IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	
	:	Chapter 11
Novan, Inc., *et al.*,[1]	:	
	:	Case No. 23-10937 (LSS)
Debtors.	:	(*Jointly Administered*)
	:	Re: D.I. 16

OBJECTION OF THE UNITED STATES TRUSTEE TO THE MOTION OF DEBTORS FOR ENTRY OF ORDERS (I)(A) APPROVING BIDDING PROCEDURES FOR SALE OF SUBSTANTIALLY ALL OF DEBTORS' ASSETS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES AND DESIGNATING LIGAND PHARMACEUTICALS AS A STALKING HORSE BIDDER, (B) SCHEDULING AN AUCTION AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF, (C) APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES AND (D) SCHEDULING A SALE HEARING AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF; (II)(A) APPROVING THE SALE OF THE DEBTORS' ASSETS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES AFTER THE AUCTION AND (B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (III) IN THE ALTERNATIVE, APPROVING THE SALE OF THE DEBTORS' ASSETS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES TO LIGAND PHARMACEUTICALS IF NOT APPROVED AS THE STALKING HORSE BIDDER (D.I. 16)

Andrew R. Vara, the United States Trustee for Regions 3 and 9 ("U.S. Trustee"), through his counsel, files this objection (the "Objection") to the *Motion of Debtors for Entry of Orders (I)(A) Approving Bidding Procedures for Sale of Substantially all of Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances and Designating Ligand Pharmaceuticals as a Stalking Horse Bidder, (B) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (C) Approving Assumption and Assignment Procedures and (D) Scheduling a Sale*

[1] The Debtors in these chapter 11 cases, along with the last four digits of the Debtors' federal tax identification number (if applicable), are: Novan, Inc. (7682) and EPI Health, LLC (9118). The corporate headquarters and the mailing address for the Debtors is 4020 Stirrup Creek Drive, Suite 110, Durham, NC 27703.

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Hearing and Approving the Form and Manner of Notice Thereof; (II)(A) Approving the Sale of the Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances after the Auction and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) In the Alternative, Approving the Sale of the Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances to Ligand Pharmaceuticals if not Approved as the Stalking Horse Bidder (the "Sale Motion;" D.I. 16), and in support of his Objection, states:

I. PRELIMINARY STATEMENT

1. The Debtors' proposed stalking horse bidder, taking advantage of the fact that it is purportedly the only entity willing to provide debtor-in-possession ("DIP") financing, seeks to use its hold of the purse strings to ensure that its prepetition unsecured claim will be assumed by any competing bidder. This is an improper use of the chapter 11 process.

2. The stalking horse bidder has manufactured a process that ensures that it will control the outcome of these cases and that its prepetition claim will be protected. First, it will agree to fund an auction process only if all other bidders agree to assume its prepetition claim. Second, if the court requires that the auction process be robust, free and clear of all claims, including those owed to the stalking horse bidder, the stalking horse agreement requires the Debtors to immediately pivot to a private sale transaction, seeking the approval of the sale to the stalking horse bidder without competing bids. Third, the stalking horse bidder conditions its obligation to provide DIP financing to the Debtors on either obtaining the bidding procedures it desires or approval of the private sale, and will cease providing funding for these cases if that condition is not met. The stalking horse bidder's conditioning of the Debtors' financing on a "heads I win, tails you lose" sales process is calculated to result in relief from the automatic stay to permit the stalking horse bidder to foreclose on its liens.

II. JURISDICTION & STANDING

3. Pursuant to 28 U.S.C. § 1334, applicable order(s) of the United States District Court for the District of Delaware issued pursuant to 28 U.S.C. § 157(a), and 28 U.S.C. § 157(b)(2)(A), this Court has jurisdiction to hear and resolve this Objection.

4. Pursuant to 28 U.S.C. § 586, the U.S. Trustee is charged with monitoring the federal bankruptcy system. *See United States Trustee v. Columbia Gas Sys., Inc. (In re Columbia Gas Sys., Inc.)*, 33 F.3d 294, 295-96 (3d Cir. 1994) (noting that 11 U.S.C. § 307 gives the U.S. Trustee "public interest standing"); *Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.)*, 898 F.2d 498, 500 (6th Cir. 1990) (describing the U.S. Trustee as a "watchdog").

5. The U.S. Trustee has standing to be heard on the Sale Motion pursuant to 11 U.S.C. § 307.

III. BACKGROUND

6. On July 17, 2023, (the "Petition Date") the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

7. That same day, the Debtors filed both the Sale Motion and their *Motion for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Lender, (III) Scheduling Final Hearing, and (IV) Granting Related Relief* (the "Financing Motion;" D.I. 15).

A. Ligand Pharmaceuticals' Claims Against the Estates

8. Ligand Pharmaceuticals, Inc. ("Ligand") is the proposed stalking horse bidder, a prepetition creditor of the Debtors, and the Debtors' DIP Lender.

The Ligand Royalty Agreement

9. Ligand entered into a *Development Funding and Royalties Agreement* (the "Royalty Agreement") with Debtor Novan on May 4, 2019. A copy of the Royalty Agreement is attached as **Exhibit A**.

10. The Royalty Agreement states that "Ligand desire[d] to contribute to the funding and development of the product designated as SB206 in exchange for the right to receive future payments based on the development and commercialization of such product." (Royalty Agreement at p. 1).

11. The Royalty Agreement further provides:

> It is the intention of the Parties that the sale, transfer, assignment and conveyance of the Royalties contemplated by this Agreement constitute a sale of the Royalties from Novan to Ligand and not a financing transaction, borrowing or loan. In connection therewith, Novan shall treat the sale, transfer, assignment and conveyance of the Royalties as a sale of an "account" or a "payment intangible" (as appropriate) in accordance with the Uniform Commercial Code in the applicable jurisdiction ("UCC"), and Novan hereby authorizes Ligand to file financing statements (and continuation statements with respect to such financing statements when applicable) naming Novan as the debtor and Ligand as the secured party in respect of the Royalties. Not in derogation of the foregoing statement of the intent of the Parties in this regard, and for the purposes of providing additional assurance to Ligand in the event that, despite the intent of the Parties, the sale, transfer, assignment and conveyance contemplated hereby is hereafter held not to be a sale, Novan does hereby grant to Ligand, as security for the obligations of Novan hereunder, a first priority security interest in and to all right, title and interest of Novan, in, to and under the Royalties and any "proceeds" (as such term is defined in the UCC) thereof, and Novan does hereby authorize Ligand, from and after the Effective Date, to file such financing statements (and continuation statements with respect to such financing statements when applicable) as may be necessary to perfect such security interest. Prior to filing any financing statement, Ligand shall provide a copy of such financing statement to Novan to review and provide comments on such financing statement, and shall in good faith take such comments into account.

Royalty Agreement at Art. 3.3.4. There is no evidence filed in this case that Ligand ever filed a UCC financing statement or otherwise perfected its purported security interest.

12. Under the Royalty Agreement Ligand made a one-time payment of $12,000,000. *Id.* at Art. 4.1.

13. Ligand is entitled to both "Milestone Payments" and "Royalty Payments" under the Royalty Agreement.

14. The Milestone Payments are:

Milestone Event	**Milestone Payment**
First filing with the FDA of an NDA for a Product	US$1,000,000
First Regulatory Approval by the FDA of an NDA for a Product	US$4,000,000
First time aggregate Net Sales of Products in the Field in the Territory during the Term reach one hundred million Dollars (US$100,000,000)	US$5,000,000
First time aggregate Net Sales of Products in the Field in the Territory during the Term reach two hundred fifty million Dollars (US$250,000,000)	US$10,000,000

Royalty Agreement at Art. 4.2. Upon information and belief, the first Milestone Event has been accomplished, but Ligand has not yet been paid the Milestone Payment related thereto.

15. The Royalty Payments are:

Net Sales Tier	**Royalty Rate**
For that portion of annual aggregate Net Sales of Products in the Field in the Territory in a Calendar Year that are less than one hundred million Dollars (US$100,000,000)	7%
For that portion of annual aggregate Net Sales of Products in the Field in the Territory in a Calendar Year that are greater than or equal to one hundred million Dollars (US$100,000,000) but less than one hundred fifty million Dollars (US$150,000,000)	8%
For that portion of annual aggregate Net Sales of Products in the Field in the Territory in a Calendar Year that are greater than or equal to one	9%

hundred fifty million Dollars (US$150,000,000) but less than two hundred million Dollars (US$200,000,000)	
For that portion of annual aggregate Net Sales of Products in the Field in the Territory in a Calendar Year that are greater than or equal to two hundred million Dollars (US$200,000,000)	10%

Royalty Agreement at Art. 4.3.1.

The Pre-Petition Bridge Loan

16. On July 14, 2023, one business day prior to the Petition Date, Debtors Novan and EPI Health, as borrowers, and Ligand, as lender, entered into a Loan and Security Agreement (the "Bridge Financing"), under which the Debtors borrowed, on a secured basis, $3,000,000.[2] *Declaration of Paula Brown Stafford in Support of Debtors' Chapter 11 Petitions and First Day Motions* ("Stafford Decl.;" D.I. 4) at ¶¶ 14 & 38.

17. At the "first day" hearing in this case, and as reflected in the DIP Budget attached to the Financing Order, the Debtors had $3,141,383.00 as of the Petition Date. Without the Bridge Financing, the Debtors would have had at least $141,383.00 as of the Petition Date.[3]

The Asset Purchase Agreement

18. On the Petition Date, the Debtors and Ligand entered into an Asset Purchase Agreement (the "APA"). Under the APA, Ligand proposes to purchase substantially all of the Debtors' assets for $15 million.

19. While the APA is subject to higher and better offers, the APA requires that such offers must include the assumption of the Royalty Agreement by any bidder other than Ligand.

[2] At the first day hearing in the Case, Ligand's counsel indicated that the funding took place late in the afternoon on Friday, July 14.

[3] The Debtors' cash balance on the Petition Date would likely have been $201,383 absent the Bridge Financing, as the budget reflects that Debtors paid Ligand a $60,000 origination fee in connection therewith.

See APA at Art. 1 (definition of "Conversion Trigger Event" and "Qualified Bid") and APA at Ex. E, ¶ 8 (Proposed Sales Procedures Order, stating "provided, however, that under no circumstances may a bid, other than the Stalking Horse Bid, qualify as a Qualified Bidder if it does not provide for the unaltered assumption and assignment of the Royalty Agreement.").

20. The APA further requires that the Debtors pay Ligand a break-up fee of $3 million if an Alternative Transaction closes. The APA also provides a broad release of the Buyer Released Parties. *See* APA at Art. 5.8.

21. If the Court does not approve either the DIP Order or the Sales Procedures Order, then the APA requires the Debtors to use their reasonable best efforts to obtain an order approving the APA as a "private sale," not subject to overbids.

22. The Debtors' proposed bid procedures include Ligand as a "Notice Party" with consultation rights and require Ligand's consent to any sale if Ligand withdraws as the stalking horse purchaser. Sale Mot. Ex. 1 (proposed bid procedures).

The DIP Financing

23. The proposed DIP financing, provided by Ligand, provides up to $15 million to fund the Debtors' operations and bankruptcy cases, subject to a budget. The DIP facility will mature at the earlier of 70 days after the Petition Date, the consummation of a sale of the Debtors' assets, the effective date of a Plan, or after an Event of Default.

24. The initial proposed interim DIP order provided that the failure of the Court to approve either the Asset Purchase Agreement and the Bidding Procedures (as defined in the DIP Credit Agreement) would constitute Events of Default. The definition of "Bidding Procedures" in the DIP Credit Agreement "means bidding procedures in connection with the sale as contemplated under the Asset Purchase Agreement, which such bidding procedures shall be in form and

substance *acceptable to Lender in its sole discretion*." Financing Mot. Ex. 1 (DIP Credit Agreement) at Art. 1.1. (emphasis added).[4]

25. The DIP Loan includes paying Ligand $540,000 for its fees, costs and expenses incurred in connection with the negotiation, execution and delivery of the DIP financing agreement and the other Loan Documents. Financing Mot. Ex. 1 (DIP Credit Agreement) at Art. 3.1(5). Loan Documents include the Sale Order. *Id.* at Art. 1.1 (76)

B. The Sale Motion

26. At the "first day" hearing, Ligand requested that the Sale Motion be heard on August 4, 2023, less than 21 days after the Petition Date. If the Court does not enter the Bidding Procedures Order (including the requirement that any other bid must include the assumption of the Royalty Agreement), then the Debtors will seek approval of the Ligand APA as a private sale at the August 4 hearing.

27. The Sale Motion indicates that the Debtors commenced a prepetition marketing process in early June, contacting 30 potential strategic buyers. It is unclear whether the marketing process required buyers to provide DIP financing as part of a sale transaction. It is also unclear whether the Debtors reached out to traditional lending institutions to provide DIP financing.

28. The Debtors' timeline, requiring qualified bids (which include assumption of the Royalty Agreement) to be provided by August 28, with an outside closing date no later than September 25, appears dictated by Ligand based on its willingness to fund the bankruptcy cases for only 70 days. It appears that Ligand will not fund the bankruptcy cases and permit the sale of the Debtors' assets as a going concern unless it is guaranteed that its Royalty Agreement will be assumed by any competing buyer.

[4] Prior to the hearing, Ligand agreed to make the milestones subject to further order of the court.

29. The Sale Motion appears to present the requirement that the Royalty Agreement be assumed by any competing bidder as a bid protection in Ligand's favor. The Sale Motion states that, "Ligand would not have agreed to act as a stalking horse without the Stalking Horse Protections and the Royalty Assumption, given the substantial time and expense that it incurred in connection with entering into definitive documentation and the risk that it will be outbid at the Auction. Without the Stalking Horse Protections and the Royalty Assumption, the Debtors might lose the opportunity to obtain the highest or otherwise best offer for the Assets, may have lost the financing for these Chapter 11 Cases, and would certainly lose the downside protection that will be afforded by the existence of the Stalking Horse Bidder." Sale Mot. at ¶ 56.

30. In addition, the Debtors note that, "no party other than Ligand was able to agree to a $15 million purchase price *and provide the prepetition funding necessary to file these Chapter 11 cases.*" *Id.* at ¶ 63 (emphasis added).

C. **Bankruptcy Dates**

31. On July 27, 2023, the U.S. Trustee filed the *Request by the United States Trustee to the Clerk of the Bankruptcy Court to Schedule a Section 341 Meeting in a Chapter 11 Case* requesting that the 341 Meeting be scheduled on August 23, 2023 at 10:00 a.m. (D.I. 69).

32. Schedules and Statements of Financial Affairs have not yet been filed.

IV. Argument

33. In general, a debtor may sell assets outside of the ordinary course of business so long as the debtor meets the burden of proving that the sale satisfies four requirements: (1) a sound business reason for the sale exists; (2) accurate and reasonable notice of the sale has been given to interested parties; (3) the sale yields a fair and reasonable price; and (4) the parties have acted in good faith. *See In re Abbotts Dairies of Pennsylvania, Inc.,* 788 F.2d 143, 149-50 (3d Cir. 1986)

(establishing that "good faith" of the purchaser is a necessary finding by courts examining 363 sales); *In re Exaeris Inc*., 380 B.R. 741, 744 (Bankr. D. Del. 2008) (citations omitted); *In re First Merchants Acceptance Corp*., 1997 Bankr. LEXIS 1492, at *10-11 (Bankr. D. Del. 1997) (citing *In re Titusville Country Club*, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991)).

34. As courts in this District have previously noted, pre-plan sales of all or substantially all of a debtor's assets "requires a bankruptcy court's careful review." *In re Exaeris, Inc.,* 380 B.R. 741, 744 (Bankr. D. Del. 2008). Where there is a proposed sale or sales in the context of a Chapter 11 proceeding of substantially all of a debtor's property without the creditor protections of the disclosure statement and plan process, as is here, the transaction must be closely scrutinized, and the proponent bears a heightened burden of proving the elements necessary for authorization. *See In re Channel One Commc'ns, Inc.*, 117 B.R. 493, 496 (Bankr. E.D. Mo. 1990) (citing *In re Industrial Valley Refrigeration & Air Conditioning Supplies, Inc.,* 77 B.R. 15, 17 (Bankr. E.D. Pa. 1987)); *See also In re CGE Shattuck, LLC*, 254 B.R. 5, 12 (Bankr. D. N.H. 2000); ("The closer a proposed transaction gets to the heart of the reorganization process, the greater scrutiny the Court must give to the matter."); *In re Wilde Horse Enters., Inc.,* 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991).

