

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

In re: )  
 ) Chapter 11  
NOVAN, INC., *et al.*,<sup>1</sup> )  
 ) Case No. 23-10937 (LSS)  
 Debtors. )  
 ) (Jointly Administered)  
 )  
 ) **Re: D.I. 9**  
 )

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**CERTIFICATION OF COUNSEL REGARDING MOTION OF DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS, PURSUANT TO SECTIONS 105(A) AND 366 OF THE BANKRUPTCY CODE, (I) APPROVING DEBTORS’ PROPOSED FORM OF ADEQUATE ASSURANCE OF PAYMENT, (II) ESTABLISHING PROCEDURES FOR RESOLVING OBJECTIONS AND REQUESTS FOR ADDITIONAL ASSURANCE FROM UTILITY COMPANIES, (III) PROHIBITING UTILITY COMPANIES FROM ALTERING, REFUSING, OR DISCONTINUING SERVICE, AND (IV) GRANTING RELATED RELIEF**

The undersigned counsel to the above-captioned debtors and debtors in possession (the “Debtors”) hereby certifies as follows:

1. On July 17, 2023, the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.
2. On July 17, 2023, the Debtors filed the *Motion of Debtors for Entry of Interim and Final Orders, Pursuant to Sections 105(a) and 366 of the Bankruptcy Code, (I) Approving Debtors’ Proposed Form of Adequate Assurance of Payment, (II) Establishing Procedures for Resolving Objections and Requests for Additional Assurance from Utility Companies, (III) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Service,*

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<sup>1</sup> 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.



and (IV) Granting Related Relief (the “Motion”) [D.I. 9]. Attached to the Motion as Exhibit A was a proposed form of interim order. Attached to the Motion as Exhibit B was a proposed form of final order (the “Proposed Final Order”).

3. On July 19, 2023, the Debtors filed the *Notice of Filing of Revised Interim Order (I) Approving Debtors’ Proposed Form of Adequate Assurance of Payment, (II) Establishing Procedures for Resolving Objections and Requests for Additional Assurance from Utility Companies, (III) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Service, and (IV) Granting Related Relief* (the “Notice”) [D.I. 31]. Attached to the Notice as Exhibit A was a proposed form of interim order (the “Proposed Interim Order”).

4. On July 21, 2023, the Court entered the Proposed Interim Order [D.I. 52]. The Proposed Interim Order established a deadline to file objections or responses to the final relief requested in the Motion as August 4, 2023, at 4:00 p.m. (ET), extended for the Office of the United States Trustee (the “U.S. Trustee”) and extended to August 16, 2023, at 4:00 p.m. (ET) (the “Objection Deadline”) only as to the Official Committee of Unsecured Creditors (the “Committee”).

5. Prior to the Objection Deadline, the Debtors received informal comments from counsel to the Committee. The Debtor did not receive any other objections or informal comments to the Motion.

6. The Debtors have resolved the informal comments from the Committee by revisions to the Proposed Final Order. A copy of the revised proposed final form of order (the “Revised Proposed Final Order”) is attached hereto as **Exhibit A**. For the convenience of the Court and all parties in interest, a redline comparing the Revised Proposed Final Order to the Proposed Final Order is attached hereto as **Exhibit B**.

7. Counsel to the Committee has reviewed the Revised Proposed Final Order and does not object to its entry.

WHEREFORE, the Debtors respectfully request that the Revised Proposed Final Order attached to the Motion be entered at the earliest convenience of the Court.

