

**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)
)
) (Jointly Administered)
Debtors.)
) Related Doc. Nos. 16, 46, 59, 60

REEDY CREEK INVESTMENTS LLC’S PRELIMINARY OBJECTION AND RESERVATION OF RIGHTS REGARDING (1) 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 AND (2) INITIAL NOTICE OF POSSIBLE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Reedy Creek Investments LLC (“Reedy Creek”) by and through its undersigned counsel, hereby submits this preliminary objection and reservation of rights (the “Objection and Reservation of Rights”) with respect to the (1) *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*

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.



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 (the "Bidding Procedures Motion") [Dkt. No. 16] and (2) Initial Notice of Possible Assumption and Assignment of Certain Executory Contracts and Unexpired Leases (the "Contract Notice") [Dkt. No. 60]. This Objection and Reservation of Rights is supported by the Declaration of Steven L. Caponi filed herewith. In support of this Objection and Reservation of Rights, Reedy Creek also respectfully asserts as follows.

PRELIMINARY STATEMENT

1. Debtors Novan, Inc. ("Novan") and EPI Health, LLC ("EPI") filed these cases on July 17, 2023 (the "Petition Date") and on the same day, filed the Bidding Procedures Motion, proposing a sale of their assets (the "Proposed Sale"), to a stalking horse bidder and their DIP lender, Ligand Pharmaceuticals, Incorporated ("Ligand"). The Proposed Sale, as formulated in the Bidding Procedures Motion, has a foregone outcome by, among other things, requiring unreasonably short deadlines, forced assumption of the stalking horse bidder's contract, and entry of a private non-auction sale order in favor of Ligand (the "Private Sale Order"), free and clear of all liens, claims, encumbrances, and interests (without any opportunity for overbidding) if bidding procedures and stalking horse protections are not entered within the terms and tight schedule demanded. [Dkt. No. 16, pg. 22].

2. The preliminary hearing on the Bidding Procedures Motion should not be used to lock up the sale process, predetermine the outcome, or rubberstamp Debtors' apparent effort to sell an asset already owned by Reedy Creek. Reedy Creek objects to any such effort and further reserves all rights with respect to sale issues which the Court sets for appropriate consideration.

BACKGROUND

3. Pursuant to a Royalty and Milestone Payments Purchase Agreement (the "Reedy Creek Purchase Agreement") dated April 29, 2019, by and between Reedy Creek and Novan, Reedy Creek purchased certain royalty rights generated in connection with three products in Novan's portfolio: SB204, a once-daily, topical monotherapy being developed for the treatment of acne vulgaris; SB206, a topical anti-viral gel being developed for the treatment of molluscum contagiosum, a contagious skin infection caused by the molluscipoxvirus; and SB214, a topical cream-based product candidate being developed for the treatment of atopic dermatitis (a type of eczema) (collectively, the "Products").

4. The assets purchased by Reedy Creek consist of a royalty stream, based on an applicable percentage per Product consisting of certain upfront fees, milestone payments, royalty payments or equivalent payments received by Novan pursuant to any out-license agreement for the Products in the United States, Mexico or Canada, net of any upfront fees, milestone payments, royalty payments or equivalent payments paid by Novan to third parties pursuant to any agreements under which Novan has in-licensed intellectual property with respect to the Products in the same territory (the "Purchased Rights"). The applicable percentage is 10% for SB206 and 20% for SB204 and SB414, provided that the applicable percentage for each Product is 25% for fees or milestone payments received by Novan (but not royalty payments) until Reedy Creek has received payments under the Reedy Creek Purchase Agreement equal to the total purchase price.

If Novan self-commercializes any of the Products rather than placing them through an out-license agreement or other third-party arrangement, a separate sale fee arrangement applies. Such obligations are binding whether commercialization is by Novan or a successor.

5. Reedy Creek paid a purchase price of \$25,000,000 for the Purchased Rights. Although the Reedy Creek Purchase Agreement provided for a potential additional purchase payment of \$10,000,000 upon achievement of timely defined clinical trial success related to SB206, that milestone was not achieved.

6. The Reedy Creek Purchase Agreement authorized Reedy Creek to file an Article 9 Financing Statements notifying other parties of the purchase. Reedy Creek recorded the form UCC-1 Financing Statement with the Delaware Secretary of State on June 25, 2020. [See Decl. Steven Caponi ¶ 5, Ex. A].