35. Additional requirements must be met when a debtor proposes to sell assets pursuant to a private sale. Specifically, a private sale requires there be (1) an emergency, or in the absence of a demonstrated emergency, compelling facts and circumstances which support approval of the sale; (2) facts that justify not soliciting other prospective purchasers; and (3) a showing that the sale is in the best interest of the estate when the consideration paid and all other circumstances are taken into account. *See In re Ancor Exploration*, 30 B.R. 802, 808 (N.D. Okla. 1983).

36. Approval of the proposed private sale is not warranted. The Debtors cannot satisfy the applicable standard. There is insufficient evidence of an appropriate prepetition marketing period. Furthermore, the "emergency" justifying the private sale would be the court's refusal to permit a one-sided transaction that would not maximize value to the estate and appear to benefit only the stalking horse bidder. The stalking horse bidder's (i) refusal to fund a full and fair marketing process designed to maximize value for all constituents and (ii) insistence that its seemingly burdensome prepetition liability is assumed as a condition of its financing are insufficient grounds to grant approval of a private sale less than 21 days after the Petition Date.[5]

37. In addition, the section 341 meeting of creditors has not been held, and Schedules and Statements of Financial Affairs have not been filed.

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[5] This Court in *iMedia Brands, Inc.,* Case No. 23-10852, faced a similar situation on July 27, 2023. In that case, the Debtors sought approval of a private sale. When other potential purchasers came forward, and at the request of the creditors' committee, the Debtors agreed to conduct an auction (without bidding procedures approved by the court) on an expedited timeframe dictated by the lender's and proposed purchaser's willingness to fund the Debtors' operations. The court concluded:

> To the extent that there's any confusion, a private sale in this case is absolutely not warranted by the facts presented here. Namely, lender refusal to fund a fair and reasonable Chapter 11 process. In this circumstance, a lender should just foreclose outside of bankruptcy.
>
> Regardless, I don't consider this a private sale. From my perspective, it's a poorly and amateurly executed public sales process, not remotely resembling what I would customarily approve, seemingly driven by the lenders and a prospective purchaser.
>
> This process is unacceptable and potentially abusive to the Chapter 11 process. Said a different way, I am not in favor of a Debtor or a lender or a prospective purchaser establishing their own bidding procedures and scheduling an auction on their own, let alone the process that is attempted to be deployed here on a timeframe that has occurred that is extremely expedited, and on what I would consider inadequate notice provided to parties in interest, in violation of the Bankruptcy Code and the Rules.

Transcript of July 27, 2003 Hearing, *In re iMedia Brankds, Inc.,* 23-10852 (KBO) at p. 32. A copy of the Transcript is attached hereto at **Exhibit B**. In the present case, the purchaser seeks to use its refusal to fund a fair process to ensure that its prepetition claim is protected, likely at the expense of other unsecured creditors.

38. Holding the section 341 meeting of creditors after approval of the sale of substantially all of the Debtors' assets denies creditors what may be their only opportunity to question the debtors under oath:

> The primary purpose of the § 341 meeting is the examination of the debtor. The § 341 meeting permits the creditors to rigorously question the debtor on issues relating to dischargeability, estate administration, and the debtor's financial affairs. The meeting also allows the trustee to query about possible recoveries under the avoiding powers. Thus, the debtor's presence at the § 341 meeting is not merely ceremonial, but instead plays a pivotal role in providing the creditors and the trustee with valuable information regarding the debtor's financial situation.

In re Moore, 309 B.R. 725, 726 (Bankr. N.D. Tex. 2002). Basic information gathered at the 341 meeting can alert parties in interest to the need for additional formal and informal discovery and lead to more specific and pointed questions at the sale hearing; a party in interest should not have to incur the expense of engaging counsel to conduct a last-minute deposition in order to be able to cogently test the Debtors' statements as to valuation, marketing, and propriety of the proposed private sale.

39. Nor should the bidding procedures be approved with the requirement that the Royalty Agreement be assumed. Requiring other purchasers to assume the Royalty Agreement simply chills bidding and does not maximize value to the estate. The Debtors should not be permitted to sell their assets without a robust auction process free of Ligand's assumption demand.

40. Additionally, the Debtors seek court approval of a broad release of any claims their estates may have against Ligand. The release is wholly inappropriate in light of Ligand's insistence upon imposing unreasonable sale terms on these cases, to the estates' detriment.

41. In addition, Ligand should not be permitted to have consultation rights while it remains a bidder for the assets, and cannot retain a veto right over any sale if it withdraws from being the stalking horse bidder. The consent/consultation rights sought here are essentially no

different from a right of first refusal, which has often been held unenforceable in the bankruptcy context. See *In re Adelphia Communications Corp*., 359 B.R. 65, 87 (Bankr. S.D.N.Y. 2007) (stating that enforcing right of first refusal would "be destructive to maximizing value, and have a chilling effect on future bankruptcy auctions"). Giving Ligand consent/consultation rights will deprive the estate of the ability to maximize value and a potentially higher return to creditors.

42. Finally, Ligand should not be awarded the requested $3 million of bid protections because it is incentivized to provide a bid to protect its prepetition investment in SB206. To award an expense reimbursement (or a break-up fee) to a potential bidder, the Court must determine that the fee was an actual and necessary cost and expense of preserving the estate. *See In re O'Brien Envt'l Energy, Inc.*, 181 F.3d 527 (3d Cir. 1999). As recognized by the Third Circuit in *O'Brien*, "[E]ven if the purpose for the break-up fee is not impermissible, the break-up fee may not be needed to effectuate that purpose. For example, in some cases a potential purchaser *will bid whether or not break-up fees are offered* . . . . In such cases, the award of a break-up fee cannot be characterized as necessary to preserve the value of the estate." 181 F.3d at 535 (emphasis added). Here, Ligand's attempts to control the Debtors' cases and mandate the assumption of the Royalty Agreement lay bare its interest in protecting its prepetition investment, and the bid protections serve no purpose other than to chill bids.

43. The U.S. Trustee does not oppose the entry of bid procedures in this case and a fulsome auction process. However, such order should not include (a) the requirement that any competing bidder assume the Royalty Agreement; (b) the consultation and consent rights granted to Ligand; or (c) the proposed bid protections.

WHEREFORE, the U.S. Trustee respectfully requests that this Court deny the relief requested in the Sale Motion and award such other relief as this Court deems appropriate under the circumstances.

Dated: August 1, 2023
Wilmington, Delaware

Respectfully submitted,

ANDREW R. VARA
UNITED STATES TRUSTEE
FOR REGIONS 3 & 9

By: /s/ Linda J. Casey
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Exhibit A

Execution Version

DEVELOPMENT FUNDING AND ROYALTIES AGREEMENT

THIS DEVELOPMENT FUNDING AND ROYALTIES AGREEMENT (this "**Agreement**") is made and entered into effective as of May 4, 2019 (the "**Effective Date**") by and between **LIGAND PHARMACEUTICALS INCORPORATED**, a Delaware corporation having a place of business at 3911 Sorrento Valley Boulevard, Suite 110, San Diego, California 92121, U.S.A. ("**Ligand**"), and **NOVAN, INC.**, a Delaware corporation having a place of business at 4105 Hopson Road, Morrisville, North Carolina 27560, U.S.A., and its Affiliates ("**Novan**"). Novan and Ligand may be referred to herein individually as a "**Party**" or collectively as the "**Parties**."

RECITALS

WHEREAS, Ligand is engaged in the development and commercialization of pharmaceutical products;

WHEREAS, Novan owns or otherwise controls certain intellectual property rights and regulatory filings relating to the product designated as SB206, which is the subject of clinical development for molluscum contagiosum;

WHEREAS, Ligand desires to contribute to the funding of the development of the product designated as SB206 in exchange for the right to receive future payments based on the development and commercialization of such product; and

WHEREAS, Novan would like to obtain such funding from Ligand for such development activities, and sell to Ligand the right to receive such future payments, as set forth in this Agreement below.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants herein contained, the Parties hereby agree as follows.

ARTICLE 1

DEFINITIONS

The terms in this Agreement with initial letters capitalized, whether used in the singular or the plural, will have the meaning set forth below or, if not listed below, the meaning designated in places throughout this Agreement.

1.1 "**Affiliate**" of a Person means any other Person that (directly or indirectly) is controlled by, controls or is under common control with such initial Person. For the purposes of this definition, the term "control" (and, with correlative meanings, the terms "controlled by" and "under common control with") as used with respect to a Person means: (a) direct or indirect ownership of more than fifty percent (50%) of the voting interest in the Person in question, or more than fifty percent (50%) interest in the income of the Person in question; or (b) other than through ownership of securities, possession, directly or indirectly, of the

power to direct or cause the direction of management or policies of the Person in question.

1.2 "**Applicable Law**" means all laws, statutes, ordinances, codes, rules, and regulations that have been enacted by a Governmental Authority and are in force as of the Effective Date or come into force during the Term, in each case to the extent that the same are applicable to the performance by a Party of its obligations, and/or exercise of its rights, under this Agreement.

1.3 "**Bankruptcy Event**" means the occurrence of any of the following in respect of a Person: (a) an admission in writing by such Person of its inability to pay its debts generally or a general assignment by such Person for the benefit of creditors; (b) the filing of any petition or answer by such Person seeking to adjudicate itself as bankrupt or insolvent, or seeking for itself any liquidation, winding-up, reorganization, arrangement, adjustment, protection, relief or composition of such Person or its debts under any Applicable Law relating to bankruptcy, insolvency, receivership, winding-up, liquidation, reorganization, examination, relief of debtors or other similar Applicable Law now or hereafter in effect, or seeking, consenting to or acquiescing in the entry of an order for relief in any case under any such Applicable Law, or the appointment of or taking possession by a receiver, trustee, custodian, liquidator, examiner, assignee, sequestrator or other similar official for such Person or for any substantial part of its property; (c) corporate or other entity action taken by such Person to authorize any of the actions set forth in clause (a) or clause (b) above; (d) without the consent or acquiescence of such Person, the entering of an order for relief or approving a petition for relief or reorganization or any other petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or other similar relief under any present or future bankruptcy, insolvency or similar Applicable Law, or the filing of any such petition against such Person, or, without the consent or acquiescence of such Person, the entering of an order appointing a trustee, custodian, receiver or liquidator of such Person or of all or any substantial part of the property of such Person, in each case where such petition or order shall remain unstayed or shall not have been stayed or dismissed within ninety (90) days from entry thereof; *provided* that in the case of an involuntary petition, such Person has not challenged such petition within ninety (90) days thereof; (e) the appointment of a trustee, receiver, or custodian for all or substantially all of the property of such Person, or for any lesser portion of such property, if the result materially and adversely affects the ability of such Person to fulfill its obligations hereunder, which appointment is not dismissed within sixty (60) days; or (f) the dissolution or liquidation of such Person.

1.4 "**Business Day**" means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by Applicable Law to remain closed.

1.5 "**Calendar Quarter**" means the respective periods of three (3) consecutive calendar months ending on March 31, June 30, September 30 and December 31; *provided, however*, that (a) the first Calendar Quarter of the Term will extend from the Effective Date to the end of the first complete Calendar Quarter thereafter, and (b) the last Calendar Quarter of the Term will end upon the expiration or termination of this Agreement.

1.6 "**Calendar Year**" means (a) for the first Calendar Year of the Term, the period beginning on the Effective Date and ending on December 31, 2019, (b) for each Calendar Year of the Term thereafter, each successive period beginning on January 1 and ending twelve (12) consecutive calendar months later on December 31, and (c) for the last Calendar Year of the Term, the period beginning on January 1 of the Calendar Year in which this Agreement expires or terminates and ending on the effective date of expiration or termination of this Agreement.

1.7 "**Change of Control**" means with respect to a Party: (a) the sale or exclusive license of all or substantially all of such Party's assets or business relating to this Agreement to a Third Party; (b) a merger, reorganization or consolidation involving the Party and a Third Party in which the voting securities of the Party outstanding immediately prior thereto cease to represent at least fifty percent (50%) of the combined voting power of the surviving entity immediately after such merger, reorganization or consolidation; or (c) a transaction (which may include a tender offer for such Party's stock or the issuance, sale or exchange of stock of such Party) with a Third Party or Third Parties in which the stockholders of such Party immediately prior to the transaction do not, immediately after consummation of such transaction, (i) own, directly or indirectly through one or more intermediaries, stock or other securities of such Party that possess a majority of the voting power of all of such Party's outstanding stock and other securities or (ii) possess the power to elect a majority of the members of such Party's board of directors.

1.8 "**Claims**" has the meaning set forth in Section 7.1.

1.9 "**Commercially Reasonable Efforts**" means, as to Novan and the Product, the level of effort, expertise, and resources required to Develop and Commercialize the Product consistent with the reasonable efforts that would be typically exerted by a biotechnology or pharmaceutical company of comparable size and capabilities as Novan in pursuing the development and commercialization of a similar product with similar product characteristics at a similar stage in its development or product life, including without limitation with respect to commercial potential, the proprietary position of the Product, the regulatory status and approval process and other relevant technical, scientific, medical or legal factors, but not taking into account any competitive product in Novan's portfolio.

1.10 "**Commercialize**," "**Commercializing**," and "**Commercialization**" means activities directed to manufacturing, obtaining pricing and reimbursement approvals for, marketing, promoting, distributing, importing, and/or selling the Product.

1.11 "**Confidential Information**" means any and all technical, business or other information or materials that are disclosed or provided by such Party to the other Party under or in connection with this Agreement and are designated as confidential or would otherwise reasonably be understood to be confidential or proprietary in light of the nature of the information and the circumstances of the disclosure, whether disclosed or provided in oral, written, graphic, or electronic form, which may include without limitation trade secrets, processes, formulae, data, Know-How, improvements, inventions, chemical or biological materials, chemical structures, techniques, clinical, sublicensing and marketing and other

Development and/or Commercialization plans, strategies, customer lists, financial data, intellectual property information, tangible or intangible proprietary information or materials or other information in whatever form. For clarity, Confidential Information of Novan shall include all reports delivered by Novan pursuant to this Agreement.

1.12 "**Control**" or "**Controlled**" means, with respect to an item, information, or an intellectual property right, that the applicable Party owns or has a license or other appropriate rights in, to, and under such item, information, or intellectual property right and has the ability to disclose and grant a license or sublicense to the other Party as provided for in this Agreement in, to, and under such item, information, or intellectual property right without violating the terms of any written agreement with any Third Party.

1.13 "**Cover**," "**Covered**," or "**Covering**" means, with respect to a Patent Right, that, in the absence of ownership of or a license under such Patent Right, the manufacture, use, offer for sale, sale or importation of the Product or components thereof would infringe a Valid Claim in such Patent Right.

1.14 "**Development**" means non-clinical, pre-clinical and clinical drug discovery, research, and/or development activities, including without limitation quality assurance and quality control development, and any other activities reasonably related to or leading to the development and submission of information to a Regulatory Authority. When used as a verb, "**Develop**" means to engage in Development.

1.15 "**Development Budget**" has the meaning set forth in Section 2.2.

1.16 "**Development Plan**" has the meaning set forth in Section 2.2.

1.17 "**Disclosing Party**" has the meaning set forth in Section 5.1.

1.18 "**Dollars**" or "**US$**" means the lawful currency of the United States.

1.19 "**Export Control Laws**" means all applicable laws and regulations relating to (a) sanctions and embargoes imposed by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the European Union or (b) the export or re-export of commodities, technologies or services or data, including without limitation the Export Administration Act of 1979, 24 U.S.C. §§ 2401-2420; the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-1706; the Trading with the Enemy Act, 50 U.S.C. App. §§ 1 et. seq.; the Arms Export Control Act, 22 U.S.C. §§ 2778 and 2779; and the International Boycott Provisions of Section 999 of the U.S. Internal Revenue Code of 1986, and European Union laws and regulations (including without limitation Regulation (EC) No 428/2009, as amended), in each case as amended.