Dated: August 17, 2023  
Wilmington, Delaware

Respectfully submitted,

*/s/ Scott D. Jones*

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*Proposed Counsel to the Debtors and Debtors in Possession*

**Exhibit A**

**(Revised Proposed Final Order)**

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

In re:	)	
	)	Chapter 11
NOVAN, INC., <i>et al.</i> , <sup>1</sup>	)	
	)	Case No. 23-10937 (LSS)
Debtors.	)	
	)	(Jointly Administered)
	)	
	)	<b>Re: D.I. 6, 52</b>
	)	

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**FINAL ORDER (I) APPROVING DEBTORS’ PROPOSED FORM OF  
ADEQUATE ASSURANCE OF PAYMENT, (II) ESTABLISHING PROCEDURES  
FOR RESOLVING OBJECTIONS AND REQUESTS FOR ADDITIONAL  
ASSURANCE FROM UTILITY COMPANIES, (III) PROHIBITING UTILITY  
COMPANIES FROM ALTERING, REFUSING, OR DISCONTINUING  
SERVICE, AND (IV) GRANTING RELATED RELIEF**

Upon the *Motion of Debtors for Entry of Interim and Final Orders (I) Approving Debtors’ Proposed Form of Adequate Assurance of Payment, (II) Establishing Procedures for Resolving Objections and Requests for Additional Assurance From Utility Companies, (III) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Service, and (IV) Granting Related Relief* (the “Motion”),<sup>2</sup> for entry of a final order (this “Final Order”), (i) approving the Debtors’ proposed form of adequate assurance of postpetition payment to the Utility Companies; (ii) establishing procedures for resolving any objections by the Utility Companies relating to the Proposed Adequate Assurance; and (iii) prohibiting the Utility Companies from altering, refusing, or discontinuing service to, or discriminating against, the Debtors solely on the basis of the commencement of these cases, a debt that is owed by the Debtors

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<sup>1</sup> 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.

<sup>2</sup> Capitalized terms used but not otherwise defined in this Final Order shall have the meanings ascribed to them in this Motion.

for services rendered prior to the Petition Date, or on account of any perceived inadequacy of the Debtors' Proposed Adequate Assurance, all as further described in the Motion; and upon consideration of the First Day Declaration and the record of these Chapter 11 Cases; and this Court having found that (i) this Court has jurisdiction over the Debtors, their estates, property of their estates and to consider the Motion and the relief requested therein under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012, (ii) this Court may enter a final order consistent with Article III of the United States Constitution, (iii) this is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (iv) venue of this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409, and (v) no further or other notice of the Motion is required under the circumstances; and this Court having reviewed the Motion and having heard the statements in support of the relief requested in the Motion at a hearing before this Court, as applicable; this Court having reviewed the Motion and the First Day Declaration and having considered the statements of counsel and the evidence adduced with respect to the Motion at the interim hearing; and this Court having granted the interim relief requested in the Motion [D.I. 52]; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted in this Final Order; and any objections to the requested relief having been withdrawn or overruled;

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED, on a final basis, as set forth herein.
2. All Utility Companies are prohibited from altering, refusing, or discontinuing Utility Services to the Debtors, or otherwise discriminating against the Debtors on account of the Debtors' bankruptcy filings or any outstanding prepetition invoices.
3. Any Utility Company that is paid in advance for Utility Services or to which the Debtors already provided a deposit equal to approximately 50% of one month of Utility Services,

as reflected on Schedule 1 attached to this Final Order, shall be deemed to have received adequate assurance of payment as required by section 366 of the Bankruptcy Code.

4. Notwithstanding anything to the contrary in any other order of this Court, including any debtor in possession financing order, no creditor, including the debtor in possession financing lender, shall have any interest in or lien on the Adequate Assurance Deposit or the Utility Deposit Account.

5. The Adequate Assurance Deposit attributable to each Utility Company shall be maintained until the earlier of (a) entry of an order of this Court authorizing or directing the return of the Adequate Assurance Deposit to the Debtors; (b) subject to the requirements of paragraph 7(vi) below, entry of an order authorizing the rejection of a lease for a location closing (only if the Debtors maintain their only account with the relevant utility at such closing location); or (c) the effective date of any chapter 11 plan in the Debtors' Chapter 11 Cases.

6. The Debtors are authorized to amend, as necessary, the Utility Company List by adding or deleting a Utility Company, which amendment shall be accompanied by filing with this Court a notice of such amendment and serving such amendment on the affected Utility Company.