7. Novan filed a form 8-K publicly disclosing the Reedy Creek Purchase Agreement on May 3, 2019.²

8. Ligand, the proposed stalking horse bidder and DIP lender, entered into a Development Funding and Royalties Agreement with Novan on or about May 4, 2019 (the “Ligand Agreement”), *after* the Reedy Creek Purchase Agreement. Notwithstanding the fact the Ligand Agreement was executed in 2019, Ligand did not record a UCC-1 Financing Statement with the Delaware Secretary of State until June 27, 2023, less than 30 days prior to the Petition Date. [See Decl. Steven Caponi ¶ 6, Ex. B].

² See <https://www.sec.gov/Archives/edgar/data/1467154/000146715419000023/novn-042920198k.htm>. [See Decl. Steven Caponi at ¶ 7]. A copy of the Reedy Creek Purchase Agreement is publicly available at: <https://www.sec.gov/Archives/edgar/data/1467154/000146715422000012/a12312021-10kexhibit1030.htm>. [See Decl. Steven Caponi at ¶¶ 8-9]. As disclosed in the form 8-K and other public filings by Novan, Reedy Creek is a shareholder in Novan and consequently a party in interest separate and apart from the Reedy Creek Purchase Agreement.

9. The proposed stalking horse APA purports to sell to Ligand all right title and interest in and to SB206 and neither references nor excludes the assets purchased by Reedy Creek [Dkt. No. 16-2, pg. 23]. The proposed stalking horse APA also seeks to improperly cement all interests of Ligand under the Ligand Agreement, to the detriment of Reedy Creek, by requiring any other potential bidder to take assignment of the Ligand Agreement [Dkt. No. 16, pg. 10]. Further, the Private Sale Order contains a number of provisions that, absent an exclusion of the Purchased Rights, are clearly inappropriate, including, without limitation findings R, U, and W, and paragraphs 7, 8, and 16, because such provisions could “sell” what the Debtors do not own or otherwise impair Reedy Creek’s rights in its property. [Dkt. No. 59-1].

PRELIMINARY
OBJECTION AND RESERVATION OF RIGHTS

10. Reedy Creek objects to Bidding Procedures Motion, the Proposed Sale, and entry of the Private Sale Order to extent the Debtors and Ligand seek to sell the assets purchased by Reedy Creek in connection with the Reedy Creek Purchase Agreement or otherwise interfere with Reedy Creek’s related rights. Reedy Creek further objects to any other effort to sell assets it has already purchased related to SB204, SB 206, and SB214. Additionally, Reedy Creek objects to the sale process proposed by the Debtors and Ligand because it is designed to lock up the sale to Ligand for a fraction of the reported value of the Debtors’ assets without appropriate marketing or sale efforts.

11. A debtor may not sell an asset that is not property of the estate in a Section 363 sale. *See In re Whitehall Jewelers Holdings, Inc.*, No. 08-11261 (KG), 2008 WL 2951974, *4 (Bankr. D. Del. July 28, 2008) (“A bankruptcy court may not allow the sale of property as ‘property of the estate’ without first determining whether the property is property of the estate”). Further a Debtor may not utilize a short form sale proceeding to make a determination of ownership. *Id.* at

*6 (requiring adversary proceedings against each consignor of goods prior to their sale in the bankruptcy); *In re TSAWD Holdings, Inc.*, 565 B.R. 292 (Bankr. D. Del. 2017) (same). Without waiving any other right or objection raised by Reedy Creek, to the extent the Court ultimately determines that the Debtors have any interest in the assets purchased by Reedy Creek, Reedy Creek demands adequate protection of that interest pursuant to 11 U.S.C. §§ 363 and 361.

12. For the same reason, among others, Reedy Creek objects to Debtors' inclusion of the Reedy Creek Purchase Agreement in its Contract Notice [Dkt. No. 60; pg. 13].³ The Reedy Creek Purchase Agreement is not an optional obligation that the Debtors can "take or leave." Reedy Creek objects to any attempted designation of the agreement as an executory contract subject to rejection. Without waiving the foregoing, Reedy Creek further objects to any assignment without the consent of Reedy Creek to the extent it is required under the Reedy Creek Purchase Agreement (which Reedy Creek has not granted at this time), and to any suggestion that Ligand has provided adequate assurance of future performance (which it has not).⁴

13. Reedy Creek further objects to Debtors' and Ligand's efforts to "end run" the entire bankruptcy sale process by providing for a private sale to Ligand, not subject to any overbids, if the Court does not acquiesce to the proposed stalking horse's demands, and insisting that parties object to *the ultimate sale* to Ligand before the Court has even considered the process for the Proposed Sale. [Dkt. No. 16, pg. 22]. The Court should reject that effort to lockup the sale process with artificial timing. As disclosed in the Declaration in support of the Debtors' First-Day Motions,

³ Debtors identify two instances of the same contract at numbers 581 and 582 and incorrectly identify one instance as being a contract with EPI (581).