1.20 "**FCPA**" means the U.S. Foreign Corrupt Practices Act (15 U.S.C. § 78dd-1 et. seq.), as amended.

1.21 "**FDA**" means the United States Food and Drug Administration, or any successor agency thereto.

1.22 "**Field**" means the treatment of any and all indications, diseases, disorders, and/or conditions, including without limitation treatment of molluscum contagiosum in humans.

1.23 "**First Commercial Sale**" means, with respect to a particular product, the first commercial sale for monetary value by Novan, one or more of its Affiliates or one or more of its Licensees in an arm's length transaction to a Third Party that is not a Licensee, including without limitation any final sale to a distributor or wholesaler under any non-conditional sale arrangement, of such Product in the Field in the Territory after Regulatory Approval of such Product has been granted in the Field in the Territory. For the avoidance of doubt, sales or transfers of a Product for clinical and non-clinical research and trials (including studies reasonably necessary to comply with Applicable Law or requests by a Regulatory Authority), early access programs or for compassionate or similar use, shall not be considered a First Commercial Sale.

1.24 "**GAAP**" means generally accepted accounting principles in the United States, consistently applied.

1.25 "**Governmental Authority**" will mean any supranational, federal, national, multinational, regional, provincial, county, city, state, or local government, court, governmental agency, authority, board, bureau, instrumentality, regulatory body, or other political subdivision, domestic or foreign.

1.26 "**Indemnitee**" has the meaning set forth in Section 7.1.

1.27 "**Know-How**" means technical information and materials, including without limitation technology, software, instrumentation, devices, data, biological materials, assays, constructs, compounds, inventions (patentable or otherwise), practices, methods, algorithms, models, knowledge, know-how, trade secrets, skill and experience (including without limitation all biological, chemical, pharmacological, toxicological, clinical, assay and related know-how and trade secrets, and all manufacturing data, manufacturing processes, specifications, assays, quality control and testing procedures, regulatory submissions and related know-how and trade secrets).

1.28 "**Knowledge**" means, with respect to the applicable Party, that the officers of such Party have actual, or reasonably should have, knowledge of facts that make the associated statement true or untrue.

1.29 "**License**" means any agreement pursuant to which Novan grants to a Third Party (a "**Licensee**") a license, sublicense, option, or other right to any Novan Patents or Regulatory Filings or Regulatory Approvals relating to the Products; *provided, however*, that a License shall not include any agreement pursuant to which Novan or any of its Affiliates grants a license or sublicense of any of its intellectual property rights (i) solely to conduct research, (ii) solely to manufacture a Product, or (iii) otherwise to service providers solely on a non-exclusive basis in the ordinary course of Development or Commercialization of a Product (e.g., material transfer agreements, distribution agreements, and consulting agreements).

1.30 "**Licensee**" has the meaning set forth in the definition of License.

1.31 "**Losses**" has the meaning set forth in Section 7.1.

1.32 "**Milestone Payment**" has the meaning set forth in Section 4.2.

1.33 "**NDA**" means a New Drug Application filed with the FDA that is required for approval for Commercialization of a Product in the United States, or its foreign equivalent in the Territory.

1.34 "**Net Sales**" means, with respect to any Product, the total invoiced sales price received for such Product sold by Novan or its Affiliates or Licensees less (a) sales taxes or other taxes, (b) shipping and insurance charges, (c) actual allowances, rebates, credits, or refunds for returned or defective Product, (d) trade discounts and quantity discounts, retroactive price reductions, or other allowances actually allowed or granted from the billed amount and taken, (e) rebates, credits, and chargeback payments (or the equivalent thereof) granted to managed health care organizations, wholesalers, or to federal, state/provincial, local and other governments, including their agencies, purchasers, and/or reimbursers, or to trade customers, and (f) any import or export duties, tariffs, or similar charges incurred with respect to the import or export of such Product into or out of any country in the Territory for use in the Territory. Such Product will be considered sold when paid for. Notwithstanding the foregoing, Net Sales shall not include, and shall be deemed zero with respect to, (1) the distribution of reasonable quantities of promotional samples of a Product, (2) Product provided for clinical trials or research purposes, or charitable or compassionate use purposes or (3) Product provided to any Affiliate or Licensee under an agreement in which Net Sales by such Affiliate or Licensee shall be subject to Royalties under Section 4.3. For the avoidance of doubt, any revenue from sales of Product that is booked by Novan or its Affiliates or Licensees and recorded as revenue in accordance with GAAP will be counted as Net Sales, subject to the deductions set forth above in this Section 1.34, without duplication.

1.35 "**Novan Patents**" means any and all patents and patent applications in the Territory that are Controlled by Novan or its Affiliates and Cover a Product or its manufacture, use, sale, export or import.

1.36 "**Novan Technology**" means berdazimer sodium (NVN1000).

1.37 "**Patent Rights**" means (a) patents and patent applications, and any foreign counterparts thereof, (b) all divisionals, continuations, continuations-in-part of any of the foregoing, and any foreign counterparts thereof, and (c) all patents issuing on any of the foregoing, and any foreign counterparts thereof, together with all registrations, reissues, re-examinations, supplemental protection certificates, substitutions or extensions thereof, and any foreign counterparts thereof.

1.38 "**Person**" means any natural person, firm, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, business trust, unincorporated organization, Governmental Authority or any other legal entity, including

without limitation public bodies, whether acting in an individual, fiduciary or other capacity.

1.39 "**Prior CDA**" means the Mutual Nondisclosure Agreement between the Parties, effective as of January 21, 2019.

1.40 "**Product**" means (a) SB206 and/or (b) any other pharmaceutical product that incorporates and/or uses the Novan Technology to the extent that such product is Commercialized by Novan and/or its Affiliates or Licensees for the treatment of molluscum contagiosum in humans.

1.41 "**Public Official or Entity**" means (a) any officer, employee (including without limitation physicians, hospital administrators or other healthcare professionals), agent, representative, department, agency, de facto official, representative, corporate entity, instrumentality or subdivision of any government, military or international organization, including without limitation any ministry or department of health or any state-owned or affiliated company or hospital, or (b) any candidate for political office, any political party or any official of a political party.

1.42 "**Purchase Price**" has the meaning set forth in Section 4.1.

1.43 "**Receiving Party**" has the meaning set forth in Section 5.1.

1.44 "**Regulatory Approval**" means approval of an NDA by the FDA for the applicable Product in the United States, or approval by the applicable Regulatory Authority of a regulatory approval application that is equivalent to an NDA in a country in the Territory other than the United States, and any approvals, licenses, registrations, or authorizations necessary for the manufacture, marketing, and sale of Product in such country and, where relevant, including without limitation any reimbursement or pricing approvals. For the sake of clarity, except as otherwise expressly provided herein, "Regulatory Approval" will not be achieved for a Product in a country or, where applicable, a multinational jurisdiction until any applicable approvals relating to pricing and reimbursement from the relevant Regulatory Authorities have been obtained in such country or such jurisdiction.

1.45 "**Regulatory Authority**" means any national or supranational Governmental Authority, including without limitation FDA, that has responsibility for granting any licenses or approvals or granting pricing and/or reimbursement approvals necessary for the development, marketing, and sale of a Product in any country.

1.46 "**Regulatory Exclusivity**" means any exclusive marketing rights or data exclusivity rights conferred by any Governmental Authority under Applicable Law with respect to a Product in a country or jurisdiction in the Territory to prevent Third Parties from Commercializing such Product in such country or jurisdiction, other than a Patent Right, including without limitation orphan drug exclusivity, pediatric exclusivity, rights conferred in the U.S. under the Hatch-Waxman Act or the FDA Modernization Act of 1997, in the EU under Directive 2001/83/EC, or rights similar thereto in other countries or regulatory jurisdictions in the Territory.

1.47 "**Regulatory Filings**" means any and all regulatory applications, filings, modifications, amendments, supplements, revisions, reports, submissions, authorizations, and Regulatory Approvals, and associated correspondence required to Develop and Commercialize Products in the Territory, including without limitation any reports or amendments necessary to maintain Regulatory Approvals.

1.48 "**Royalties**" has the meaning set forth in Section 4.3.1.

1.49 "**Royalty Term**" has the meaning set forth in Section 4.3.2.

1.50 "**SEC**" has the meaning set forth in Section 3.3.2.

1.51 "**SB206**" means the composition described in Investigational New Drug application #137015 in section 3.2.P.2.1, as may be amended from time to time.

1.52 "**Securities Act**" means the Securities Act of 1933, as amended.

1.53 "**Term**" has the meaning set forth in Section 6.1.

1.54 "**Territory**" means the United States, Canada and Mexico and all of their respective territories and possessions.

1.55 "**Third Party**" means any Person other than Novan, Ligand, and their respective Affiliates.

1.56 "**United States**" or "**U.S.**" means the United States of America and all of its territories and possessions.

1.57 "**Valid Claim**" means either (a) a claim of an issued and unexpired patent or a supplementary protection certificate within the Novan Patents that has not been held permanently revoked, unenforceable, or invalid by a decision of a court or other Governmental Authority of competent jurisdiction, unappealable or unappealed within the time allowed for appeal and that is not admitted to be invalid or unenforceable through reissue, disclaimer, or otherwise (i.e., only to the extent the subject matter is disclaimed or is sought to be deleted or amended through reissue), or (b) a claim of a pending patent application within the Novan Patents that has not been abandoned, finally rejected, or expired without the possibility of appeal or refiling.

ARTICLE 2

NOVAN RESPONSIBILITIES; LICENSING; REPORTING

2.1 Responsibilities. Novan will have the sole right, as between the Parties, to Develop and Commercialize Products in the Field, including without limitation determining the marketing and regulatory strategies for seeking (if and when appropriate) Regulatory Approvals and Regulatory Exclusivity in the Territory for Products in the Field, filing for such Regulatory Approvals and Regulatory Exclusivity for Products in the Field in the

Territory, preparing, submitting, and maintaining any and all Regulatory Filings and Regulatory Approvals for Products in the Field in the Territory, and seeking any necessary Regulatory Approvals of Regulatory Authorities for Product labeling and promotional materials to be used in the applicable jurisdiction(s) in connection with Commercializing Products in the Field. As between the Parties, Novan will be responsible for all costs and expenses incurred by Novan in connection with the foregoing activities, except for the Purchase Price paid by Ligand pursuant to Section 4.1. If an Affiliate and/or a Licensee meets or fulfills any or all of the obligations of Novan under this Agreement, and/or observes any of the terms or conditions hereof, then Novan will be deemed to have met or fulfilled such obligations or observed such terms or conditions, as the case may be.

2.2 Development Plan and Development Budget. Novan will conduct the activities set forth in the Development plan set forth on Appendix A (the "**Development Plan**") in accordance with the Development budget set forth on Appendix B (the "**Development Budget**"). Novan may update or modify in good faith the Development Plan and the Development Budget from time to time in its sole discretion without Ligand's consent; *provided* that Novan must obtain Ligand's consent (not to be unreasonably withheld, delayed or conditioned) with respect to any updates or modifications that are not made to implement reasonable and customary modifications in Development activities, or that could reasonably materially adversely affect Ligand's ability to receive Milestone Payments and Royalties under this Agreement. Novan will use the Purchase Price paid by Ligand pursuant to Section 4.1 solely to fund activities in accordance with the Development Plan and the Development Budget, including for the purpose of seeking Regulatory Approval of the Products in the Field, each of which may be modified from time to time in accordance with this Section 2.2. Without limiting any other remedies available, if all Development of Products in the Field in the Territory is ceased prior to the first Regulatory Approval of Products in the Territory, Novan will pay to Ligand an amount equal to the Purchase Price less the amounts spent in accordance with the Development Budget on Development activities conducted prior to such cessation.

2.3 Diligence. Novan will use Commercially Reasonable Efforts to carry out its responsibilities under this Agreement. During the Term, Novan will use Commercially Reasonable Efforts to (i) Develop and Commercialize at least one (1) Product in the Field in the Territory, (ii) initiate a Phase 3 trial with respect to at least one (1) Product by December 31, 2019 and (iii) file an NDA with respect to at least one (1) Product by June 30, 2021. Without limiting the foregoing, Novan will use Commercially Reasonable Efforts to perform all of the activities set forth in the Development Plan in accordance with the timelines set forth therein.

2.4 Licensing.

2.4.1 Right to License. Novan will retain the right to perform its activities under this Agreement through Licensees, subject to this Section 2.4. Novan will remain responsible for the performance of Licensees as set forth in this Agreement, including without limitation with respect to all payments due hereunder. Novan will provide Ligand with notice of the entering into of each License promptly after execution of such License. In

addition, Novan will provide a copy of any such License to Ligand after execution of such License. Ligand will treat Licenses as Confidential Information of Novan, subject to the terms of Article 5.

2.4.2 Terms. Each License granted by Novan pursuant to Section 2.4.1 will contain terms and conditions consistent in all material respects with Novan's obligations in this Agreement. Without limiting the foregoing, agreements with any Licensee that include the right to Commercialize any Product will contain provisions consistent with the following: (a) the requirements set forth in Sections 4.4, 4.5, and 8.2.19, and (b) a requirement that such Licensee comply with the confidentiality and non-use provisions of Article 5 with respect to both Parties' Confidential Information.

2.4.3 Subcontracting. Novan may utilize the services of Third Parties, including without limitation Third Party contract research organizations, contract manufacturing organizations, suppliers, partners and service providers to perform its Development and Commercialization activities; *provided* that Novan will remain at all times fully responsible for its respective responsibilities under this Agreement. Any agreement with a Third Party to perform Novan's responsibilities under this Agreement will include confidentiality and non-use provisions which are no less stringent than those set forth in Article 5.

ARTICLE 3

REGULATORY AND PATENT MATTERS

3.1 Regulatory Filings. As between the Parties, Novan will solely own and control any and all Regulatory Approvals and any and all other Regulatory Filings submitted in connection with seeking and maintaining Regulatory Approvals for Products in the Field in the Territory.

3.2 Regulatory Communications. Novan will be the sole contact, as between the Parties, with the applicable Regulatory Authorities and will be solely responsible, using Commercially Reasonable Efforts, for all communications with such Regulatory Authorities that relate to any Regulatory Approvals or other Regulatory Filings prior to and after any Regulatory Approval with respect to Products in the Field in the Territory. If Ligand is required to respond to any requests from or by any and all Regulatory Authorities with respect to any Product, Novan will have an opportunity to comment on the response to the extent such response may materially impact a Product before Ligand submits such response and Ligand will provide a copy of the final response to Novan.

3.3 Reports.

3.3.1 Within thirty (30) days after the end of each Calendar Quarter during the Term, Novan will deliver to Ligand a report containing information regarding its Development and Commercialization activities conducted by or on behalf of Novan and its Affiliates and Licensees during such Calendar Quarter. Without limiting the foregoing, such report shall include a description of all material activities in connection with any Regulatory

Approvals and Regulatory Exclusivity for Products in the Field in the Territory, preparing, submitting, and maintaining any and all Regulatory Filings and Regulatory Approvals for Products in the Field in the Territory, and seeking any necessary Regulatory Approvals of Regulatory Authorities for Product labeling and promotional materials to be used in the applicable jurisdiction(s) in connection with Commercializing Products in the Field. In addition, such reports shall contain a description of Novan's performance against the activities and timelines set forth in the Development Plan and costs and expenses incurred against the Development Budget.

3.3.2 If at any time Novan is no longer required to publicly disclose audited financial reports with U.S. Securities and Exchange Commission ("**SEC**"), Novan will furnish to Ligand, within forty-five (45) days after the last day of each quarter, financial statements, which shall include a balance sheet as of the last date of the applicable quarter and a statement of income and operating expenses with respect to such quarter.