7. Subject to the Adequate Assurance Procedures set forth below, the Adequate Assurance Deposit attributable to each Utility Company constitutes sufficient adequate assurance of future payment to the Utility Companies to satisfy the requirements of section 366 of the Bankruptcy Code (the "Proposed Adequate Assurance") and no Utility Company shall discontinue Utility Services without complying with the following Adequate Assurance Procedures:

- i. Any Utility Company that objects to the Adequate Assurance must serve a request (an "Adequate Assurance Request") on: (i) the Debtors, Novan, Inc., 4020 Stirrup Creek Drive, Suite 110, Durham, NC 27703 (Attn: John M. Gay (jgay@novan.com)); (ii) proposed counsel to the Debtors, Morris, Nichols, Arsht & Tunnell LLP, 1201

Market Street, 16<sup>th</sup> Floor, Wilmington, Delaware 19801 (Attn: Derek C. Abbott, Esq. (dabbott@morrisnichols.com)); (iii) counsel to Ligand Pharmaceuticals, Incorporated (the “DIP Lender”), Morgan Lewis and Bockius LLP, 101 Park Ave. New York, NY 10174 (Attn: Attn: Craig A. Wolfe, Esq. (craig.wolfe@morganlewis.com), Jason R. Alderson (jason.alderson@morganlewis.com), and David K. Shim (david.shim@morganlewis.com)); (iv) the Office of the United States Trustee, J. Caleb Boggs Federal Building, 844 King St., Lockbox 35, Wilmington, DE 19801 (Attn: Linda J. Casey, Esq. (linda.casey@usdoj.gov)); and (v) counsel to the Official Committee of Unsecured Creditors (the “Committee”) Goodwin Procter, LLP, The New York Times Building, 620 Eighth Avenue, New York, New York 10018 (Attn: Howard Steel (hsteel@goodwinlaw.com), Barry Bazian (bbazian@goodwinlaw.com), Stacy Dasaro (sdasaro@goodwinlaw.com), and James Lathrop (jlathrop@goodwinlaw.com)) (collectively, the “Notice Parties”).

- ii. Any Adequate Assurance Request must be served on the Notice Parties and must: (a) be made in writing; (b) identify the location for which Utility Services are provided and relevant account number(s); (c) include information regarding any security deposits paid by the Debtors; (d) provide evidence that the Debtors have a direct obligation to the Utility Provider; and (e) explain the basis for the Request including why the Utility Company believes the Adequate Assurance is not sufficient adequate assurance of future payment.
- iii. Upon the Debtors’ receipt of any Adequate Assurance Request, the Debtors shall promptly negotiate with the requesting Utility Company to resolve its Adequate Assurance Request.
- iv. The Debtors are authorized to resolve any Adequate Assurance Request by mutual agreement with a Utility Company in consultation with the DIP Lender and without further order of the Court and, in connection with any such agreement, provide a Utility Company with alternative adequate assurance of payment, including cash deposits, prepayments, or other forms of security, without further order of the Court, if the Debtors believe such alternative assurance is reasonable provided, however, that the Debtors shall maintain a summary record of such agreements and



their respective terms, to be made available, on request, to the Notice Parties.

- v. If the Debtors determine that a timely received Adequate Assurance Request is not reasonable and are unable to reach an alternative resolution with the applicable Utility Company, the Debtors shall request a hearing before the Court to determine the adequacy of assurance of payment pursuant to section 366(c)(3) of the Bankruptcy Code (the “Determination Hearing”). Pending resolution of such Adequate Assurance Request at the Determination Hearing, the Utility Company shall be prohibited from altering, refusing, or discontinuing services to the Debtors on account of unpaid charges for prepetition services or on account of any objections to the Adequate Assurance.
- vi. Upon the termination of Utility Services independent thereof, including on account of a Closed Account, the Debtors may, without further order of the Court, reduce the Adequate Assurance Deposit by an amount not exceeding, for each of the Utility Services being discontinued, the amount of the Adequate Assurance Deposit then attributable to the applicable terminated Utility Services; provided that for any Utility Company for which the Adequate Assurance Deposit is reduced, the Debtors shall provide the affected Utility Company fourteen (14) days’ notice of their intent to reduce the Adequate Assurance Deposit and shall have paid such Utility Company in full for any outstanding post-petition Utility Services before reducing the Adequate Assurance Deposit.