⁴ Debtors are additionally in default of their obligations under the Reedy Creek Purchase Agreement to the extent that they have Encumbered (as defined therein) the rights assigned to Reedy Creek in connection with the Debtors' Debtor-in-Possession financing. If the Reedy Creek Purchase Agreement were an executory contract, such default would have to be cured prior to any attempted assumption and assignment.

a robust sale process is just beginning for these estates. Debtors only engaged their investment banker in June 2023 [Dkt. No. 4; pg. 19] and negotiated with Ligand and other potential stalking horse bidders for less than two weeks [*Id.* at 20]. Such a short-form process is not sufficient to robustly market complex assets that the Debtors valued in their most recent Form 10-Q at almost \$80 million. [*See Novan Form 10-Q For the Quarterly Period Ended March 31, 2013*].⁵

14. Further, the proposed bidding procedures not only contain a break-up fee, but also require assumption of the Ligand Agreement *in order for any other bidder to be a qualified bidder*. [Dkt. No. 16; pg. 10]. Such treatment is not an appropriate protection for a stalking horse bidder, but rather an effort to shore up Ligand's position, even in connection of a sale of assets entirely unrelated to the Ligand Agreement.

15. Reedy Creek additionally reserves all rights with respect to the Proposed Sale, including, without limitation, its right to object, be heard, and present evidence in connection with any sale hearing set by the Court, object to any proposed treatment of the Reedy Creek Purchase Agreement or any other agreement with the Debtors, and such other or further matters as may be heard and considered by the Court.

CONCLUSION

WHEREFORE, for the foregoing reasons, Reedy Creek requests that the Court (a) deny the Bidding Procedures Motion to the extent it seeks relief inconsistent with the objections raised herein, (b) deny any effort to enter the Private Sale Order, and (c) establish bidding and sale procedures that include a reasonable timeline to maximize the value of the Debtors and asset and do not artificially predetermine the outcome of a sale.

⁵ https://www.sec.gov/ix?doc=/Archives/edgar/data/1467154/000146715423000047/novn-20230331.htm#i28c717daeddb4b4cac6bc1c948e5532b_13. [*See Decl. Steven Caponi at ¶ 10*].

Dated: August 1, 2023

K&L GATES LLP

/s/ Steven L. Caponi

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Counsel to Reedy Creek Investments LLC

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

In re:)	Chapter 11
)	
NOVAN, INC., <i>et al.</i> , ¹)	Case No. 23-10937 (LSS)
)	
Debtors.)	(Jointly Administered)
)	
		Related Doc. Nos. 16, 46, 59, 60

**DECLARATION OF STEVEN L. CAPONI IN SUPPORT OF
REEDY CREEK INVESTMENTS LLC’S PRELIMINARY OBJECTION AND
RESERVATION OF RIGHTS REGARDING (1) 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,
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(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 AND (2) INITIAL NOTICE OF POSSIBLE
ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND
UNEXPIRED LEASES**

I, Steven L. Caponi, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am over 21 years of age and fully competent to make this declaration (the “Declaration”).

2. I am a partner of the law firm of K&L Gates LLP (“K&L Gates”), and a resident in the firm’s Wilmington, Delaware office, located at 600 N. King Street, Suite 901, Wilmington,

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.

DE 19801. I am admitted to the bar of the State of Delaware and I practice and am in good standing in such jurisdiction.

3. I submit this Declaration in support of *Reedy Creek Investments LLC's Preliminary Objection and Reservation of Rights Regarding (1) 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 and (2) Initial Notice of Possible Assumption and Assignment of Certain Executory Contracts and Unexpired Leases* (the "Objection and Reservation of Rights"), filed by Reedy Creek Investments LLC ("Reedy Creek") in the above-captioned action. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Objection and Reservation of Rights.

4. Except as otherwise noted, I have personal knowledge of the facts set forth herein.

5. A true, accurate and complete copy of the UCC-1 Financing Statement naming Novan as debtor and Reedy Creek as secured party, filed on June 25, 2020 at Filing No. 20204394781, as obtained from the Delaware Secretary of State is attached hereto at **Exhibit A**.

6. A true, accurate and complete copy of the UCC-1 Financing Statement naming Novan as debtor and Ligand as secured party, filed on June 27, 2023 at Filing No. 20234522685, as obtained from the Delaware Secretary of State is attached hereto at **Exhibit B**.