3.3.3 Novan will provide Ligand with prompt written notice at such time as (a) Novan becomes insolvent as defined in Applicable Law, including without limitation interpretations in applicable case law; (b) Novan's liabilities (which, for clarity, shall not be deemed to include warrants and preferred stock issued by Novan) exceed its assets; (c) Novan is unable to pay its debts as they become due; (d) there is an occurrence of a default by Novan with respect to any of its debt or payment obligations or any agreement having a materially adverse effect on this Agreement or the Development of Products; (e) Novan suspends, closes, or otherwise ceases to operate a portion of its business having a material adverse effect on Novan's ability to comply with its obligations and/or Ligand's ability to receive payments under this Agreement; or (f) any corporate or other action is taken by Novan for the purpose of effecting any of the foregoing. In addition, if at any time Novan is no longer required to publicly disclose audited financial reports with the SEC, within fifteen (15) days of a written request of Ligand (such request not to be made more than four times during any Calendar Year), Novan will provide Ligand with its most recent audited financial reports. Ligand will treat all notices and financial reports (and the information contained therein) as Confidential Information of Novan, subject to the terms of Article 5.

3.3.4 It is the intention of the Parties that the sale, transfer, assignment and conveyance of the Royalties contemplated by this Agreement constitute a sale of the Royalties from Novan to Ligand and not a financing transaction, borrowing or loan. In connection therewith, Novan shall treat the sale, transfer, assignment and conveyance of the Royalties as a sale of an "account" or a "payment intangible" (as appropriate) in accordance with the Uniform Commercial Code in the applicable jurisdiction ("**UCC**"), and Novan hereby authorizes Ligand to file financing statements (and continuation statements with respect to such financing statements when applicable) naming Novan as the debtor and Ligand as the secured party in respect of the Royalties. Not in derogation of the foregoing statement of the intent of the Parties in this regard, and for the purposes of providing additional assurance to Ligand in the event that, despite the intent of the Parties, the sale, transfer, assignment and conveyance contemplated hereby is hereafter held not to be a sale, Novan does hereby grant to Ligand, as security for the obligations of Novan hereunder, a first priority security interest in and to all right, title and interest of Novan, in, to and under

the Royalties and any "proceeds" (as such term is defined in the UCC) thereof, and Novan does hereby authorize Ligand, from and after the Effective Date, to file such financing statements (and continuation statements with respect to such financing statements when applicable) as may be necessary to perfect such security interest. Prior to filing any financing statement, Ligand shall provide a copy of such financing statement to Novan to review and provide comments on such financing statement, and shall in good faith take such comments into account.

3.4 Patent Matters.

3.4.1 As between the Parties, Novan will have the sole responsibility, at its expense, for the preparation, filing, prosecution, and maintenance of the Novan Patents, including without limitation any patent term extensions. Novan will provide copies to Ligand of any and all correspondence with the PTO relating to the Novan Patents that are owned by Novan. During the Term, Novan will maintain the Novan Patents owned by Novan comprising issued patents, and with respect to the Novan Patents controlled but not owned by Novan, will maintain such Novan Patents to the extent Novan has the right and obligation to do so, in each case in a manner that would not result in a material adverse effect on the Royalties. In no event will Novan permit any of the Novan Patents to be abandoned in any country in the Territory in any manner that could reasonably have a material adverse effect on Ligand's ability to receive the Royalties. Novan will provide Ligand with notice of any decision to abandon any of the Novan Patents at least thirty (30) days prior to any abandonment thereof.

3.4.2 In the event that either Party has cause to believe that a Third Party may be infringing or misappropriating any of the Novan Patents in the Field in the Territory, it will promptly notify the other Party in writing, identifying the alleged infringer and the alleged infringement or misappropriation complained of and furnishing the information upon which such determination is based. As between the Parties, Novan will have the sole right to stop such infringement or misappropriation of the Novan Patents by such Third Party in the Field in the Territory or settle with such Third Party. Upon reasonable request by Ligand, Novan will give Ligand all reasonable information with respect to any such enforcement action or settlement. As between the Parties, Novan will bear all costs and expenses (including without limitation any costs or expenses incurred that exceed the amounts recovered by Novan) in pursuing any such enforcement action or settlement and will be responsible for payments awarded against or agreed to be paid by Novan. After deducting any amounts recovered by Novan, its Affiliates and Licensees in connection with the foregoing, whether by settlement or judgment, to reimburse Novan, its Affiliates and Licensees for their respective reasonable costs and expenses in making such recovery, Novan will retain any remainder; *provided* that, solely for purposes of Section 4.3, to the extent such remaining amount constitutes lost profits and/or recovery resulting from sales by a Third Party of a Product in the Territory that infringes a Valid Claim, such remaining amount will be deemed to be Net Sales in the Calendar Quarter in which such amounts were received by or paid, and thereby will be subject to the Royalties payments contemplated in Section 4.3.

3.4.3 Novan will promptly inform Ligand in writing of any actual,

threatened, or alleged infringement or misappropriation, based on the making, using, selling, or offering for sale of Products in the Field in the Territory, of a Third Party's intellectual property rights of which it becomes aware.

ARTICLE 4

PAYMENTS

4.1 Purchase Price. In consideration for the rights transferred or granted under this Agreement to Ligand, including without limitation the sale of the Royalties, Ligand will pay Novan a one-time payment of Twelve Million Dollars ($12,000,000) (the "**Purchase Price**") within ten (10) days after the Effective Date to an account designated in writing by Novan.

4.2 Milestone Payments. In partial consideration for the Purchase Price paid to Novan under Section 4.1, Novan will pay Ligand each milestone payment set forth in the table in this Section 4.2 below (each, a "**Milestone Payment**") after the first achievement of the corresponding milestone event set forth in the table in this Section 4.2 below (each, a "**Milestone Event**") for a Product. All such payments are non-refundable and non-creditable. For the avoidance of doubt, each of the Milestone Payments shall be payable no more than one time. Novan will notify Ligand of any achievement of a Milestone Event within five (5) Business Days after Novan achieves such Milestone Event or otherwise obtains information from its Affiliates and Licensees which establish such achievement. Ligand may submit an invoice to Novan for each Milestone Payment at any time after the corresponding Milestone Event is achieved. Novan will pay any Milestone Payments payable under this Section 4.2 within thirty (30) days after the date of Novan's required notice under this Section 4.2.

Milestone Event	**Milestone Payment**
First filing with the FDA of an NDA for a Product	US$1,000,000
First Regulatory Approval by the FDA of an NDA for a Product	US$4,000,000
First time aggregate Net Sales of Products in the Field in the Territory during the Term reach one hundred million Dollars (US$100,000,000)	US$5,000,000
First time aggregate Net Sales of Products in the Field in the Territory during the Term reach two hundred fifty million Dollars (US$250,000,000)	US$10,000,000

4.3 Royalty Payments.

4.3.1 Royalties on Products. In partial consideration for the Purchase Price paid to Novan under Section 4.1, Novan hereby sells to Ligand all of its right, title, and interest in and to royalties on annual aggregate Net Sales of Products in the Field in the Territory in each Calendar Year during the Royalty Term, in an amount calculated by multiplying the applicable royalty rate in the table below by the corresponding amount of incremental Net Sales of Products in the Field in the Territory ("**Royalties**"). Novan shall have no right, title, or interest in the Royalties and Novan shall remit all Royalties to Ligand in accordance with Section 4.4. Ligand's ownership interest in the Royalties shall vest upon Novan's receipt of payment of the Purchase Price pursuant to Section 4.1. Ligand is acquiring no rights other than those expressly assigned herein. For the avoidance of doubt, Ligand is acquiring no rights under any intellectual property of Novan, including any Novan Patents.

Net Sales Tier	Royalty Rate
For that portion of annual aggregate Net Sales of Products in the Field in the Territory in a Calendar Year that are less than one hundred million Dollars (US$100,000,000)	7%
For that portion of annual aggregate Net Sales of Products in the Field in the Territory in a Calendar Year that are greater than or equal to one hundred million Dollars (US$100,000,000) but less than one hundred fifty million Dollars (US$150,000,000)	8%
For that portion of annual aggregate Net Sales of Products in the Field in the Territory in a Calendar Year that are greater than or equal to one hundred fifty million Dollars (US$150,000,000) but less than two hundred million Dollars (US$200,000,000)	9%
For that portion of annual aggregate Net Sales of Products in the Field in the Territory in a Calendar Year that are greater than or equal to two hundred million Dollars (US$200,000,000)	10%

4.3.2 Royalty Term. Royalties will be remitted under this Section 4.3, on a country-by-country basis, commencing on First Commercial Sale of the first Product in such country until the last to occur of: (i) the expiration of the last-to-expire Valid Claim in such country that Covers a Product; (ii) the expiration of Regulatory Exclusivity in such country covering a Product; and (iii) the fifteenth (15^{th}) anniversary of the First Commercial Sale of such first Product in such country (the **"Royalty Term"**).

4.4 Royalty Reports and Payments. During the Term following the First Commercial Sale of any Product, within forty-five (45) days after the end of each of the first three (3) Calendar Quarters of each Calendar Year and within sixty (60) days after the end of the last Calendar Quarter of each Calendar Year, Novan will pay to Ligand Royalties due

for such Calendar Quarter calculated in accordance with Section 4.3 and will deliver to Ligand a Royalties report showing, on a country-by-country basis for the Territory, the information set forth in this Section 4.4 below:

4.4.1 the gross amount invoiced for and the amounts received and the Net Sales resulting from sales of Products sold by Novan, its Affiliates or Licensees during such Calendar Quarter, including without limitation the specific deductions applied in the calculation of such Net Sales amounts, and any amounts required to be included in Net Sales pursuant to Section 3.4.2;

4.4.2 the Royalties (in Dollars) that have accrued in such Calendar Quarter with respect to such Net Sales;

4.4.3 withholding taxes, if any, required by Applicable Law to be deducted with respect to such Royalties; and

4.4.4 the rate of exchange used by Novan in determining the amount of Dollars due hereunder.

If no Royalties are due for any Calendar Quarter hereunder, Novan will so report. Novan will keep, and will require in its Licenses, and use good faith efforts to enforce such requirements, its Licensees and their respective Affiliates to keep (all in accordance with GAAP), complete and accurate records in sufficient detail to properly reflect the Net Sales to enable the Royalties due hereunder to be determined for a period of at least three (3) Calendar Years.

In addition, Novan will deliver to Ligand no later than twenty-five (25) days following the end of each Calendar Quarter a preliminary statement setting forth the actual Net Sales for the first two (2) months of such Calendar Quarter and estimated Net Sales for the third (3rd) month of such Calendar Quarter, the calculation of Royalties or Net Sales due on a country-by-country basis in the Territory (based on such actual and estimated Net Sales) and, if applicable, the exchange rate to be utilized by Novan to convert a local currency payment to Dollars.

4.5 Audits of Royalty Reports. Upon the written request of Ligand and not more than once in any twelve (12) month period, Novan will permit an independent certified public accounting firm selected by Ligand and reasonably acceptable to Novan, at Ligand's expense, to have access during normal business hours to such records of Novan as may be necessary to verify the accuracy of the payment reports made and the amounts owed to Ligand under this Agreement for any Calendar Year period ending not more than thirty-six (36) months prior to the date of such request. Such rights with respect to any Calendar Year will terminate three (3) years after the end of any such Calendar Year. Ligand will provide Novan with a copy of such accounting firm's written report within thirty (30) days after completion of such report. If such accounting firm concludes that an overpayment or underpayment was made, then the owing Party will pay the amount due within thirty (30) days after the date Ligand delivers to Novan such accounting firm's written report so concluding, and any accrued interest as determined in accordance with Section 4.9 from the

date such overpayment was paid or such underpayment was originally due, as applicable, until payment thereof. Ligand will bear the full cost of such audit unless such audit discloses that the additional payment payable by Novan for the audited period is more than five percent (5%) of the amount of the payments due for that audited period or Ten Thousand Dollars, whichever is greater, in which case Novan will pay the reasonable documented fees and expenses charged by the accounting firm. If the Parties dispute any such accounting firm's conclusion, they will resolve such issue pursuant to Article 10. Ligand will treat all information subject to review under Section 4.5 in accordance with the confidentiality provisions of this Agreement.

4.6 Currency of Payments. All payments under this Agreement will be made in Dollars by wire transfer of immediately available funds into an account designated by the Party receiving the funds. Net Sales outside of the U.S. will be first determined in the currency in which they are earned and will then be converted into an amount in Dollars using Novan's customary and usual conversion procedures used in preparing its financial statements pursuant to GAAP for the applicable reporting period.

4.7 Blocked Currency. In each country in the Territory where the local currency is blocked and cannot be removed from the country, at the election of Ligand, Royalties accrued on Net Sales in such country will be paid to Ligand in local currency by deposit in a local bank in such country designated by Ligand.

4.8 Taxes. Each Party will be solely responsible for the payment of all taxes imposed on its share of income arising directly or indirectly from the efforts of the Parties under this Agreement. The Parties agree to cooperate with one another and use reasonable efforts to reduce or eliminate tax withholding or similar obligations in respect of Royalties, Milestone Payments, and other payments made by Novan to Ligand under this Agreement. To the extent Novan is required under the Internal Revenue Code of 1986, as amended (the **"Code"**), or any other tax laws to deduct and withhold taxes on any payment to Ligand, Novan will deduct from such royalty or other payment the tax amount to be withheld, and Novan will pay the amounts of such taxes to the proper Governmental Authority in a timely manner and promptly transmit to Ligand an official tax certificate or other evidence of such withholding sufficient to enable Ligand to claim such payment of taxes. Upon Novan's reasonable request, Ligand will provide Novan any tax forms that may be reasonably necessary in order for Novan to determine whether to withhold tax on any such payments or to withhold tax on such payments at a reduced rate under the Code or any other tax laws, including without limitation any applicable bilateral income tax treaty. Novan will give reasonable support so that any withholding tax or value added tax may be minimized or avoided to the extent permitted under the Applicable Laws and treaties. Each Party will provide the other with reasonable assistance to enable the recovery, as permitted by Applicable Laws, of withholding taxes, value added taxes, or similar obligations resulting from payments made under this Agreement, such recovery to be for the benefit of the Party bearing such withholding tax or value added tax. Novan will require its Licensees to cooperate with Ligand in a manner consistent with this Section 4.8.

4.9 Interest Due. Novan will pay Ligand interest on any payments that are not

paid on or before the date such payments are due under this Agreement at a monthly interest rate equal to the U.S. prime interest rate, as reported by *The Wall Street Journal* (New York edition) for the first Business Day of the month in which such payment was due plus one percentage point (1 ppt), or the maximum applicable legal rate, if less, calculated based on the total number of days payment is delinquent.

ARTICLE 5

NONDISCLOSURE OF CONFIDENTIAL INFORMATION

5.1 Nondisclosure. Each Party agrees that, during the Term and for a period of five (5) years thereafter (or, for any trade secret, for so long as the Disclosing Party maintains such trade secret as a trade secret), a Party (the "**Receiving Party**") receiving Confidential Information of the other Party (the "**Disclosing Party**") will (a) maintain in confidence such Confidential Information, (b) not disclose such Confidential Information to any Third Party without the prior written consent of the Disclosing Party, except for disclosures expressly permitted in this Article 5, and (c) not use such Confidential Information for any purpose except those expressly permitted by this Agreement. The Parties agree that any Confidential Information (within the meaning of the Prior CDA) disclosed by the Parties or their Affiliates pursuant to the Prior CDA will be Confidential Information within the meaning of, and will be subject to, this Article 5. The Agreement shall be deemed Confidential Information of both Parties.

5.2 Exceptions. The obligations under Section 5.1 will not apply with respect to any portion of Confidential Information of a Disclosing Party that the Receiving Party can show by competent evidence:

5.2.1 at the time of disclosure to Receiving Party is in the public domain;

5.2.2 after disclosure, becomes part of the public domain by publication or otherwise, except by breach of this Agreement by the Receiving Party or anyone to whom the Receiving Party disclosed Confidential Information;

5.2.3 was (a) in the Receiving Party's possession at the time of disclosure without any obligation to keep it confidential or any restriction on its use or (b) subsequently and independently developed by the Receiving Party's employees who had no knowledge of and who did not use, rely on or refer to any of Disclosing Party's Confidential Information, in each case as shown by Receiving Party's records; or

5.2.4 is received by the Receiving Party from a Third Party who has the lawful right to disclose such Confidential Information and who has not obtained such Confidential Information either directly or indirectly from the Disclosing Party.

