

**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)
) **Sale Objection Deadline: Aug. 28, 2023 at 4 p.m.**
) **Sale Hearing: September 11, 2023 at 10:00 a.m.**

**NOTICE OF SALE, BIDDING PROCEDURES, AUCTION,
SALE HEARING, AND OTHER DEADLINES RELATED HERETO**

PLEASE TAKE NOTICE OF THE FOLLOWING:

On July 17, 2023, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”), filed with the United States Bankruptcy Court for the District of Delaware (the “Court”) a motion [D.I. 16] (the “Bidding Procedures Motion”),² seeking entry of (a) an order (the “Bidding Procedures Order”): (i) approving bidding procedures (the “Bidding Procedures”) to be used in connection with one or more sales (each a “Sale”) of the Debtors’ assets (the “Assets”) free and clear of all liens, claims, interests, and encumbrances, (ii) authorizing the Debtors to designate Ligand Pharmaceuticals, Incorporated (“Ligand”) as the Stalking Horse Bidder for all of the Assets in connection with considering the entry of the Bidding Procedures Order, (iii) scheduling an auction of the Assets (the “Auction”); (iv) approving the form and manner of service of this Notice of Sale; (v) approving procedures for the assumption and assignment of executory contracts and unexpired leases (collectively, “Assumed Contracts”) in connection with any Sale; (vi) approving the form and manner of service of notice to each relevant non-debtor counterparty to an Assumed Contract (each a “Counterparty”) of the proposed assumption and assignment of such Counterparty’s Assumed Contract; (vii) scheduling a final hearing to consider approval of the proposed Sale(s) (the “Sale Hearing”); and (vi) granting related relief; and (b) one or more orders (each, a “Sale Order”) (i) authorizing a Sale of the Assets free and clear of all liens, claims, interests, and encumbrances; (ii) authorizing the assumption and assignment of certain Assumed Contracts in connection with the approved Sale; and (iii) granting related relief.

On August 15, 2023, the Court entered the Bidding Procedures Order [D.I. 166].

¹ The Debtors in these chapter 11 cases, along with the last four digitals 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.

² Capitalized terms used but not defined herein shall have the respective meanings given to them in the Motion or the Bidding Procedures, as applicable. Any summary of the Bidding Procedures or the Bidding Procedures Order (or any provision thereof) contained herein is qualified in its entirety by the actual terms and conditions thereof. To the extent that there is any inconsistency between any summary in this Notice of Sale and the terms and conditions of either of the Bidding Procedures or the Bidding Procedures Order, the actual terms and conditions in those documents shall control.



ASSETS FOR SALE

The Debtors intend to sell all, substantially all, or a portion of the Assets. Any Qualified Bidder may submit a bid for all or a portion of the R&D Assets, the Commercial Assets, or all of the Assets, subject to the conditions set forth in the Bidding Procedures. The ability to undertake and consummate a Sale shall be subject to competitive bidding, as set forth herein and in the Bidding Procedures Order, and approval by the Court.

Any party interested in submitting a bid for any of the Debtors' Assets should contact (a) the Debtors' proposed investment banker, Raymond James & Associates (Geoffrey Richards (geoffrey.richards@raymondjames.com) and Simon Wein (simon.wein@raymondjames.com); and (b) the Debtors' proposed counsel, Morris, Nichols, Arsht & Tunnell LLP.

KEY DATES AND DEADLINES

A. Bid Deadline

Any Qualified Bidder that intends to participate in the Auction must submit a Qualified Bid in accordance with Section 7 of the Bidding Procedures, on or before **August 28, 2023, at 5:00 p.m. (ET)** (the "Bid Deadline").

B. Auction

If the Debtors timely receive one or more Qualified Bids other than the Stalking Horse Bid for any Assets, then the Debtors shall conduct one or more Auctions. If the Debtors do not receive more than one Qualified Bid other than the Stalking Horse Bid, the Debtors shall cancel the Auction(s) for the Assets, deem the Stalking Horse Bid as the Winning Bid for the Assets, and shall request at the Sale Hearing that the Court approve the Stalking Horse Bid and the transactions contemplated thereunder for the Assets.

The Auction, if required, will commence on **August 31, 2023, at 10:00 a.m. (ET)**, at the offices of proposed investment banker for the Debtors, Raymond James & Associates, Inc., 320 Park Avenue, Floor 12, New York, New York 10022, or virtually via telephone or video conference pursuant to information to be timely provided by the Debtors to the Auction Participants (as defined below). If the Debtors conduct the Auction virtually, the Debtors will provide instructions setting forth how to attend the Auction to the Auction Participants via electronic mail. The Debtors will provide notice (via electronic mail or otherwise) of any change in the date, time, or location of any Auction to the relevant Qualified Bidders, and will cause publication of such change to occur on the website of the Debtors' claims and noticing agent, Kurtzman Carson Consultants LLC.