7. Novan's form 8-K (the "8-K") filed on May 3, 2019 and referenced in paragraph 7 of the Objection and Reservation of Rights is publicly accessible at:

<https://www.sec.gov/Archives/edgar/data/1467154/000146715419000023/novn-042920198k.htm>. I last visited this website on August 1, 2023.

8. Novan's entry into the Reedy Creek Purchase Agreement was publicly disclosed in the 8-K and in its form 10-K for the year ended December 31, 2022 (the "10-K"), filed on March 30, 2023. The 10-K is publicly accessible at:

<https://www.sec.gov/ix?doc=/Archives/edgar/data/1467154/000146715423000029/novn-20221231.htm>. I last visited this website on August 1, 2023.

9. The Reedy Creek Purchase Agreement was attached to the 10-K at Exhibit 10.34² and is publicly accessible at:

<https://www.sec.gov/Archives/edgar/data/1467154/000146715422000012/a12312021-10kexhibit1030.htm>. I last visited this website on August 1, 2023.

10. Novan's Form 10-Q for the quarterly period ended March 31, 2023 valued its assets at almost \$80,000,000. The 10-Q is publicly accessible at:

https://www.sec.gov/ix?doc=/Archives/edgar/data/1467154/000146715423000047/novn-20230331.htm#i28c717daeddb4b4cac6bc1c948e5532b_13. I last visited this website on August 1, 2023.

² The exhibit itself is mislabeled as "Exhibit 10.30."

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: August 1, 2023

/s/ Steven L. Caponi

Steven L. Caponi
K&L Gates LLP

EXHIBIT A

See attached.

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)
Jolene Beaty 704-331-5731

B. E-MAIL CONTACT AT FILER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

**Jolene Beaty
 K&L Gates LLP
 300 S Tryon St
 Suite 1000
 Charlotte, NC 28202**

Delaware Department of State
 U.C.C. Filing Section
 Filed: 11:08 AM 06/25/2020
 U.C.C. Initial Filing No: 2020 4394781

Service Request No: 20205901807

Print **Reset**

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. **DEBTOR'S NAME:** Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here and provide the individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME
Novan, Inc.

OR

1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

1c. MAILING ADDRESS

4105 Hopson Road	CITY Morrisville	STATE NC	POSTAL CODE 27560	COUNTRY USA
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2. **DEBTOR'S NAME:** Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here and provide the individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

2c. MAILING ADDRESS

	CITY	STATE	POSTAL CODE	COUNTRY

3. **SECURED PARTY'S NAME** (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME
Reedy Creek Investments LLC

OR

3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

3c. MAILING ADDRESS

100 Matrix Drive, Box 8000	CITY Cary	STATE NC	POSTAL CODE 27513	COUNTRY USA
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4. **COLLATERAL:** This financing statement covers the following collateral:

All of Debtor's right, title and interest in and to all Assigned Rights, Sales Royalties and all proceeds of the foregoing, whether now existing or hereafter owned, existing or arising.

Capitalized terms used herein shall have the meanings attributed to them on Exhibit A attached hereto.

5. Check only if applicable and check only one box: Collateral is held in a Trust (see UCC1Ad, item 17 and instructions) being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:
 Public-Finance Transaction Manufactured-Home Transaction A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:
 Agricultural Lien Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): Lessee/Lessor Consignee/Consignor Seller/Buyer Bailee/Bailor Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:
Filed with Delaware SOS (1859358.00004) Debtor: **Novan, Inc.**

EXHIBIT A

DESCRIPTION OF COLLATERAL

Debtor / Seller: Novan, Inc.
Secured Party / Buyer: Reedy Creek Investments LLC
Collateral Description:

All of the Debtor's right, title and interest in and to all Assigned Rights, Sales Royalties and all proceeds of the foregoing, whether now existing or hereafter owned, existing or arising.

The following terms shall have the following meanings. Such definition shall be equally applicable to the singular and plural forms of the terms defined. Capitalized terms used but not defined in this Exhibit A shall have the meaning attributed to such terms in the Royalty and Milestone Payments Purchase Agreement, dated as of April 29, 2019 between Debtor and Secured Party (as amended, restated, supplemented or otherwise modified from time to time, the "**Purchase Agreement**").