5.3 Authorized Disclosure. To the extent (and only to the extent) that it is reasonably necessary or appropriate to fulfill its obligations or exercise its rights under this Agreement, the Receiving Party may disclose Confidential Information belonging to the Disclosing Party in the following instances:

5.3.1 prosecuting or defending litigation;

5.3.2 subject to Sections 5.4 and 5.5, required by Applicable Laws (including without limitation the rules and regulations of the SEC or any national securities exchange) and with judicial process; and

5.3.3 to Affiliates in connection with the performance of this Agreement and solely on a need-to-know basis; to potential or actual collaborators (including without limitation actual and potential Licensees), who prior to disclosure must be bound by written obligations of confidentiality and non-use no less restrictive than the obligations set forth in this Article 5; to potential or actual investment bankers, investors, lenders, acquirers, merger partners or other potential financial partners, and their attorneys and agents, who prior to disclosure must be bound by written or professional obligations of confidentiality and non-use no less restrictive than the obligations set forth in this Article 5; or employees, independent contractors (including without limitation contract research organizations, contract manufacturing organizations, consultants and clinical investigators) or agents, each of whom prior to disclosure must be bound by written obligations of confidentiality and non-use no less restrictive than the obligations set forth in this Article 5; *provided*, *however*, that the Receiving Party will remain responsible for any failure by any Person who receives Confidential Information pursuant to this Section 5.3.3 to treat such Confidential Information as required under this Article 5.

If and whenever any Confidential Information is disclosed in accordance with this Section 5.3, such disclosure will not cause any such information to cease to be Confidential Information except to the extent that such disclosure results in a public disclosure of such information (other than in breach of this Agreement). Where reasonably possible and subject to Sections 5.4 and 5.5, the Receiving Party will notify the Disclosing Party in writing of the Receiving Party's intent to make such disclosure pursuant to Sections 5.3.1–5.3.3 sufficiently prior to making such disclosure so as to allow the Disclosing Party adequate time to take whatever action appropriate to protect the confidentiality of the information while still permitting such disclosure, and the Receiving Party will cooperate with the Disclosing Party in such efforts.

5.4 Required Disclosure. A Receiving Party may disclose Confidential Information of the Disclosing Party to the extent such disclosure is required pursuant to interrogatories, judicial requests for information or documents, subpoena, civil investigative demand issued by a court or Governmental Authority or as otherwise required by Applicable Law; *provided, however,* that the Receiving Party will notify the Disclosing Party promptly in writing upon receipt thereof, giving (where practicable) the Disclosing Party sufficient advance notice to permit it to oppose, limit or seek a protective order or confidential treatment for such disclosure; and *provided, further,* that the Receiving Party will furnish only that portion of the Confidential Information that it is advised by counsel is legally required whether or not a protective order or other similar order is obtained by the Disclosing Party.

5.5 Securities Filings. In the event a Party proposes to file with the SEC or the

securities regulators of any state or other jurisdiction a registration statement or any other disclosure document which describes or refers to this Agreement under the Securities Act, the Securities Exchange Act, of 1934, as amended, or any other applicable securities laws, such Party will notify the other Party in writing of such intention and will provide such other Party with a copy of relevant portions of the proposed filing not less than five (5) days prior to such filing (and any revisions to such portions of the proposed filing a reasonable time prior to the filing thereof), including without limitation any appendices to this Agreement, will consider in good faith the other Party's comments and will use reasonable efforts to obtain confidential treatment of any information concerning this Agreement that such other Party requests, no later than two (2) days prior to such filing, be kept confidential, and will only disclose Confidential Information that it is advised by counsel is legally required to be disclosed. No such notice will be required under this Section 5.5 if the substance of the description of or reference to this Agreement contained in the proposed filing has been included in any previous filing made by the either Party hereunder or otherwise approved by the other Party (including pursuant to Section 5.6).

5.6 Disclosure of Agreement. Except for a press release and a Current Report on Form 8-K previously approved in form and substance by Ligand and Novan or any other public announcement using substantially the same text as such press release or Form 8-K, or as otherwise permitted under Section 5.3.3 or Section 5.5, neither Party may issue any press release or make any other public statement or other disclosure disclosing to any Third Party any information relating to this Agreement or its terms or the transactions contemplated hereby without the prior written consent of the other Party, such consent not to be unreasonably withheld, delayed, or conditioned; *provided* that either Party shall be entitled to respond to analysts' and investors' questions in the ordinary course and in a manner substantially consistent with any previous disclosure made in accordance with this Section 5.6.

ARTICLE 6

TERM AND TERMINATION

6.1 Term and Expiration. The term of this Agreement will commence on the Effective Date and will continue for as long as payments are due and payable under this Agreement or until such date as this Agreement is sooner terminated in accordance with Section 6.2, 6.3 or 6.4 or by mutual written consent of the Parties (the "**Term**").

6.2 Termination by Ligand. Ligand may terminate this Agreement for any or no reason upon ninety (90) days prior written notice to Novan.

6.3 Termination for Material Breach.

6.3.1 If Ligand believes that Novan is in material breach of this Agreement, then Ligand may deliver notice of such breach to Novan. In such notice Ligand will identify with specificity the alleged breach and the actions or conduct that it wishes Novan to take for an acceptable and prompt cure of such breach; *provided* that such identified actions will not be binding upon Novan with respect to the actions that it may need to take to cure such

breach. Novan will have sixty (60) days to cure such breach. If Novan fails to cure such breach within such cure period, Ligand may, subject to Section 6.3.2, terminate this Agreement immediately by providing Novan a written notice at the end of such cure period. Notwithstanding the foregoing, if Novan fails to cure such breach within such cure period, but within such cure period Novan is using good faith efforts to cure such breach, then Ligand may not terminate this Agreement for so long as Novan is using good faith efforts to cure such breach.

6.3.2 Notwithstanding the foregoing, if Novan disputes in good faith the existence or materiality of such breach and provides notice to Ligand of such dispute within such cure period, Ligand will not have the right to terminate this Agreement in accordance with this Section 6.3 unless and until it has been determined in accordance with Article 10 that this Agreement was materially breached by Novan and Novan failed to cure such breach within the applicable cure period. It is understood and acknowledged that during the pendency of such a dispute, all of the terms and conditions of this Agreement will remain in effect and the Parties will continue to perform all of their respective obligations hereunder.

6.4 Termination for Insolvency. To the extent permitted under Applicable Law, Ligand may terminate this Agreement upon written notice to Novan on or after the occurrence of any Bankruptcy Event relating to Novan.

6.5 Effect of Expiration or Termination of Agreement. Expiration or termination of this Agreement for any reason will not (a) release any Party from any obligation that has accrued prior to the effective date of such expiration or termination, (b) preclude any Party from claiming any other damages, compensation, or relief that it may be entitled to upon such expiration or termination, or (c) terminate any right to obtain performance of any obligation provided for in this Agreement that will survive expiration or termination. Without limiting the foregoing, upon expiration or termination of this Agreement, the rights and obligations of the Parties under this Section 6.5 and Articles 1, 4, 5 (for the term set forth in Section 5.1), 7, 9, 10, and 11 will survive such expiration or termination. Without limiting any other remedies available, if this Agreement is terminated by Ligand pursuant to (x) Section 6.3 for a material breach of Section 2.3 or (y) Section 6.4, then within thirty (30) days following the effective date of such termination, Novan shall pay to Ligand an amount equal to the Purchase Price less any payments made by Novan under this Agreement as of the effective date of termination. Upon expiration of this Agreement or early termination of this Agreement, Ligand will have the right to retain all amounts previously paid to Ligand by Novan.

ARTICLE 7

INDEMNITY

7.1 Novan Indemnity Obligations. Novan will defend Ligand, its Affiliates, and their respective directors, officers, employees, contractors and agents (collectively, the "**Indemnitees**"), and will indemnify and hold harmless the Indemnitees, from and against any liabilities, losses, costs, damages, fees, or expenses incurred by such Indemnitees, and

reasonable attorney's fees and other legal expenses with respect thereto, ("**Losses"**) arising out of any allegation, claim, action, lawsuit, or other proceeding ("**Claims**") brought against any Indemnitee to the extent directly resulting from or relating to: (a) any breach by Novan of any of its representations, warranties, covenants, or obligations pursuant to this Agreement, (b) research, Development, manufacturing, Commercialization, transfer, importation or exportation, labeling, handling or storage, or use of or other exploitation of any Product by or on behalf of Novan, its Affiliates, Licensees, distributors, or contractors, including without limitation Claims brought following the Effective Date based on product liability, bodily injury, risk of bodily injury, death, or property damage, (c) any allegations of infringement or misappropriation of the intellectual property of any Third Party with respect to any Product or the Novan Patents, (d) the gross negligence or willful misconduct of Novan, its Affiliates and/or Licensees, or (e) any violation of Applicable Law by Novan, its Affiliates, or Licensees; except in any such case to the extent such Losses and Claims directly result from: (i) the gross negligence or willful misconduct of Ligand or an Indemnitee, (ii) any breach by Ligand of any of its representations, warranties, covenants, or obligations pursuant to this Agreement, or (iii) any violation of Applicable Law by Ligand or an Indemnitee.

7.2 Procedure. If any Indemnitee intends to claim indemnification under this Article 7, the Indemnitee will promptly notify Novan in writing of any Claim in respect of which the Indemnitee intends to claim such indemnification, and Novan will assume the defense thereof with counsel selected by Novan and reasonably acceptable to the Indemnitee; *provided, however,* that an Indemnitee will have the right to retain its own counsel, with the fees and expenses to be paid by the Indemnitee, if representation of such Indemnitee by the counsel retained by Novan would be inappropriate due to actual or potential differing interests between such Indemnitee and any other Party represented by such counsel in such proceedings. Novan will have the right to control the defense of, and settle, dispose of or compromise any Claims for which it is providing indemnification under this Article 7; *provided* that the prior written consent of the Indemnitee (which will not be unreasonably withheld, delayed, or conditioned) will be required in the event any such settlement, disposition or compromise would adversely affect the interests of the Indemnitee. The failure to deliver notice to Novan within a reasonable time after the commencement of any such action, to the extent prejudicial to Novan's ability to defend such action, will relieve Novan of any liability to the Indemnitee under this Article 7, but the omission to so deliver notice to Novan will not relieve it of any liability that it may have to any Indemnitee otherwise than under this Article 7. The Indemnitee under this Article 7, its employees, and its agents, will cooperate with Novan and its legal representatives in the investigation of any Claim covered by this indemnification.

ARTICLE 8

REPRESENTATIONS, WARRANTIES, AND COVENANTS

8.1 Mutual Representations and Warranties. Each Party represents and

warrants to the other Party that:

8.1.1 it has the full right and corporate power and authority to enter into and perform this Agreement;

8.1.2 it has full legal power to extend the rights transferred or granted to the other under this Agreement;

8.1.3 it is not aware of any impediment that would inhibit its ability to perform the terms and conditions imposed on it by this Agreement; and

8.1.4 it has taken all necessary action on its part required to authorize the execution and delivery of this Agreement.

8.2 Further Representations and Warranties, and Covenants, of Novan. Novan represents and warrants as of the Effective Date, and, as applicable, Novan covenants, that:

8.2.1 it has enforceable written agreements with all of its employees, consultants, or independent contractors who receive Confidential Information under this Agreement obligating them to keep such information confidential and to use such information only as permitted in this Agreement, and assigning to Novan ownership of all intellectual property rights created in the course of their employment or performance of consulting or contracting services;

8.2.2 as of the Effective Date, it has the full right to transfer and grant the rights to receive payments transferred and granted to Ligand under this Agreement, and is not currently bound by any agreement with any Third Party, or by any outstanding order, judgment, or decree of any court or administrative agency, that restricts it in any way from transferring or granting to Ligand the rights as set forth in this Agreement;

8.2.3 it has not granted as of the Effective Date any right, option, license or interest in or to any Novan Patents or Regulatory Filings that is in conflict with the rights granted to Ligand under this Agreement and Novan will not do any of the foregoing during the Term; it has not granted, or permitted to be attached, any lien, security interest, or other encumbrance with respect to Novan Patents or Regulatory Filings;

8.2.4 Novan will not create, incur, assume or suffer to exist any lien, security interest, or other encumbrance on the Novan Patents or Regulatory Filings, except to the extent that such lien, security interest, or encumbrance does not have an adverse effect on the interest of Ligand under this Agreement, including without limitation the right to receive payments and related information under this Agreement;

8.2.5 Novan will not assign, transfer, convey, or otherwise encumber its right, title, and interest in Novan Patents or Regulatory Filings in a manner that conflicts with any rights transferred or granted to Ligand hereunder, including without limitation by assigning, transferring, or conveying its right, title, and interest in Novan Patents or

Regulatory Filings to any Person to which this Agreement (including, for clarity, the obligation to pay to Ligand the Milestone Payments and Royalties) is not contemporaneously assigned, transferred, and conveyed; *provided* that this Section 8.2.5 will not restrict Novan's right to perform its activities under this Agreement through Licensees in accordance with Section 2.4 or to enter into any lending arrangements that are secured by any Novan Patents, Regulatory Filings or other assets of Novan, or product revenue monetization arrangements similar to this Agreement, *provided* that in each case the Milestone Payments and Royalties remain free and clear of any lien, security interest, or other encumbrance, and continue to be payable to Ligand in accordance with Article 4;

8.2.6 Novan has no Knowledge of any infringement or misappropriation by any Third Party of any of the Novan Patents or Regulatory Filings as of the Effective Date;

8.2.7 to Novan's Knowledge, Novan Controls, and is unaware of any facts that have lead Novan to suspect that it does not Control, Novan Patents existing as of the Effective Date;

8.2.8 Novan has not utilized and will not utilize, in conducting Development, manufacture, or Commercialization of Products, any Person that at such time, to Novan's Knowledge, is debarred by FDA or other Regulatory Authority;

8.2.9 Novan has obtained, and during the Term will maintain, all licenses, authorizations, and permissions necessary under Applicable Law for meeting and performing its obligations under this Agreement and all such licenses, authorizations, and permissions are in full force and effect;

8.2.10 All of Novan's activities relating to its use of Novan Patents and Regulatory Filings, and the research, Development and Commercialization of Products pursuant to this Agreement have complied and will comply in all material respects with all Applicable Laws;

8.2.11 Novan has not incurred, will not incur and does not presently intend to incur, debts, liabilities, or other obligations beyond its ability to pay such debts, liabilities, or other obligations as they become absolute and matured. Novan is not subject to any Bankruptcy Event, and no action has been taken or is intended by Novan or, to its Knowledge, any other Person, to make Novan subject to a Bankruptcy Event;

8.2.12 Novan has no indebtedness for borrowed money of Novan. The fair salable value of Novan's assets (including goodwill minus disposition costs) exceeds the fair value of its liabilities. After giving effect to the transactions described in this Agreement, Novan (a) is not left with unreasonably small capital in relation to its business as presently conducted and (b) is able to pay its debts (including trade debts) as they mature.