8. The Debtors shall, as necessary, provide a copy of this Final Order to any Utility Company not listed on the Utility Service List (each, an “Additional Utility Company” and, collectively, the “Additional Utility Companies”), as such Utility Companies are identified. Promptly upon their discovery of an Additional Utility Company, the Debtors shall increase the Adequate Assurance Deposit by an amount equal to approximately 50% of the Estimated Utility Expense for each Additional Utility Company, unless such Additional Utility Company agrees in writing to a lesser amount or is paid in advance for Utility Services. The Additional Utility

Companies shall be subject to the terms of this Interim Order, including the Adequate Assurance Procedures.

9. A Utility Company shall be deemed to have adequate assurance of payment under section 366 of the Bankruptcy Code unless and until: (a) the Debtors agree to an alternative assurance of payment; or (b) this Court enters an order after a Determination Hearing requiring that additional adequate assurance of payment be provided to the Utility Company.

10. This Final Order is without prejudice to the rights of the Debtors and their estates to contest the validity, priority, or amounts of any obligations relating to the Utility Companies on any grounds they deem appropriate, and any rights of the Debtors and their estates with respect to such matters shall be reserved.

11. The Debtors are authorized to reduce the Adequate Assurance Deposit to the extent that it includes an amount on account of a Utility Company that the Debtors subsequently determine should be removed from the Utility Company List upon either: (a) obtaining the affected Utility Company's consent to reduce the Adequate Assurance Deposit or (b) providing such affected Utility Company with fourteen (14) days' notice of their intent to reduce the Adequate Assurance Deposit and receiving no response thereto.

12. If any undisputed amount relating to postpetition Utility Services provided by a Utility Company is unpaid beyond any applicable grace period, such Utility Company may request a disbursement from the Utility Deposit Account by giving written notice to the Notice Parties.

13. Notwithstanding the relief granted in this Final Order or any actions taken hereunder, nothing contained in this Final Order shall create any rights in favor of, or enhance the status of any claim held by, any Utility Company.

14. The Debtors' service of the Motion, the Interim Order, or this Final Order upon the Utility Companies shall not constitute an admission or concession that any such entity is a utility company within the meaning of section 366 of the Bankruptcy Code, and all rights and defenses of the Debtors are reserved with respect thereto.

15. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order or any payment made pursuant to this Final Order shall constitute, nor is it intended to constitute: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Final Order or the Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission to the validity, priority, enforceability, or perfection of any lien on, security interest in, or encumbrance on property of the Debtors' estates; or (g) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law.

1. Notwithstanding the possible applicability of Bankruptcy Rule 6004(h), the terms and provisions of this Final Order shall be immediately effective and enforceable upon its entry.

2. The Debtors are hereby authorized to take all actions they deem necessary to effectuate the relief granted in this Final Order.

3. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation or interpretation of this Final Order.

**Schedule 1**

**(Utility Company List)**

<b>Utility Company</b>	<b>Corporate Address</b>	<b>Service</b>	<b>Account Nos. (if available)</b>	<b>Proposed Adequate Assurance</b>
CallTower Inc.	10701 S River Front Pkwy., Ste 450, South Jordan, UT 84095	Phone	8888274462	\$275
City of Durham	101 City Hall Plaza, Durham, NC 27701	Water and sewer	210159605242	\$125
Clean Harbors	42 Longwater Drive, Norwell, MA 02061	Hazardous Waste Disposal	NO30690	\$3,400
Dominion Energy North Carolina	P.O. Box 100256, Columbia, SC 29202-3256	Gas	5-2101-2817-8123	\$3,100
Duke Energy	P.O. Box 70516, Charlotte, NC 28272	Electric	9100 9428 3716	\$4,250
Level 3 Communications, LLC	1025 Eldorado Blvd., Broomfield, CO 80021	Internet	5-HTLTYDQ6	\$355
Republic Services	5111 Chin Page Road, Durham, NC 27703-840505	Trash	309390033526	\$275
Segra	P.O. Box 1068, Waynesboro, VA 22980-0774	Internet	5251108	\$300
Segra	P.O. Box 1068, Waynesboro, VA 22980-0774	Phone	5172703	\$550
Spectrum	4145 S. Falkenburg Rd, Riverview, FL 33578	Cable		\$85
vCom	12657 Alcosta Blvd., Ste 418, San Ramon, CA 94585	Internet	001084-00003	\$130
Verizon Wireless	500 Technology Drive, Suite 550, Weldon Spring, MO 63304	Cellphone	442467760-00001	\$1,220
Worksmart	100 Meredith Drive, Ste 200, Durham, NC 27713	Internet		\$1,000