"**Affiliate**" means with respect to each Party, any Person that directly or indirectly is controlled by, controls or is under common control with a Party. For the purposes of this definition only, the term "control" (including, with correlative meanings, the terms "controlled by" and "under common control with") as used with respect to a Person means (a) in the case of a corporate entity, direct or indirect ownership of voting securities entitled to cast at least fifty percent (50%) of the votes in the election of directors or (b) in the case of a non-corporate entity, direct or indirect ownership of at least fifty percent (50%) of the equity interests with the power to direct the management and policies of such entity; provided that, if local laws restrict foreign ownership, control shall be established by direct or indirect ownership of the maximum ownership percentage that may, under such local laws, be owned by foreign interests, but only if such lower percentage provides such Person with the power to direct the management and policies of such entity.

"**Assigned Rights**" means the SB204 Rights, SB206 Rights and SB414 Rights.

"**Assigned Rights Period**" means, with respect to each Product, the longer of: (a) the period beginning with April 29, 2019 and ending on a future anniversary thereof as set forth in the Purchase Agreement and (b) the period beginning with April 29, 2019 and ending on a future anniversary of the First Commercial Sale of such Product as set forth in the Purchase Agreement.

"**Commercialize**" or "**Commercialization**" means, with respect to a Product, marketing, promotion, sale (and offer for sale or contract to sell), distribution, importation or other commercial exploitation of such Product following receipt Regulatory Approval. Commercialization shall include commercial activities conducted in preparation for First Commercial Sale.

"**Development Payments**" means any payments received by Debtor from Third Parties, including Licensees, as consideration for Debtor's or its Affiliates' performance of research and development services or activities or the provision of goods or materials regarding the Products or otherwise, including without limitation any related reimbursement or cost-sharing arrangements or activities. Development Payments shall not include any payments received by Debtor in connection with Commercialization.

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

“First Commercial Sale” means for each Product, the first commercial sale to a Third Party in any country in the Territory as part of a nationwide introduction by Debtor or its sublicensees following receipt of Regulatory Approval. Sales for clinical trial purposes or for compassionate use or on a named patient basis shall not be considered to constitute a First Commercial Sale.

“In-License Agreement” means, with respect to each Product, (a) the following license agreements or other written agreements entered into by Debtor and a Third Party whereby Debtor is granted rights under Intellectual Property of such Third Party with respect to such Product: the UNC License Agreement, Akron License Agreement and KIPAX Agreement; and (b) any such license agreement or written agreement entered into by Debtor and a Third Party and approved by Secured Party under Section 3.7 of the Purchase Agreement.

“Intellectual Property” means any and all right, title and interest in, arising from, or relating to inventions, ideas, Know-How, works of authorship and confidential information, including copyrights, patents and patent applications, trade secrets, any registrations or applications relating to any of the foregoing, and any other rights of a similar nature or character whether now existing or hereafter created, developed, arising or otherwise coming into being.

“Licensee” means the Third Party counterparty to Debtor in any Out-License Agreement.

“Out-License Agreement” means, with respect to any Product, any license agreement or other written agreement entered into by Debtor and a Third Party whereby Debtor grants any rights under any Intellectual Property related to such Product or to any Regulatory Approvals for such Product, in each case for the development and/or Commercialization of such Product by such Third Party in the Territory.

“Person” means any individual, firm, corporation, partnership, limited liability company, trust, business trust, joint venture, governmental authority, association or other entity.

“Product” means, individually, the SB204 Product, the SB206 Product or the SB414 Product.

“Purchase Price” has the meaning set forth in Section 2.2 of the Purchase Agreement.

“Regulatory Approval” means, with respect to a particular country or regulatory jurisdiction, all necessary authorizations and approvals by the Regulatory Authorities required to manufacture, use, import, market, distribute and promote a Product in such country or regulatory jurisdiction.

“Sales Royalties” means, collectively, the SB204 Sales Royalty, SB206 Sales Royalty and SB414 Sales Royalty.

“SB204 Applicable Percentage” means, with respect to each of the SB204 Net Milestones and SB204 Net Royalties, twenty percent (20%). Notwithstanding the foregoing, until Debtor has made payments to Secured Party under the Purchase Agreement the sum of which equals the Purchase Price, the SB204 Applicable Percentage shall mean, with respect to SB204 Net Milestones, twenty-five percent (25%).

“SB204 Net Milestones” means the aggregate, gross amount of upfront fees, milestone payments and equivalent fees or payments received by Debtor pursuant to any Out-License Agreement based on the occurrence of events specified in such Out-License Agreement, including the achievement of any milestones, with respect to the SB204 Product in the Territory in the SB204 Field of Use, less any upfront fees, milestone payments and equivalent fees or payments payable by Debtor pursuant to any In-License

Agreement with respect to the SB204 Product in the Territory in the SB204 Field of Use. SB204 Net Milestones shall not include any Development Payments received by Debtor with respect to the SB204 Product.