8.2.13 Novan shall provide Ligand with written notice as promptly as possible (but in no event more than five (5) Business Days) after acquiring Knowledge of the occurrence of a Bankruptcy Event in respect of Novan;

8.2.14 the claims and rights of Ligand created by this Agreement to receive the Milestone Payments and Royalties are not and shall not be subordinated to any creditor of Novan or any other Person (other than as a result of Ligand's own election);

8.2.15 Novan and, to its Knowledge, its Affiliates and Licensees and their respective employees and contractors have not, and Novan and its Affiliates will not, and will use good faith efforts to cause its Licensees and their respective employees and contractors to not, directly or indirectly through Third Parties, pay, promise, or offer to pay, or authorize the payment of, any money or give any promise or offer to give, or authorize the giving of anything of value to a Public Official or Entity or other Person for purpose of obtaining or retaining business for or with, or directing business to, any Person, including without limitation Ligand or Novan. Without any limitation to the foregoing, Novan and its Affiliates and Licensees and their respective employees and contractors have not, and Novan and its Affiliates will not, and will use good faith efforts to cause its Licensees and their respective employees and contractors to not, directly or indirectly promise, offer, or provide any corrupt payment, gratuity, emolument, bribe, kickback, illicit gift, or hospitality or other illegal or unethical benefit to a Public Official or Entity or any other Person;

8.2.16 Novan is aware of all applicable anti-corruption and anti-bribery laws, including without limitation the FCPA, and all applicable anti-corruption laws in effect in the countries in which Novan conducts or will conduct business. Novan and its Affiliates will not, and Novan will use good faith efforts to cause its Licensees and their respective employees and contractors to not, cause any Indemnitees to be in violation of the FCPA, Export Control Laws, or any other Applicable Laws;

8.2.17 Novan and its Affiliates will fully cooperate and will use good faith efforts to cause its Licensees and their respective employees, contractors, and subcontractors to cooperate fully with Ligand in ensuring compliance with the FCPA, Export Control Laws, and all other Applicable Laws. During the Term, Novan will provide Ligand with such due diligence information relating to compliance with the FCPA, Export Control Laws, and other Applicable Laws by Novan and its Affiliates, subcontractors, and Licensees and their respective principals, directors, officers, employees, representatives, and contractors, as Ligand may reasonably request;

8.2.18 Novan will immediately notify Ligand if Novan has any information or reasonable belief that there may be a violation of the FCPA, Export Control Laws, or any other Applicable Law in connection with the performance of this Agreement or the sale of Products in the Territory; and

8.2.19 Neither Novan nor its Affiliates or Licensees will directly or indirectly sell any Product to any Person outside of the Territory that Novan knows is going to market, distribute, or sell such Product, directly or indirectly, in the Territory. Novan will ensure that reasonable safeguards are put in place so that all Products that are sold by Novan, its Affiliates or its Licensees outside of the Territory will not subsequently be imported into or sold in the Territory.

ARTICLE 9

DISCLAIMER; LIMITATION OF LIABILITY

9.1 DISCLAIMER. EXCEPT AS PROVIDED UNDER ARTICLE 8, EACH PARTY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES, OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICES, IN ALL CASES WITH RESPECT THERETO.

9.2 LIMITATION OF LIABILITY.

9.2.1 NEITHER PARTY WILL BE LIABLE FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE, OR MULTIPLE DAMAGES ARISING IN CONNECTION WITH THIS AGREEMENT OR THE EXERCISE OF ITS RIGHTS OR PERFORMANCE OF ITS OBLIGATIONS HEREUNDER, OR FOR LOST PROFITS OR LOSS OF USE ARISING FROM OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF ANY NOTICE OF SUCH DAMAGES.

9.2.2 NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, SECTION 9.2.1 WILL NOT LIMIT OR RESTRICT (A) DAMAGES AVAILABLE FOR BREACHES OF CONFIDENTIALITY OBLIGATIONS UNDER ARTICLE 5, (B) THE INDEMNIFICATION OBLIGATIONS UNDER ARTICLE 7, OR (C) THE OBLIGATIONS TO PAY MILESTONE PAYMENTS AND ROYALTIES UNDER SECTIONS 4.2 AND 4.3.

9.3 No Assumed Obligations. Notwithstanding any provision in this Agreement, Ligand is not assuming any liability or obligation of Novan or any of Novan's Affiliates of whatever nature, whether presently in existence or arising or asserted hereafter. All such liabilities and obligations shall be retained by and remain liabilities and obligations of Novan or its Affiliates, as the case may be.

ARTICLE 10

DISPUTE RESOLUTION

10.1 Resolution by Senior Executives. The Parties will seek to settle amicably any and all disputes or differences arising out of or in connection with this Agreement. Any dispute between the Parties will be promptly presented to the Chief Executive Officer of Novan and the Chief Executive Officer of Ligand, or their respective designees, for resolution. Such officers, or their designees, will attempt in good faith to promptly resolve such dispute. Notwithstanding the foregoing, either Party may seek equitable or interim relief or provisional remedy in any court of competent jurisdiction to enforce its rights under this Agreement, including without limitation injunctive relief and specific performance, without

having to prove actual damages or post a bond. If the Chief Executive Officers of the Parties, or their respective designees, are unable to resolve a given dispute within thirty (30) days of the matter being referred to them, either Party may have the dispute adjudicated in accordance with Section 10.2.

10.2 Applicable Law and Venue. This Agreement will be governed by, enforced, and will be construed in accordance with the laws of the State of New York, United States of America without regard to any Applicable Law, rule, or principle that would result in the application of the laws of any other jurisdiction. All actions and proceedings arising out of or relating to this Agreement will be heard and determined exclusively in any New York State or federal court sitting in the Southern District of New York, and each Party hereby irrevocably consents to personal jurisdiction and venue in, and agrees to service of process issued or authorized by, such court in any such action or proceeding and irrevocably waive any defense of an inconvenient forum to the maintenance of any such action or proceeding. Notwithstanding the foregoing, either Party may seek injunctive relief in any court in any jurisdiction where appropriate.

ARTICLE 11

MISCELLANEOUS

11.1 Assignment.

11.1.1 Novan shall not enter into an agreement after the date hereof (i) with respect to a Change of Control of Novan or (ii) whereby Novan directly or indirectly sells, licenses, conveys, assigns or otherwise transfers all or any significant portion of its Regulatory Filings, Know-How, Patent Rights or other intellectual property rights or interests in and to any Product to a Third Party unless, in each case, such Third Party that succeeds to the rights of Novan to develop such Product assumes the obligations of Novan contained in this Agreement with respect to the development of such Product (including, without limitation, the obligations set forth in Sections 2.2 and 2.3 of this Agreement and the obligation to pay to Ligand the Milestone Payments and Royalties) and Novan assigns all of the applicable Novan Patents and Regulatory Filings to such Third Party; *provided* that this Section 11.1.1 will not restrict Novan's right to perform its activities under this Agreement through Licensees in accordance with Section 2.4.

11.1.2 This Agreement may not be assigned or otherwise transferred by either Party without the consent of the other Party, which consent will not be unreasonably withheld, delayed, or conditioned; *provided, however*, that either Party may, without such consent, assign this Agreement together with all of its rights and obligations hereunder to its Affiliates, or to a successor in interest in connection with the transfer or sale of all or substantially all of its business to which this Agreement relates, or in the event of a Change of Control, subject in each case to Section 11.1.1 and the assignee or successor-in-interest agreeing to be bound by the terms of this Agreement. Any purported assignment in violation of this Section 11.1 will be void. Any permitted assignee or successor will assume and be bound by all obligations of its assignor or predecessor under this Agreement.

11.2 Severability. If any provision of this Agreement is held to be invalid or unenforceable, all other provisions will continue in full force and effect, and the Parties will substitute for the invalid or unenforceable provision a valid and enforceable provision which conforms as nearly as possible with the original intent of the Parties.

11.3 Notices. Any notice or other communication to a Party pursuant to this Agreement will be sufficiently made or given on the date it was sent; *provided* that such notice or other communication is sent by first class certified or registered mail, postage prepaid, or is sent by next day express delivery service, addressed to it at its address in this Section 11.3, below, or to such other address as the Party to whom notice is to be given may have furnished to the other Party in writing in accordance herewith.

If to Ligand:

Ligand Pharmaceuticals, Inc.
3911 Sorrento Valley Boulevard, Suite 110
San Diego, California 92121, U.S.A.
Attention: Chief Financial Officer

With copies to (which alone will not constitute notice):

Ligand Pharmaceuticals, Inc.
3911 Sorrento Valley Boulevard, Suite 110
San Diego, California 92121, U.S.A.
Attention: General Counsel

and

Latham & Watkins LLP
12670 High Bluff Drive
San Diego, CA 92130
Attention: Matthew Bush

If to Novan, to:

Novan, Inc.
4105 Hopson Road
Morrisville, NC 27560, U.S.A.
Attn: Chief Executive Officer

With copies to (which alone will not constitute notice):

Smith, Anderson, Blount,
Dorsett, Mitchell & Jernigan, LLP
Wells Fargo Capitol Center

150 Fayetteville Street, Suite 2300
Raleigh, NC 27601, U.S.A.
Attn: Gerald F. Roach, Esq.

11.4 Expenses. Except as expressly set forth in this Agreement or as may be specifically agreed to in writing by Novan and Ligand, each Party will be responsible for all costs and expenses it incurs in connection with this Agreement.

11.5 Headings. The headings of Articles and Sections of this Agreement are for ease of reference only and will not affect the meaning or interpretation of this Agreement in any way.

11.6 Waiver. The failure of either Party in any instance to insist upon the strict performance of the terms of this Agreement will not be construed to be waiver or relinquishment of any of the terms of this Agreement, either at the time of the Party's failure to insist upon strict performance or at any time in the future, and such terms will continue in full force and effect.

11.7 Counterparts; Electronic Delivery. This Agreement and any amendment may be executed in one or more counterparts (including without limitation by way of PDF or electronic transmission), each of which will be deemed an original, but all of which together will constitute one and the same instrument. When executed by the Parties, this Agreement will constitute an original instrument, notwithstanding any electronic transmission, storage and printing of copies of this Agreement from computers or printers. For clarity, PDF signatures will be treated as original signatures.

11.8 Use of Names. Neither Party will, without prior written consent of the other Party, use the name or any trademark or trade name owned by the other Party, or owned by an Affiliate of the other Party, in any publication, publicity, advertising, or otherwise, except as expressly permitted by Article 5.

11.9 Independent Contractors. Nothing contained in this Agreement will be deemed to constitute a joint venture, partnership, or employer-employee relationship between Ligand and Novan, or to constitute one as the agent of the other. Neither Party will be entitled to any benefits applicable to employees of the other Party. Both Parties will act solely as independent contractors, and nothing in this Agreement will be construed to make one Party an agent, employee, or legal representative of the other Party for any purpose or to give either Party the power or authority to act for, bind, or commit the other Party.

11.10 Entire Agreement. This Agreement, together with the Appendices attached hereto, constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous proposals, oral or written, confidentiality agreements, and all other communications between the Parties with respect to such subject matter, including without limitation the Prior CDA.

11.11 Modifications. The terms and conditions of this Agreement may not be amended or modified, except in writing signed by both Parties.

11.12 Exports. The Parties acknowledge that the export of technical data, materials, or products is subject to the exporting Party receiving any necessary export licenses and that the Parties cannot be responsible for any delays attributable to export controls which are beyond the reasonable control of either Party. Novan and Ligand agree not to export or re-export, directly or indirectly, any information, technical data, the direct product of such data, samples, or equipment received or generated under this Agreement in violation of any applicable export control laws.

11.13 Further Assurances. Each Party agrees to do and perform all such further reasonable acts and things and will execute and deliver such other agreements, certificates, instruments, and documents necessary to carry out the intent and accomplish the purposes of this Agreement and to evidence, perfect, or otherwise confirm the other Party's rights hereunder. Novan shall make available to Ligand such information as Ligand may, from time to time, reasonably request with respect to the right to receive payments under this Agreement.

11.14 Interpretation.

11.14.1 This Agreement was prepared in the English language, which language will govern the interpretation of, and any dispute regarding, the terms of this Agreement.

11.14.2 Each of the Parties acknowledges and agrees that this Agreement has been diligently reviewed by and negotiated by and between them, that in such negotiations each of them has been represented by competent counsel and that the final agreement contained herein, including without limitation the language whereby it has been expressed, represents the joint efforts of the Parties and their counsel. Accordingly, in the event an ambiguity or a question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the Parties and no presumption or burden of proof will arise favoring or disfavoring any Party by virtue of the authorship of any provisions of this Agreement.

11.14.3 The definitions of the terms herein will apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun will include the corresponding masculine, feminine, and neuter forms. The word "any" will mean "any and all" unless otherwise clearly indicated by context.

11.14.4 Unless the context requires otherwise, (a) any definition of or reference to any agreement, instrument, or other document herein will be construed as referring to such agreement, instrument, or other document as from time to time amended, supplemented, or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or therein), (b) any reference to any Applicable Laws herein will be construed as referring to such Applicable Laws as from time to time enacted, repealed, or amended, (c) any reference herein to any Person will be construed to mean the Person's successors and assigns (after any such succession or assignment), (d) the words "herein", "hereof" and "hereunder", and words of similar import, will be construed to refer to this Agreement in its entirety and not to any particular provision hereof, and (e) all

references herein to Articles, Sections, or Appendices, unless otherwise specifically provided, will be construed to refer to Articles, Sections, and Appendices of this Agreement.

11.14.5 References to sections of the Code of Federal Regulations and to the United States Code will mean the cited sections, as these may be amended from time to time.

11.15 Force Majeure Event. Except for the payment of money, neither Party will be in breach or default, nor will either Party be liable or responsible to the other Party for losses or damages, nor will either Party have the right to terminate this Agreement, for any breach, default or delay by the other Party that is attributable to an event beyond their reasonable control, including without limitation acts of God, acts of government (including without limitation injunctions), fire, flood, earthquake, strike, lockout, labor dispute, breakdown of plant, shortage of equipment or supplies, loss or unavailability of manufacturing facilities or materials, casualty or accident, stoppage or interruption of transportation or utilities, civil commotion, acts of public enemies, acts of terrorism or threat of terrorist acts, blockage or embargo and the like (each, a "**Force Majeure Event**"); *provided, however*, that such Party will use reasonable efforts to avoid and/or minimize the impact of such occurrence, and give prompt written notice of any Force Majeure Event to the other Party.

[*Signature Page Follows*]

IN WITNESS WHEREOF, each of the Parties has caused its duly authorized officer to execute and deliver this Agreement as of the Effective Date.

LIGAND PHARMACEUTICALS INCORPORATED

By: _____

Name: Charles Berkman

Title: SVP, GC & Secretary

NOVAN, INC.

By: _____

Name: G. Kelly Martin

Title: CEO

Appendix A

Development Plan

Trial Phase	Trial	Trial Design	Trial Objective	Target - First Patient In	Target - Top Line Results
1	NI-MC101	N<36 Maximal Use PK	To determine the maximal exposure of SB206 tolerated dose	3Q19	1Q20
1	HF-MC001	N=<48 Human Factor	To identify critical tasks, identify risk mitigations for common use errors and assess the effectiveness of risk management measures	3Q19	4Q19
1	NI-MC102	N<15 Mechanism of Action	To evaluate the mechanism of action of SB206 12% QD	1Q20	4Q20
2	NI-MC201	N=256 Randomized, double-blind, vehicle controlled, ascending dose	To evaluate and determine a safe and efficacious SB206 dose level for future studies	1Q18	4Q18
3	NI-MC301	N=340 Randomized, double-blind, vehicle-controlled, randomized 2:1	To evaluate the efficacy and safety of SB206 12% QD for the treatment of MC	2Q19	1Q20
3	NI-MC302	N=340 Randomized, double-blind, vehicle-controlled, randomized 2:1	To evaluate the efficacy and safety of SB206 12% QD for the treatment of MC	2Q19	1Q20

Regulatory Pathway	Target Date
iPSP Submission	2Q19
Type C Meeting	3Q19
Pre-NDA Meeting	3Q20
Submit NDA	4Q20
120-Day Safety Update	2Q21
Expected NDA Approval	4Q21

Appendix B

Development Budget

Trial #	Target Budget
NI-MC101	$1M
HF-MC001	$0.5M
NI-MC102	$0.25M
NI-MC301	$8.5M
NI-MC302	$8.5M
Regulatory	$3M

Exhibit B

UNITED STATES BANKRUPTCY COURT

DISTRICT OF DELAWARE

In re:	:	
	:	Chapter 11
IMEDIA BRANDS, INC., et al.,	:	Case No. 23-10852 (KBO)
Debtors.	:	(Jointly Administered)
_____	:	

United States Bankruptcy Court

824 North Market Street

Wilmington, Delaware

July 27, 2023

10:04 a.m. - 10:45 a.m.