**Exhibit B**

**(Blackline)**

**EXHIBIT B**

**Proposed Final Order**



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

In re:	)
	) Chapter 11
NOVAN, INC., <i>et al.</i> , <sup>1</sup>	)
	) Case No. 23-10937 (LSS)
Debtors.	)
	) (Jointly Administered)
	)
	) <b>Re: D.I.—.6, 52</b>
	)

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**FINAL ORDER (I) APPROVING DEBTORS’ PROPOSED FORM OF ADEQUATE ASSURANCE OF PAYMENT, (II) ESTABLISHING PROCEDURES FOR RESOLVING OBJECTIONS AND REQUESTS FOR ADDITIONAL ASSURANCE FROM UTILITY COMPANIES, (III) PROHIBITING UTILITY COMPANIES FROM ALTERING, REFUSING, OR DISCONTINUING SERVICE, AND (IV) GRANTING RELATED RELIEF**

Upon the *Motion of Debtors for Entry of Interim and Final Orders (I) Approving Debtors’ Proposed Form of Adequate Assurance of Payment, (II) Establishing Procedures for Resolving Objections and Requests for Additional Assurance From Utility Companies, (III) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Service, and (IV) Granting Related Relief* (the “Motion”),<sup>2</sup> for entry of a final order (this “Final Order”), (i) approving the Debtors’ proposed form of adequate assurance of postpetition payment to the Utility Companies; (ii) establishing procedures for resolving any objections by the Utility Companies relating to the Proposed Adequate Assurance; and (iii) prohibiting the Utility Companies from altering, refusing, or discontinuing service to, or discriminating against, the

<sup>1</sup> 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.

<sup>2</sup> Capitalized terms used but not otherwise defined in this Final Order shall have the meanings ascribed to them in this Motion.

Debtors solely on the basis of the commencement of these cases, a debt that is owed by the Debtors for services rendered prior to the Petition Date, or on account of any perceived inadequacy of the Debtors' Proposed Adequate Assurance, all as further described in the Motion; and upon consideration of the First Day Declaration and the record of these Chapter 11 Cases; and this Court having found that (i) this Court has jurisdiction over the Debtors, their estates, property of their estates and to consider the Motion and the relief requested therein under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012, (ii) this Court may enter a final order consistent with Article III of the United States Constitution, (iii) this is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (iv) venue of this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409, and (v) no further or other notice of the Motion is required under the circumstances; and this Court having reviewed the Motion and having heard the statements in support of the relief requested in the Motion at a hearing before this Court, as applicable; this Court having reviewed the Motion and the First Day Declaration and having considered the statements of counsel and the evidence adduced with respect to the Motion at the interim hearing; and this Court having granted the interim relief requested in the Motion [D.I. 52]; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted in this Final Order; and any objections to the requested relief having been withdrawn or overruled;

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED, on a final basis, as set forth herein.

2. All Utility Companies are prohibited from altering, refusing, or discontinuing Utility Services to the Debtors, or otherwise discriminating against the Debtors on account of the Debtors' bankruptcy filings or any outstanding prepetition invoices.

3. Any Utility Company that is paid in advance for Utility Services or to which the Debtors already provided a deposit equal to approximately 50% of one month of Utility Services, as reflected on Schedule 1 attached to this Final Order, shall be deemed to have received adequate assurance of payment as required by section 366 of the Bankruptcy Code.