“SB204 Net Royalties” means the aggregate, gross amount of royalty payments and any collections, recoveries, payments, supplements or other compensation made in lieu thereof and any other remuneration of any kind received by or for Debtor pursuant to any Out-License Agreement for sales or other transfers of the SB204 Product in the Territory for use in the SB204 Product Field of Use in the Territory, less any royalty payments and any collections, recoveries, payments, supplements or other compensation made in lieu thereof and any other remuneration of any kind payable by Debtor pursuant to any In-License Agreement with respect to such sales or transfers. For clarity, SB204 Net Royalties shall not include any milestone payments received by or for Debtor pursuant to any Out-License Agreements for sales or other transfers of the SB204 Product in the Territory in the SB204 Product Field of Use, provided however, such milestone payments shall be included as part of the SB204 Net Milestones. SB204 Net Royalties shall not include any Development Payments received by Debtor with respect to the SB204 Product.

“SB204 Product” means Debtor’s pharmaceutical product known as SB204 being developed for the treatment of acne vulgaris in humans, as such product exists as of April 29, 2019 or as such product may be modified (i) during the development process up to and including the first Regulatory Approval by the FDA and (ii) for the treatment of acne vulgaris in humans from time to time thereafter.

“SB204 Product Field of Use” means the treatment of any distinct illness, sickness, interruption, cessation or disorder of a particular bodily function, system, tissue type or organ, or sign or symptom of any such items or conditions, regardless of the severity, frequency or route of any treatment, dosage strength or patient class, for which Regulatory Approval is being sought or has been obtained, including treatment of acne vulgaris in humans.

“SB204 Rights” means the right to receive cash in an amount equal to the sum of (a) the product of the SB204 Applicable Percentage multiplied by the SB204 Net Milestones and (b) the product of the SB204 Applicable Percentage multiplied by the SB204 Net Royalties, in each case during the Assigned Rights Period and pursuant to the terms and conditions of the Purchase Agreement.

“SB204 Sales Royalty” has the meaning set forth in Section 2.3(b) of the Purchase Agreement.

“SB206 Applicable Percentage” means, with respect to each of the SB206 Net Milestones and SB206 Net Royalties, ten percent (10%). Notwithstanding the foregoing, until Debtor has made payments to Secured Party under the Purchase Agreement the sum of which equals the Purchase Price, the SB206 Applicable Percentage shall mean, with respect to SB206 Net Milestones, twenty-five percent (25%).

“SB206 Net Milestones” means the aggregate, gross amount of upfront fees, milestone payments and equivalent fees or payments received by Debtor pursuant to any Out-License Agreement based on the occurrence of events specified in such Out-License Agreement, including the achievement of any milestones, with respect to the SB206 Product in the Territory in the SB206 Field of Use, less any upfront fees, milestone payments and equivalent fees or payments payable by Debtor pursuant to any In-License Agreement with respect to the SB206 Product in the Territory in the SB206 Field of Use. SB206 Net Milestones shall not include any Development Payments received by Debtor with respect to the SB206 Product.

“SB206 Net Royalties” means the aggregate, gross amount of royalty payments and any collections, recoveries, payments, supplements or other compensation made in lieu thereof and any other

remuneration of any kind received by or for Debtor pursuant to any Out-License Agreement for sales or other transfers of the SB206 Product in the Territory for use in the SB206 Product Field of Use in the Territory, less any royalty payments and any collections, recoveries, payments, supplements or other compensation made in lieu thereof and any other remuneration of any kind payable by Debtor pursuant to any In-License Agreement with respect to such sales or transfers. For clarity, SB206 Net Royalties shall not include any milestone payments received by or for Debtor pursuant to any Out-License Agreements for sales or other transfers of the SB206 Product in the Territory in the SB206 Product Field of Use, provided however, such milestone payments shall be included as part of the SB206 Net Milestones. SB206 Net Royalties shall not include any Development Payments received by Debtor with respect to the SB206 Product.

“SB206 Product” means Debtor’s pharmaceutical product known as SB206 being developed for the treatment of molluscum contagiosum in humans, as such product exists as of April 29, 2019 or as such product may be modified (i) during the development process up to and including the first Regulatory Approval by the FDA and (ii) for the treatment of molluscum contagiosum in humans from time to time thereafter.