B E F O R E :

HON KAREN B. OWENS

U.S. BANKRUPTCY JUDGE

ECRO OPERATOR: LISA BROWN

HEARING re Status Conference regarding issues related to the Notice of Auction for All or Substantially All Debtors' Assets in Furtherance of Sale Motion [Docket No. 244] and the Emergency Motion of the Official Committee of Unsecured Creditors for Entry of Order Adjourning July 28, 2023 Hearing [Docket No. 277]

Transcribed by: Sonya Ledanski Hyde

A P P E A R A N C E S :

MCDERMOTT WILL & EMERY LLP
Attorneys for the Debtor

BY: DAVID HURST

FRIED, FRANK, HARRIS, SHRIVER & JACOBSON LLP
Attorneys for RNN-TV Licensing Co. LLC

BY: JENNIFER L. RODBERG

GREENBERG TRAURIG, LLP
Attorneys for IV Media, LLC

BY: DENNIS A. MELORO

DLA PIPER LLP (US)
Attorneys for Kinbow, Inc.

BY: AARON S. APPLEBAUM

BENESCH, FRIEDLANDER, COPLAN & ARONOFF LLP

Attorneys for Apparel Solutions Inc.

BY: KEVIN CAPUZZI

SAUL EWING LLP

Attorneys for G&I X Montclair on Center LLC

BY: JOHN LUCIAN

P R O C E E D I N G S

THE COURT: Good morning, everyone. This is Judge Owens. We are gathered for a status conference in iMedia. I had the opportunity to take a look at the emergency motion that was filed yesterday by the Unsecured Creditors' Committee, as well as what I think to be all the substantive sale documents. And so I thought it would be worthwhile for us to get on the phone and talk about what the parties think is the best way to move forward with this case and then make some sort of ruling on my part on how we're going to proceed.

So, unless the parties have talked amongst themselves and decided on an alternative process for presentations today, I'm going to yield the podium to the Committee, who has the pending emergency motion.

MR. HURST: Thank you, Your Honor. David Hurst from McDermott, Will & Emory, representing the Official Committee of Unsecured Creditors in these cases.

Your Honor, the Committee was appointed on July 10th and has selected McDermott as its counsel and AlixPartners as its financial advisor, subject, of course, to Your Honor's ultimate approval of those retentions.

So, McDermott and Alix have been in place now for just more than two weeks. We have obviously been busy with sale issues, busy financing issues, and really dealing with

the host of other things you have to deal with after being retained as counsel at one of these fast sale cases.

We certainly hope to advance these cases toward a successful conclusion, and obviously, hopefully, want to secure a reasonable recovery for our constituents, the Unsecured Creditors.

With that, Your Honor, I could turn to the Committee's emergency motion. As the Court is aware, the Debtors have noticed an auction for 9:00 AM tomorrow morning, live in Delaware. Happy to be back after COVID in person. There's also a hearing to consider approval of the Debtors' sale and DIP financing scheduled for tomorrow afternoon at 1:00 PM.

The Committee asked the Debtors to adjourn that hearing, but the Debtors wouldn't agree. So we filed what we characterized as an emergency motion, asking the Court to adjourn the hearing. That motion appears at Docket Number 277.

The Committee requested the adjournment for a number of reasons, Your Honor. First, it seemed very unrealistic to say that we would hold an auction and then a sale hearing four hours after that. We know that the proposed purchaser in this case, entity known as RNN-TV Licensing Co., wants the Debtors' assets. Right? They're obviously this -- the party to which the Debtors proposed to

sell the assets to pursuant to a private sale is outlined in the sale motion. And we know they're out there potentially bettering their bid now.

We also know there are two other serious bidders for substantially all the Debtors' assets. Now, the Debtors have treated those other bidders' names as confidential, although both bidders have filed objections to the sale announcing their interest in the Debtors' assets. So there is no confidentiality issue.

Those objections, Your Honor, in case you haven't seen them yet, are at Docket Number 231 -- that's for an entity called IV Media -- and Docket Number 236 for an entity called Kinbow, Inc.

Second, Your Honor, it's important to contract counterparties and all other parties in interests are given written notice of the outcome of an auction and have time to react. It's bad enough to say that we'll tell them on a Friday afternoon or perhaps over the weekend, whenever this auction ends, what happened, and expect them to show up for a hearing in Delaware, perhaps on Monday. But it's entirely unreasonable to say we're going to have an auction at 9:00, and let's just say we get lucky and it ends at noon, we're going to put a notice on the docket and have people show up for a hearing. It just doesn't work, especially when there's been no disclosure regarding the terms of the bids

of these other bidders.

And finally, Your Honor, in order to make a thoughtful and organized presentation to the Court of a sale hearing, the case professionals need time to digest what happens at this auction and prepare for a hearing. What happens next week -- or, well, what happens at the sale and DIP hearing will determine the outcome of these cases. And it's very important that we have the opportunity to get it right, and it's just going to take us some time.

Your Honor, it's not lost on the Committee that adjourning the hearing tomorrow could cause issues under the Debtors' DIP financing, or may mean that we can't hold RNN to its initial bid.

Of course, it's the Debtors' prepetition lenders and RNN that are at least partially responsible for the structure of this sale, including unrealistic milestones. And the reality is that both the Debtors' prepetition lenders and RNN, which together provided the DIP financing, have significant new money at risk, and quite a bit to lose if they would pull the plug on the process right now.

And in any case, Your Honor, RNN's initial bid provides no recovery to unsecured creditors, and the Debtors' DIP financing likely will be exhausted in the next week. So, we don't think that the threat of the DIP lenders somehow tanking this whole case or RNN walking away are

real.

And that's it, Your Honor. That's the basis for our motion to adjourn. And I'll stop there, unless you have any questions.

THE COURT: I have many questions, but maybe they're not for you, and I'll hear from Mr. Dahl on this topic. But -- I keep hearing someone I keep hearing this idea of an auction and I'm just confused because I didn't schedule an auction. So, what is this alleged auction that's occurring on Friday? So, why don't we start off with that and then I'll hear from -- why don't you let me know, Mr. Hurst, what has developed and led to this purported auction that's occurring.

MR. HURST: Okay, Your Honor. Yes, I'm happy to address that. So, as Your Honor is aware, the Debtors filed their sale motion. It purported to -- well, it proposed to sell substantially all the company's assets to RNN, pursuant to what we would characterize as a private sale. I understand that Debtors disagree with that characterization. But the reality is the Debtors did not seek approval of bidding procedures, auction procedures, or anything else, because they fully believed that RNN was going to buy the company.

Now, part -- they say that's because they had a fulsome prepetition marketing process, which if you have had

the opportunity to read my weekends' work product, the Committee's sale objection, I think that we have -- you know, we have a decent argument that that process was not as fulsome as the Debtors suggested. We've had the opportunity to depose the Debtors' investment bankers, Lincoln International, and we could provide much more detail about that process, if necessary. But let's just say that process was not as fulsome as I think the various declarations filed suggest. But in any case, the Debtors proposed to sell the business to RNN.

Once the case filed back on June 28th, it turns out that other bidders came out of the woodwork, which is great. They saw the filing and that precipitated them reaching out to the Debtors and/or the Committee and/or Lincoln. There are two of those bidders that the Debtors refer to in various places. But they came out of the woodwork, and it turns out that at least one of them has a very viable bid.

And when we saw this all developing, we said well, listen, this is crazy. We can't just move forward with the sale to RNN. Let's try to create some kind of structure so that there's a competitive aspect to this process. So we asked the Debtors, we said listen, please schedule an auction so that there's at least the opportunity to assess bids. And now, you know, maybe that was where we made a

mistake and we should have said, let's get -- let's ask the Judge for a status conference. But admittedly, that's not what we did. And I accept fault for that decision. Although it was just a suggestion on our part, let's do something to improve this process.

The Debtors initially did not like that idea, but ultimately, I think that the bids got the compete -- it got solid enough that they felt comfortable scheduling an auction. So they sent out a notice.

THE COURT: And when you said sent out a notice, why don't you be more specific? So, what was the --

MR. HURST: Oh, sure.

THE COURT: And again, I hate to put you on the spot, but only to the extent that you know. So, what --

MR. HURST: (indiscernible)

THE COURT: I'd be interested to know what the notice said and who it went to and what kind of notice was given.

MR. HURST: Well, Okay. I'll do my best, Your Honor.

THE COURT: I've been told that the notice actually states that someone other than RNN could be presented to me at a hearing tomorrow. Did it say that?

MR. HURST: Yeah, well. I have the notice in front of me, Your Honor, and it appears at Docket Number

244.

THE COURT: Okay.

MR. HURST: You're messing up my whole presentation, Your Honor, but I'm going to try.

THE COURT: I am so sorry. No, go ahead. You know what? You continue.

MR. HURST: That's all right.

THE COURT: Okay.

MR. HURST: So, Okay. No, we have -- notice appears at Docket Number 244.

THE COURT: Okay.

THE COURT: It basically announces that there will be an auction held tomorrow, Friday, July 28th, beginning at 9:00 AM for bidders qualified by the Debtors. Okay? And it says the Debtors, in consultation with various parties, will notify applicable parties as to their status as qualified bidders prior to the auction. And the Debtors seek -- or intend to seek approval of any winning bid designated by the Debtors at the auction -- at a hearing tomorrow at 1:00. So --

THE COURT: Okay. Thank you so much.

MR. HURST: -- it does suggest, Your Honor -- yeah, so it suggests that there could be someone else presented to Your Honor tomorrow, despite the fact that the Debtors just sought approval for a sale to RNN.

THE COURT: Okay. That's helpful. And I did have the opportunity to pull this up, based on the Docket Number. Thank you so much.

MR. HURST: So, I mean, that's what -- the Committee found itself in a situation where we knew there was no process because of the way the Debtors approached the situation. And we thought that the best way to try to move forward would be to hold an auction. And it's not, you know -- so if you read our objection, we basically take the position there we should just start over, because this is not a process. We think it has chilled bidding. We have a lot of concerns and they're all laid out in detail in our objection.

Unfortunately, Your Honor, although we don't have a complete picture of everything right now, we know there is very limited liquidity here. And it's not unlikely that we've got about a week worth of liquidity left. And then there's nothing left. Right? And this is an operating business and it takes significant liquidity for it to operate.

So we looked at this and said, well, are we better off trying to blow this up because the unsecureds are not receiving any benefit. Why would we go forward with this? Or can we try to somehow salvage it? And we were so encouraged when these other bidders appeared, and one of

them reached out to us and we were able to speak to them early on. And they, you know -- we assessed them as being real. We thought, okay, this is great. This is someone who actually can come forward for a variety of reasons. This is an actionable bid.

And so we thought, okay, well, maybe we can salvage this within the time frame that we have by holding an option and then perhaps there will be a higher bid and, you know, that higher bid will provide a recovery to unsecured creditors, because the -- RNN's initial bid basically takes care of the secured lender, but it didn't take care of anyone after that. So the secured lender would walk away almost whole, close to whole, and unsecureds would receive nothing. And so we thought we've got to do better than that.

And so we thought, this is the way to do it. You know, hopefully we'll have an auction, we'll continue to apply pressure to the Debtors to schedule it, and then we're going to go and we're going to do our best to raise the bid. And that was the plan.

And as I said, the problem with that plan, as I can see it now in retrospect, is that we should have involved the Court earlier. But, you know, we are where we are.

THE COURT: Well, and I didn't mean to --

MR. HURST: And I apologize.

THE COURT: I didn't mean to infer any wrongdoing on behalf of the Committee. I really just wanted to get information about the auction, since I had not heard of it until late afternoon yesterday, after I received the agenda for tomorrow's hearing and your objection. So I really -- I apologize if my question was pointed and implied wrongdoing on behalf of the Committee. I just wanted more information about what is actually occurring behind the scenes in this case.

MR. HURST: Yeah.

THE COURT: So I appreciate that. I also appreciate you getting me up to speed on the timeline and the Committee's thinking with respect to how it suggests going forward, because that's, of course, important.

MR. HURST: And Your Honor, just -- I know you want to hear from the Debtors, but to the extent we do go forward with an auction construct, the Committee does have several things we'd like to ask for. We don't have to deal with that right this minute. But I just wanted you to know, we want to come back and talk to you about a few things, to the extent that you sanction this auction going forward.

THE COURT: Okay. All right. Thank you very much. It seems to me there might be many parties that wish to be heard today. And so I think I'd like to hear from the

Debtors next. And then I'm happy to hear from other parties in interest. But Mr. Dahl, you've been patiently waiting in the ranks. And so I think it's fair -- why don't I hear from you and then we'll hear from other parties.

MR. DAHL: Thank you very much, Judge, and thank you for accommodating us. This is obviously important timing for the company. I would note at the outset, I agree with very much what Mr. Hurst said. But there are a few points I would quibble with in terms of whether the Debtors believe that the vigorous and -- you know, vigorous marketing process and things like that.

But I'm not going to take up your time on that, Judge, because frankly, we have more important things to focus on, which is that, as we said at the very beginning of these cases, we were going to continue to try to drive higher and better value in this process. And we very much believe that we have the opportunity to do significantly better than the initial bid that we started these cases with.

We have been actively working with potential bidders to develop a higher and better bid. I believe Mr. Meloro, of the Greenberg Traurig firm, is on the phone today and able to confirm that, in fact, he has a client ready, willing and able to close on a transaction that does, in the Debtors' view, provide greater value than the original RNN

proposal that we filed with the Court on July 3rd.

But I would also note then in here too, we did not mean that -- and I agree with Mr. Hurst -- we did not mean to impose on the prerogatives of the Court in terms of scheduling the auction. Rather, that we the company did determine, as suggested by the Committee, that providing an auction mechanic could be the best mechanism to continue the process, which has really begun prior to the Chapter 11 cases, of driving value for the benefit of these Chapter 11 estates.

Because we do have at least one highly competitive bidder as an alternative to RNN. And that's not to denigrate the value that RNN has provided to this process to date. We hope they continue and will continue to provide that value.

But the one point I might quibble with with respect to what Mr. Hurst said is his statement that the Debtors refused to extend the hearing today. And I would just note that it is a small point, but an important one. There is a difference between the Debtors refusing to extend the hearing and the Debtors being unable to extend the hearing. Because what we do need is, frankly, more time, Judge, we believe, to be able to allow this quick process to move to fruition, because we do have a DIP milestone tomorrow. We do have a milestone in (indiscernible)

tomorrow. And adjourning these hearings is not something the Debtors believe that would be appropriate without at least advising the Court of the potential consequences. I mean, I am hopeful, as Mr. Hurst alluded to, that parties will recognize that given that the path that we're on provides improved recoveries to all creditors, nobody is going to put these Chapter 11 cases or subject these Chapter 11 cases to a hair trigger.

And if we have some additional time -- and I appreciate the moderate approach taken by the Creditors' Committee here, which is that this is not a situation where the Creditors' Committee, in my view, have filed a pleading asking for months to extend the timeline. I think the Creditors' Committee appreciates the Debtors' perspective, which is that time really is money here. These are operating businesses that consume anywhere from $2-3 million of (indiscernible) a week on the one hand. But the opportunity has now presented itself to be able to drive value in the very near term and we want to take advantage of that in the very near term.

With respect to an auction, we would welcome the opportunity to work with the Committee to make sure we finalize procedures, which I'm sure many of us could probably recite from memory in terms of auction procedures for companies like this. But I agree on those procedures,

to make sure that we have got on the docket the right notices available to folks, that'd be prepared to have that auction fairly quickly and be back in front of the Court with what we believe will be increased value for the benefit of all our estates. But the Debtors need more time to do it, and unfortunately, these milestones are not ones within the Debtors' control.

THE COURT: Thank you so much. Appreciate that. Okay, there's many people joining us today and in fairness, I'm happy to hear from all parties in interest. Of course, we're here on scheduling, so we're not here on a sale, but we're on scheduling. So keep that in mind when we're presenting. So, if there's other folks, please just go ahead.

MS. RODBERG: I think this is -- let me start off. Good morning. This is Jennifer Rodberg, from Fried, Frank, Harris, Shriver & Jacobson, on behalf of the currently proposed buyer, RNN-TV Licensing Co. And I want to apologize because it might seem that my name (indiscernible) to folks on this Zoom and it is not. It was a screwup with Zoom invites. But this is -- my name is Jennifer Rodberg. And so I apologize for that. Not a great way to start.