4. Notwithstanding anything to the contrary in any other order of this Court, including any debtor in possession financing order, no creditor, including the debtor in possession financing lender, shall have any interest in or lien on the Adequate Assurance Deposit or the Utility Deposit Account.

5. The Adequate Assurance Deposit attributable to each Utility Company shall be maintained until the earlier of (a) entry of an order of this Court authorizing or directing the return of the Adequate Assurance Deposit to the Debtors; (b) subject to the requirements of paragraph 7(vi) below, entry of an order authorizing the rejection of a lease for a location closing (only if the Debtors maintain their only account with the relevant utility at such closing location); or (c) the effective date of any chapter 11 plan in the Debtors' Chapter 11 Cases.

6. The Debtors are authorized to amend, as necessary, the Utility Company List by adding or deleting a Utility Company, which amendment shall be accompanied by filing with this Court a notice of such amendment and serving such amendment on the affected Utility Company.

7. Subject to the Adequate Assurance Procedures set forth below, the Adequate Assurance Deposit attributable to each Utility Company constitutes sufficient adequate assurance

of future payment to the Utility Companies to satisfy the requirements of section 366 of the Bankruptcy Code (the “Proposed Adequate Assurance”) and no Utility Company shall discontinue Utility Services without complying with the following Adequate Assurance Procedures:

- i. Any Utility Company that objects to the Adequate Assurance must serve a request (an “Adequate Assurance Request”) on: (i) the Debtors, Novan, Inc., 4020 Stirrup Creek Drive, Suite 110, Durham, NC 27703 (Attn: John M. Gay (jgay@novan.com)); (ii) proposed counsel to the Debtors, Morris, Nichols, Arsht & Tunnell LLP, 1201 Market Street, 16<sup>th</sup> Floor, Wilmington, Delaware 19801 (Attn: Derek C. Abbott, Esq. (dabbott@morrisnichols.com)); (iii) counsel to Ligand Pharmaceuticals, Incorporated (the “DIP Lender”), Morgan Lewis and Bockius LLP, 101 Park Ave. New York, NY 10174 (Attn: Attn: Craig A. Wolfe, Esq. (craig.wolfe@morganlewis.com), Jason R. Alderson (jason.alderson@morganlewis.com), and David K. Shim (david.shim@morganlewis.com)); (iv) the Office of the United States Trustee, J. Caleb Boggs Federal Building, 844 King St., Lockbox 35, Wilmington, DE 19801 (Attn: Linda J. Casey, Esq. (linda.casey@usdoj.gov)); and (v) counsel to ~~any official committee of unsecured creditors appointed in the Chapter 11 Cases~~the Official Committee of Unsecured Creditors (the “Committee”) Goodwin Procter, LLP, The New York Times Building, 620 Eighth Avenue, New York, New York 10018 (Attn: Howard Steel (hsteel@goodwinlaw.com), Barry Bazian (bbazian@goodwinlaw.com), Stacy Dasaro (sdasaro@goodwinlaw.com), and James Lathrop (jlathrop@goodwinlaw.com)) (collectively, the “Notice Parties”).
- ii. Any Adequate Assurance Request must be served on the Notice Parties and must: (a) be made in writing; (b) identify the location for which Utility Services are provided and relevant account number(s); (c) include information regarding any security deposits paid by the Debtors; (d) provide evidence that the Debtors have a direct obligation to the Utility Provider; and (ee) explain the basis for the Request including why the Utility Company believes the Adequate Assurance is not sufficient adequate assurance of future payment.