Within one (1) business day of the selection of any Winning Bid(s), the Debtors shall file a Notice of Winning Bid with the Court that sets forth: (i) the identity of the Winning Bidder(s) and any Back-Up Bidder; (ii) the amount of the Winning Bid and any Back-Up Bid; (iii) a summary of the Assets subject to the Winning Bid; and (iv) whether the Winning Bidder or the Back-Up Bidder have any connections to the Debtors other than those arising from their respective bids.

C. Sale Objection Deadlines

- i. Initial Sale Objection Deadline. Objections to a Sale of the Assets, including any general objections to the Sale and objections to the Sale of any Assets free and clear of all liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code to the Stalking Horse Bidder, a Winning Bidder or a Back-Up Bidder, must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (c) state with specificity the grounds for such objection, and (d) be filed with the Court and served on (i) the Debtors; (ii) proposed counsel to the Debtors; (iii) counsel to Ligand; and (iv) proposed counsel to the Creditors' Committee (the "Objection Notice Parties") **on or before August 28, 2023, at 4:00 p.m. (ET).**
- ii. Winning Bid Objection Deadline. Any objection relating solely to the conduct of the Auction, the Auction results, the selection of any Winning Bid or Back-Up Bid, or the terms of any Sale to a Winning Bidder or a Back-Up Bidder, which could not have been raised by the Initial Sale Objection Deadline, must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (c) state with specificity the grounds for such objection, and (d) be filed with the Court and served on the Objection Notice Parties on or before **September 6, 2023, at 4:00 p.m. (ET).**

D. Sale Hearing

The Sale Hearing shall take place on **September 11, 2023, at 10:00 a.m. (ET)**, before The Honorable Laurie Selber Silverstein, United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Delaware, located at 824 N. Market Street, Wilmington, Delaware 19801.

RESERVATION OF RIGHTS TO MODIFY BIDDING PROCEDURES

In accordance with and subject to the Bidding Procedures and the Bidding Procedures Order, and without prejudice to the rights of the DIP Lender under the DIP Facility or the Stalking Horse Bidder under the Stalking Horse APA, the Debtors, in the exercise of their reasonable business judgment and in a manner consistent with their fiduciary duties and applicable law, in consultation with the Notice Parties, shall have the right to modify the Bidding Procedures, including to (a) extend, modify, adjourn, or waive dates, deadlines or other terms and conditions set forth herein or in the Bidding Procedures; (b) adopt new rules and procedures for conducting the bidding and Auction process so long as any such modifications are reasonably disclosed to Qualified Bidders; and (c) promote competitive bidding for and maximizing the value of the Assets; provided, however, that under no circumstance (i) shall any of the forgoing potential modifications and/or procedural rules be materially inconsistent with the existing terms of the Bidding Procedures Order or the Bidding Procedures without the consent of the Creditors' Committee and Ligand; or (ii) may a bid for the R&D Assets, 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.

ADDITIONAL INFORMATION

Copies of the Bidding Procedures Motion, the Bidding Procedures, the Bidding Procedures Order, and all other documents filed with the Court may be obtained free of charge by visiting the Kurtzman Carson Consultants LLC Website at <https://www.kccllc.net/novan>, or can be requested by calling Kurtzman Carson Consultants LLC at: (888) 251-2954 (U.S./Canada) or (310) 751-2614 (International).

FAILURE TO ABIDE BY THE BIDDING PROCEDURES, THE BIDDING PROCEDURES ORDER, OR ANY OTHER APPLICABLE ORDER OF THE COURT ENTERED IN THESE CHAPTER 11 CASES MAY RESULT IN THE REJECTION OF YOUR BID AND YOUR DISQUALIFICATION FROM PARTICIPATING IN THE BIDDING FOR AND AUCTION OF ANY OF THE ASSETS.

THE FAILURE OF ANY PERSON OR ENTITY TO TIMELY FILE AND SERVE AN OBJECTION IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER, INCLUDING THE FAILURE TO FILE ANY SUCH OBJECTION BY THE APPLICABLE OBJECTION DEADLINE, SHALL FOREVER BAR SUCH PERSON OR ENTITY FROM ASSERTING, AT THE SALE HEARING OR THEREAFTER, ANY SUCH OBJECTION TO THE RELIEF REQUESTED IN THE MOTION, THE CONSUMMATION OF ANY APPLICABLE SALE, INCLUDING THE SALE OF ANY ASSETS TO A WINNING BIDDER FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES, PURSUANT TO SECTION 363(f) OF THE BANKRUPTCY CODE OR THE TERMS OF ANY STALKING HORSE AGREEMENT OR OTHER ASSET PURCHASE AGREEMENT EXECUTED BY THE DEBTORS.

Dated: August 16, 2023
Wilmington, Delaware

Respectfully submitted,

/s/ Daniel B. Butz

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