relief requested in the Taxes and Fees Motion is in the best interests of the Debtors' estates, their creditors and all other parties in interest and constitutes a critical element in achieving a successful and smooth transition to chapter 11. Accordingly, on behalf of the Debtors, I respectfully submit that the relief requested in the Taxes and Fees Motion should be granted.

- ii. *Motion of Debtors for Entry of Interim and Final Orders Establishing Notification Procedures and Approving Restrictions on Certain Transfers of Claims Against and Interests in the Debtors' Estates (the "NOLs Motion")*

103. The Debtors seek entry of interim and final orders to enforce the automatic stay by implementing Procedures (as defined in the NOLs Motion) intended to protect the Debtors' estates against the possible loss of valuable tax assets that could flow from inadvertent stay violations. The NOLs Motion seeks entry of orders to (a) establish and implement restrictions

and notification requirements regarding the Tax Ownership and certain transfers of common stock of TerraVia and (b) establish “sell-down” procedures with respect to Covered Claims and (c) notify holders of Stock and Covered Claims of the Procedures. The Debtors also seek approval of a form of notice, which will notify holders of Stock and Covered Claims whose actions could adversely affect the Debtors’ tax assets that the Procedures have been established by order of this Court.

104. I believe that the relief requested in the NOLs Motion is in the best interests of the Debtors’ estates, their creditors, and all other parties in interest and constitutes a critical element in achieving a successful and smooth transition to chapter 11. Accordingly, on behalf of the Debtors, I respectfully submit that the relief requested in the NOLs Motion should be granted.

*[Signature page follows]*

I, the undersigned Chief Financial Officer and Chief Operating Officer of TerraVia Holdings, Inc., declare under penalty of perjury that the foregoing is true and correct.

Dated: August 2, 2017

*/s/ Tyler W. Painter*

---

Tyler W. Painter  
Chief Financial Officer and Chief  
Operating Officer