But obviously, my client is front and center in this. They have proposed the APA and are the current bidder for the assets. And I think there's something that's very

important to understand here. We respect the concerns about timing, having a competitive process. RNN has never stood in the way of that. We have never said there needs to be exclusivity. We have not been involved in the marketing process. And we did not say anything in opposition to this idea of an auction. We said to the Debtors, you need to do what you need to do. We'll continue on our path of trying to get to our transaction.

And as part of that, you know, it should be noted that this financing that, you know, has been alleged being short, RNN, you know, is not a prepetition lender. It came in and provided a subordinated DIP just to bridge to where we are today. So it has significant value at risk, but it's all in support of getting this sale done, because quite frankly, has it's been pointed out, there is a limited timeline here that is dictated by access to financing and the company needing that. And as Creditors' Committee counsel pointed out, that runs out next week. So, and without that, there is no value proposition for a robust sale to anyone, quite frankly, unless somebody is willing to put in additional money.

So, what RNN's goal has been in this whole time and including with the milestones is bridging to a sale in time where the company continues as a growing concern, but RNN has finality that it can close and do all the work to

close. And quite frankly, every dollar that is spent during this time period would be borne by the purchaser, at least in RNN's construct for its sale.

So we understand it's been a tight timeframe. That's why we've been open to any competition and have not gotten in the way. But at the same time, we've stuck to our milestones. And our concern now here is that people seem to be talking about an open-ended process having an open auction, which we don't know when it would take place, if we're talking about, you know, procedures and the like.

And you know, the Creditors' Committee's motion asked for the -- you know, the earliest would be Monday. I don't know what would be beyond that. And the way -- at least the current RNN bid is structure is we need to get to a closing by August 5th. And in order to do that, there is an immense amount of work that needs to be done to transition a going concern company into the hands of RNN or any purchaser for that matter.

So we need to do that work. And in order -- and we need to work with management to transition 500 employees over to the reorganized company, to send out those notices, to work with counterparties to all the contracts, because we don't intend to be doing this in a contested way. We have not contested cure costs and the like. We're trying to do this as quickly as possible on a consensual basis. And

that's from RNN's perspective.

So, what concerns RNN in moving any milestones is we're the only bidder at this auction, and I'm not -- you know, I heard that there are others but, you know, if we are, we want to keep that sale hearing tomorrow so that we know there's finality and we can put in all of the work that needs to be done to get to closing next week. If we're not and there's a process, you know, we want to make sure that that is a process that provides that same finality, you know, by Friday, if it's going to be our bid. Because our bid gets more difficult as the time goes by because of this financing. And I haven't seen another bidder step up and say I'm going to bridge, you know, (indiscernible) this bridge to a two-week closing, or the like.

And so, as far as the RNN bid is concerned, we're trying just to preserve the value of that bid and do it on an expedited basis. And I take note that we have been trying to address the objections of all of the parties, including the UCC and offered other forms of consideration and other terms to address that, all with this goal of having finality by Friday that we know that we can put all of our efforts into closing the sale. And it's subject to the Court, of course, entering a sale order to get to a closing next week, and to provide the funding, and to provide the cash payments, and to provide the assumption of

contracts, and take on all of the liabilities that we've promised to do.

So the concern, again, that RNN has with moving this milestone is it's open-ended. There are no guardrails around this. We've been asked also that the DIP be extended. But if there's no financing under the DIP until next week, you're talking about doing an auction process where there no financing. And so there's a lot of concerns we have with this open-ended -- we just need more time to get other people in.

And that's been the concern of RNN in moving these milestones. And you know, perhaps if we did have finality as of Friday that we would know who is that bidder, we'd be more comfortable than going into the weekend, doing all of the work we need to do. Perhaps if we had more protections on that, I mean, we don't have a breakup fee. We didn't ask for any protections going forward, which is why we do have this walkaway on the milestones. And quite frankly, we have not committed to being a backup bidder for an auction process.

So, you know, there is a lot that I think needs to go into that. But the truth is, if we are the successful bidder as of the morning, or if somebody has not come in to top that, which again, I'm not saying they won't, but we haven't seen that commitment, then we want to be able to

say, as of Friday, it is all systems go to get to that closing that everybody desperately needs next week and by that August 5th date.

And so that was the concern of RNN just saying, yes, we'll adjourn to Monday, no problem. Because we would lose all of that time. We would have a lot of distraction in terms of RNN trying to execute on what it believes to be, you know, its transaction. And you know, it's just too difficult because there is significant value and significant money that is to be proposed to be paid for this going concern business. And we need -- RNN needs to preserve that if it's going to be asked to stick by its commitment.

THE COURT: Thank you very much. I appreciate your perspective. Okay. Mr. Meloro, I apologize for mispronouncing your last name. You've been waiting patiently. Happy to hear from you, and then I'll hear from others.

MR. MELORO: No, of course, Your Honor. Good morning. Dennis Meloro, of Greenberg Traurig, on behalf of Innovation Ventures. Your Honor, as Mr. Dahl noted, and I think he requested, I can confirm that we have a client who is ready, willing and able to close on a sale quickly and by next week, which, you know, now appears to be the outer limit. We're standing by. We're ready to go.

We don't seek or support an open-ended extension.

I think RNN was concerned about, you know, an open-ended process. We're not -- certainly not looking for that. We support a quick process. We're engaged and, you know, we're standing by, ready to go with the process quickly.

THE COURT: Thank you so much. Mr. Applebaum?

MR. APPLEBAUM: Good morning, Your Honor. Can you hear me okay?

THE COURT: Okay.

MR. APPLEBAUM: Thank you. Aaron Applebaum, DLA Piper, on behalf of Kinbow, Inc. Your Honor, Kinbow is the other potential bidder here that I think has been referenced.

Kinbow did file an objection to the sale motion, which is at Docket Number 236. And this morning we did file at Docket Number 294 a joinder to the Committee's emergency motion to continue the sale hearing.

Your Honor, Kinbow very much desires to participate in whatever sale process is happening here as a bidder. Certainly, there's a lot of uncertainty as to what that process looks like without bidding procedures having been approved. And the time constraints that have been associated with the current proposed private sale subject to higher offers have limited Kinbow's ability to submit a fully noncontingent bid and a bid that could close by August 5th.

Kinbow certainly believes that with additional time, and not a lot of time, but a reasonable amount of time, it could be able to submit a fully noncontingent higher and better bid. That said, Kinbow is working tirelessly right now to get exactly that kind of bid to the Debtors now that would actually be able to comply with the Debtors' and RNN's timetable for an auction tomorrow and for a closing next week.

But we're not there yet, and we're working to get there. And I can't guarantee that everything will align by 9:00 AM tomorrow morning, when the Debtors have scheduled this auction.

So, Kinbow's request is, I think, a little broader than what Mr. Meloro was just saying. We are asking for a reasonable extension of this auction by at least a week and then a further extension of the sale hearing to allow all the parties to get on the same page, to allow procedures to actually be presented so everyone knows what the rules are, what a qualified bid looks like, and what the schedule would be.

So that's -- so we join the Committee's request and ask that further (indiscernible) the auction be delayed as well. Thank you, Your Honor.

THE COURT: Thank you. All right. I think I have Mr. Lucian, that would like to speak?

MR. LUCIAN: Yeah.

THE COURT: And then I have Mr. Capuzzi as well with his hand up. I believe he represents another purchaser. Perhaps it makes sense to hear from Mr. Capuzzi first and then I'll hear from the lender.

MR. LUCIAN: Sure, Your Honor.

THE COURT: Mr. Capuzzi?

MR. CAPUZZI: I'm here, Your Honor. Apologies. I'm standing in a train station, so hopefully you can hear me okay.

THE COURT: I can.

MR. CAPUZZI: Your Honor, I -- represent -- again, for the record, Kevin Capuzzi, Benesch, Friedlander. I represent Apparel Solutions. Apparel Solutions filed a sale objection on Friday at Docket Number 228.

Your Honor, initially, Apparel Solutions was a little bit different than Mr. Meloro and Mr. Applebaum's client in that our indication of interest only covered a portion of the assets. Since then, like the others, we've been working tirelessly, without much structure in place, however, to get a full asset bid in front of the Debtors. That's a work in progress. I hope to have it today. I believe that it will be a competitive bid just like the other two or three that you're hearing from.

Like Mr. Applebaum, some additional time, not

open-ended, would be nice. But we are working tirelessly as well and hope to be part of this process. The problem is, with this process, we don't know what a qualified bid is, what it isn't, sort of some of the safeguards you would have in a typical sale.

So, again, we're here, we're serious; we just would like some guardrails put in place to make sure the process is not only competitive but fair.

Your Honor, I don't have anything beyond that, unless you have any questions for me.

THE COURT: I do not. Thank you so much.

MR. CAPUZZI: Thank you.

MR. LUCIAN: Thank you, Your Honor. John Lucian, of Blank Rome, for Siena, the agent for the prepetition secured parties and the DIP lenders. First, I note, I'm impressed Ms. Rodberg was able to change her name on the screen from (indiscernible) to Jennifer mid-presentation. We didn't have such luck, Your Honor. We tried to get our large-screen TV to work in this room. I'm here with Miss Kelbon and Mr. Tarr. And so we're doing it the old fashioned way from the laptop. So, thank you.

THE COURT: Well, RNN's counsel can thank my court staff. They're very adept at modifying people's names and muting people when appropriate and the like. So, yes, I'm very lucky.

MR. LUCIAN: I had a feeling that's what happened, Your Honor. Thank you. I wanted -- I appreciate the opportunity to share the agent's perspective on this, Your Honor, and our concerns. We obviously want to collaborate with the parties and continue to do so on a daily basis. And we understand this is couched, I think, somewhat innocuously as, you know, a one business day extension. And we're not surprised the Committee would ask for that. That's what Committee's do in nearly all cases.

But Your Honor, we're concerned here because of the impact that has on the DIP and on funding and on milestones. Your Honor, I want to just take us back briefly to the start of this case. About a month ago, at the end of June, Your Honor remembers we were in front of you initially with an interim order on cash collateral for a week, because we didn't have a DIP. We didn't have a private sale transaction yet.

We all then worked tirelessly over that week. I remember because it was July 4th weekend. And we worked to get a DIP in place. And we did that in tandem really, with the private sale transaction that is scheduled for hearing and approval tomorrow.

Your Honor, those milestones were obviously important to the agent for many reasons. And while we will defer to the Court as to what the best path forward here is

over the next day or longer, if that's what the Court decides, we have concerns about extending this out seems to be implying that the lenders would be obligated to continue to fund. And that's a problem, Your Honor, because it's a blind process right now. And the lenders are not obligated to fund beyond tomorrow. That's why we have a final DIP hearing. That's why that hearing needs to go forward.

Your Honor, without that finality and this continues in an open-ended process, it creates significant risk to the lenders. As Your Honor pointed out at the start of this status conference, there isn't even an approved auction. What would those bid procedures be? Where are the (indiscernible) packages for these competing bidders? What would the terms be? We wouldn't even have a required backup bid from RNN.

So, we understand the Committee's desire to, you know, roll the wheel one more time and see what happens. But that creates significant prejudice to the lenders, because we would potentially lose the certainty to close.

And that's what we worry about, Your Honor. We don't want to be in a position where this goes forward without guardrails, without specific procedures and understanding, that would then create significant risk of losing the transaction that is before Your Honor that was negotiated and filed, really, and noticed probably over

three weeks ago.

We at least want to see a final DIP order tomorrow, Your Honor. We don't even know, again, if there is an auction, what will happen, what will transpire? All of that, again, is much more than just can we push the hearing one day? This is asking Your Honor, can we push the hearing one day and change the entire rules of the game in the process? The lenders are sensitive to that, Your Honor. And that's why we wanted to share these concerns with you.

Again, we're trying to collaborate with the parties here and get to a result that maximizes recovery and satisfies constituency concerns. But it can't be in a fashion that prejudices the lenders and seeks to force them somehow to commit to fund blindly beyond tomorrow.

Certainly, Your Honor, if there is an auction and it concludes tomorrow and the results are known, we're prepared to discuss with the Debtor and with the successful bidder funding needs and appropriate terms, you know, to bridge to get to closing. But it seems as if the Committee is trying to force the lenders to continue to fund in a blind. And that's a significant concern of ours, Your Honor.

THE COURT: All right. Thank you very much. I think I've heard enough and I appreciate everyone's time and attention today. Let me make a few observations and rulings

that will hopefully help the parties move forward.

To the extent that there's any confusion, a private sale in this case is absolutely not warranted by the facts presented here. Namely, lender refusal to fund a fair and reasonable Chapter 11 process. In this circumstance, a lender should just foreclose outside of bankruptcy.

Regardless, I don't consider this a private sale. From my perspective, it's a poorly and amateurly executed public sales process, not remotely resembling what I would customarily approve, seemingly driven by the lenders and a prospective purchaser.

This process is unacceptable and potentially abusive to the Chapter 11 process. Said a different way, I am not in favor of a Debtor or a lender or a prospective purchaser establishing their own bidding procedures and scheduling an auction on their own, let alone the process that is attempted to be deployed here on a timeframe that has occurred that is extremely expedited, and on what I would consider inadequate notice provided to parties in interest, in violation of the Bankruptcy Code and the Rules.

So, what does that mean? Well, needless to say, the hearing on Friday will not be going forward. And I'm not going to schedule it on Monday. On these facts, how could the Debtors ever begin to establish the burden that is necessary to carry the approval of a sale under Section 363?

To begin to do so, the process must be subject to Court supervision, starting with the establishment of set procedures, firm deadlines, approved noticing and scheduled auction and hearing dates. These must be properly and publicly noticed. Moreover, I want a Committee to review and support the timeline procedures and process. If there isn't support, then the issues need to be brought to me in advance so I can decide.

This may seem like a bankruptcy primer, but this procedure has been well developed in our jurisdiction. It assures due process, certainty and fairness in the process, a level playing field for all, notice to all potentially interested parties, and a reasonable opportunity to participate in due diligence and form a bid.

All of this encourages bidding and maximizes value for all stakeholders, which is what is required of the Court and estate fiduciaries in a Chapter 11. The make it up as you go process that has been employed to date does the contrary and I take violent issue with it.

So, here's how I suggest we move forward. The stakeholders need to put their heads together to develop procedures for me to approve that are customary. I fear that you have wasted four weeks pursuing this process. But that was your strategic decision.

So, I am happy to schedule a status conference on

Monday, at which time you can present to me how you wish to go forward. But the hearing on Friday will be canceled. If you wish to present a form of a bid procedures order on Monday, I may consider that. However, that has not been filed and publicly noticed on the docket for parties to have an opportunity to object. So, that is not a guarantee.

But I think it's worthwhile for the parties to start talking about a new process and a proper process, because I'm not going to condone the process that has occurred to date.

So, reach out to my chambers and get a hearing time for Monday. It can be remote. Put your heads together and start working on what you -- what is a proper method going forward. And we'll discuss scheduling of the DIP on Monday as well.

Okay? Do we all understand our marching orders going forward? Excellent.

MR. DAHL: Yes, Your Honor.

THE COURT: Thank you very much. We'll consider ourselves adjourned. Thank you.

(Whereupon these proceedings were concluded at 10:40 AM)

I N D E X

RULINGS

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: July 27, 2023

CERTIFICATE OF SERVICE

I hereby certify that on August 1, 2023, I electronically filed the Objection of the United States Trustee to the Motion of Debtors for Entry of Orders (I)(A) Approving Bidding Procedures for Sale of Substantially all of Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances and Designating Ligand Pharmaceuticals as a Stalking Horse Bidder, (B) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (C) Approving Assumption and Assignment Procedures and (D) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof; (II)(A) Approving the Sale of the Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances after the Auction and (B) Approving the Assumption and Assignment Executory Contracts and Unexpired Leases; and (III) In the Alternative, Approving the Sale of the Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances to Ligand Pharmaceuticals if not Approved as the Stalking Horse Bidder with the Clerk of this Court using the CM/ECF system which will send notification of such filing to all ECF registrants in this case. I further certify that the foregoing was emailed to the following:

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/s/ *Linda J. Casey*
Linda J. Casey, Trial Attorney