“SB206 Product Field of Use” means the treatment of any distinct illness, sickness, interruption, cessation or disorder of a particular bodily function, system, tissue type or organ, or sign or symptom of any such items or conditions, regardless of the severity, frequency or route of any treatment, dosage strength or patient class, for which Regulatory Approval is being sought or has been obtained, including treatment of molluscum contagiosum in humans.

“SB206 Rights” means the right to receive cash in an amount equal to the sum of (a) the product of the SB206 Applicable Percentage multiplied by the SB206 Net Milestones and (b) the product of the SB204 Applicable Percentage multiplied by the SB206 Net Royalties, in each case during the Assigned Rights Period and pursuant to the terms and conditions of the Purchase Agreement.

“SB206 Sales Royalty” has the meaning set forth in Section 2.3(b) of the Purchase Agreement.

“SB414 Applicable Percentage” means, with respect to each of the SB414 Net Milestones and SB414 Net Royalties, twenty percent (20%). Notwithstanding the foregoing, until Debtor has made payments to Secured Party under the Purchase Agreement the sum of which equals the Purchase Price, the SB414 Applicable Percentage shall mean, with respect to SB414 Net Milestones, twenty-five percent (25%).

“SB414 Net Milestones” means the aggregate, gross amount of upfront fees, milestone payments and equivalent fees or payments received by Debtor pursuant to any Out-License Agreement based on the occurrence of events specified in such Out-License Agreement, including the achievement of any milestones, with respect to the SB414 Product in the Territory in the SB414 Field of Use, less any upfront fees, milestone payments and equivalent fees or payments payable by Debtor pursuant to any In-License Agreement with respect to the SB414 Product in the Territory in the SB414 Field of Use. SB414 Net Milestones shall not include any Development Payments received by Debtor with respect to the SB414 Product.

“SB414 Net Royalties” means the aggregate, gross amount of royalty payments and any collections, recoveries, payments, supplements or other compensation made in lieu thereof and any other remuneration of any kind received by or for Debtor pursuant to any Out-License Agreement for sales or other transfers of the SB414 Product in the Territory for use in the SB414 Product Field of Use in the Territory, less any royalty payments and any collections, recoveries, payments, supplements or other compensation made in lieu thereof and any other remuneration of any kind payable by Debtor pursuant to

any In-License Agreement with respect to such sales or transfers. For clarity, SB414 Net Royalties shall not include any milestone payments received by or for Debtor pursuant to any Out-License Agreements for sales or other transfers of the SB414 Product in the Territory in the SB414 Product Field of Use, provided however, such milestone payments shall be included as part of the SB414 Net Milestones. SB414 Net Royalties shall not include any Development Payments received by Debtor with respect to the SB414 Product.

“SB414 Product” means Debtor’s pharmaceutical product known as SB414 being developed for the treatment of atopic dermatitis in humans, as such product exists as of April 29, 2019 or as such product may be modified (i) during the development process up to and including the first Regulatory Approval and (ii) for the treatment of atopic dermatitis in humans from time to time thereafter.

“SB414 Product Field of Use” means the treatment of any distinct illness, sickness, interruption, cessation or disorder of a particular bodily function, system, tissue type or organ, or sign or symptom of any such items or conditions, regardless of the severity, frequency or route of any treatment, dosage strength or patient class, for which Regulatory Approval is being sought or has been obtained, including treatment of atopic dermatitis in humans.

“SB414 Rights” means the right to receive cash in an amount equal to the sum of (a) the product of the SB414 Applicable Percentage multiplied by the SB414 Net Milestones and (b) the product of the SB414 Applicable Percentage multiplied by the SB414 Net Royalties, in each case during the Assigned Rights Period and pursuant to the terms and conditions of the Purchase Agreement.

“SB414 Sales Royalty” has the meaning set forth in Section 2.3(b) of the Purchase Agreement.

“Territory” means the United States of America, Canada, Mexico and each of their territories and possessions.

“Third Party” means any Person other than Debtor and Secured Party and their respective Affiliates.

EXHIBIT B

See attached.

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)
Melissa Hong (858) 523-5400

B. E-MAIL CONTACT AT FILER (optional)
melissa.hong@lw.com

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

Latham & Watkins LLP
 12670 High Bluff Drive
 San Diego, CA 92130

Delaware Department of State
 U.C.C. Filing Section
 Filed: 07:14 PM 06/27/2023
 U.C.C. Initial Filing No: 2023 4522685
 Service Request No: 20232871451

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here and provide the individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME
Novan, Inc.

OR

1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

1c. MAILING ADDRESS
4105 Hopson Road

CITY Morrisville	STATE NC	POSTAL CODE 27560	COUNTRY USA
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2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here and provide the individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

2c. MAILING ADDRESS

CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME
Ligand Pharmaceuticals Incorporated

OR

3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX

3c. MAILING ADDRESS
3911 Sorrento Valley Boulevard, Suite 110

CITY San Diego	STATE CA	POSTAL CODE 92121	COUNTRY USA
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4. COLLATERAL: This financing statement covers the following collateral:
See Exhibit A attached hereto.

5. Check only if applicable and check only one box: Collateral is held in a Trust (see UCC1Ad, item 17 and Instructions) being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:
 Public-Finance Transaction Manufactured-Home Transaction A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:
 Agricultural Lien Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): Lessee/Lessor Consignee/Consignor Seller/Buyer Bailee/Bailor Licensee/Licenser

8. OPTIONAL FILER REFERENCE DATA:
 Filed with: DE - Secretary of State (038741-0065) **F#941957**
A#1288329

EXHIBIT A

Collateral Description

DEBTOR: Novan, Inc.

SECURED PARTY: Ligand Pharmaceuticals Incorporated

This financing statement covers all of the Debtor's 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 in Section 4.3 of the Agreement by the corresponding amount of incremental Net Sales of Products in the Field in the Territory ("**Royalties**").

Except as set forth below, all terms shall have the meanings given in the Agreement, and to the extent not defined therein, the UCC.

"**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.

"**Agreement**" means that certain Development Funding and Royalties Agreement, dated as of the Effective Date, by and between Debtor and Secured Party.

"**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 the Agreement.

"**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 the Agreement.

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

“**Covers**” 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.

“**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.

“**Effective Date**” means May 4, 2019.

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

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

“**First Commercial Sale**” means, with respect to a particular product, the first commercial sale for monetary value by Debtor, 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 nonconditional 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.

“**GAAP**” means generally accepted accounting principles in the United States, consistently applied.

“**Governmental Authority**” means 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.

“**License**” means any agreement pursuant to which Debtor 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 Debtor 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).

“**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.

“**Net Sales**” means, with respect to any Product, the total invoiced sales price received for such Product sold by Debtor 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 of the Agreement. For the avoidance of doubt, any revenue from sales of Product that is booked by Debtor 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 in Section 1.34 of the Agreement, without duplication.

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

“**Novan Technology**” means berdazimer sodium (NVN1000).

“**Party**” means Debtor or Secured Party when referred to individually, or, collectively, the “**Parties**”.

“**Patent Right**” 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.

“**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.

“**Products**” 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 Debtor and/or its Affiliates or Licensees for the treatment of molluscum contagiosum in humans.

“Regulatory Approvals” 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.

“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.

“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 European Union under Directive 2001/83/EC, or rights similar thereto in other countries or regulatory jurisdictions in the Territory.

“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.

“Royalty Term” means the term commencing on First Commercial Sale, on a country-by-country basis, 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 (15th) anniversary of the First Commercial Sale of such first Product in such country.

“Term” means the period of time commencing on the Effective Date and continuing for as long as payments are due and payable under the Agreement or until such date as the Agreement is sooner terminated in accordance with Section 6.2, 6.3, or 6.4 of the Agreement, or by mutual written consent of the Parties.

“Territory” means the United States, Canada and Mexico and all of their respective territories and possessions.

“UCC” means the Uniform Commercial Code in the applicable jurisdiction.

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

“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.

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

In re:)	Chapter 11
)	
NOVAN, INC., <i>et al.</i> , ¹)	Case No. 23-10937 (LSS)
)	
Debtors.)	(Jointly Administered)
)	
)	Related Doc. Nos. 16, 46, 59, 60

CERTIFICATE OF SERVICE

I, Steven L. Caponi, certify that I caused a true and correct copy of the foregoing *Reedy Creek Investments LLC’s Preliminary Objection and Reservation of Rights Regarding (I) 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 and (2) Initial Notice of Possible Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and the Declaration of Steven*

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.

L. Caponi in support thereof to be filed and served via CM/ECF on all parties requesting electronic notification in this case and via electronic mail to the parties set forth on the attached service list.

Dated: August 1, 2023

/s/ Steven L. Caponi
Steven L. Caponi (No. 3484)

SERVICE LIST

**PROPOSED COUNSEL
TO THE DEBTORS**

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Wilmington, Delaware 19801
Attn: Derek C. Abbott, Esq.
(dabbott@morrisonichols.com)

**THE OFFICE OF THE UNITED
STATES TRUSTEE FOR THE
DISTRICT OF DELAWARE**

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**COUNSEL TO LIGAND
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INCORPORATED**

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