- iii. Upon the Debtors' receipt of any Adequate Assurance Request, the Debtors shall promptly negotiate with the requesting Utility Company to resolve its Adequate Assurance Request.
- iv. The Debtors are authorized to resolve any Adequate Assurance Request by mutual agreement with a Utility Company in consultation with the DIP Lender and without further order of the Court and, in connection with any such agreement, provide a Utility Company with alternative adequate assurance of payment, including cash deposits, prepayments, or other forms of security, without further order of the Court, if the Debtors believe such alternative assurance is reasonable provided, however, that the Debtors shall maintain a summary record of such agreements and their respective terms, to be made available, on request, to the Notice Parties.
- v. If the Debtors determine that a timely received Adequate Assurance Request is not reasonable and are unable to reach an alternative resolution with the applicable Utility Company, the Debtors shall request a hearing before the Court to determine the adequacy of assurance of payment pursuant to section 366(c)(3) of the Bankruptcy Code (the "Determination Hearing"). Pending resolution of such Adequate Assurance Request at the Determination Hearing, the Utility Company shall be prohibited from altering, refusing, or discontinuing services to the Debtors on account of unpaid charges for prepetition services or on account of any objections to the Adequate Assurance.
- vi. Upon the termination of Utility Services independent thereof, including on account of a Closed Account, the Debtors may, without further order of the Court, reduce the Adequate Assurance Deposit by an amount not exceeding, for each of the Utility Services being discontinued, the amount of the Adequate Assurance Deposit then attributable to the applicable terminated Utility Services; provided that for any Utility Company for which the Adequate Assurance Deposit is reduced, the Debtors shall provide the affected Utility Company fourteen (14) days' notice of their intent to reduce the Adequate Assurance Deposit and shall have paid such Utility Company in full for any outstanding post-petition Utility Services before reducing the Adequate Assurance Deposit.

8. The Debtors shall, as necessary, provide a copy of this Final Order to any Utility Company not listed on the Utility Service List (each, an “Additional Utility Company” and, collectively, the “Additional Utility Companies”), as such Utility Companies are identified. Promptly upon their discovery of an Additional Utility Company, the Debtors shall increase the Adequate Assurance Deposit by an amount equal to approximately 50% of the Estimated Utility Expense for each Additional Utility Company, unless such Additional Utility Company agrees in writing to a lesser amount or is paid in advance for Utility Services. The Additional Utility Companies shall be subject to the terms of this Interim Order, including the Adequate Assurance Procedures.

9. A Utility Company shall be deemed to have adequate assurance of payment under section 366 of the Bankruptcy Code unless and until: (a) the Debtors agree to an alternative assurance of payment; or (b) this Court enters an order after a Determination Hearing requiring that additional adequate assurance of payment be provided to the Utility Company.

10. This Final Order is without prejudice to the rights of the Debtors and their estates to contest the validity, priority, or amounts of any obligations relating to the Utility Companies on any grounds they deem appropriate, and any rights of the Debtors and their estates with respect to such matters shall be reserved.

11. The Debtors are authorized to reduce the Adequate Assurance Deposit to the extent that it includes an amount on account of a Utility Company that the Debtors subsequently determine should be removed from the Utility Company List upon either: (a) obtaining the affected Utility Company’s consent to reduce the Adequate Assurance Deposit or (b) providing such affected Utility Company with fourteen (14) days’ notice of their intent to reduce the Adequate Assurance Deposit and receiving no response thereto.

12. If any undisputed amount relating to postpetition Utility Services provided by a Utility Company is unpaid beyond any applicable grace period, such Utility Company may request a disbursement from the Utility Deposit Account by giving written notice to the Notice Parties.

13. Notwithstanding the relief granted in this Final Order or any actions taken hereunder, nothing contained in this Final Order shall create any rights in favor of, or enhance the status of any claim held by, any Utility Company.

14. The Debtors' service of the Motion, the Interim Order, or this Final Order upon the Utility Companies shall not constitute an admission or concession that any such entity is a utility company within the meaning of section 366 of the Bankruptcy Code, and all rights and defenses of the Debtors are reserved with respect thereto.

15. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order or any payment made pursuant to this Final Order shall constitute, nor is it intended to constitute: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Final Order or the Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission to the validity, priority, enforceability, or perfection of any lien on, security interest in, or encumbrance on property of the Debtors' estates; or (g) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law.

1. Notwithstanding the possible applicability of Bankruptcy Rule 6004(h), the terms and provisions of this Final Order shall be immediately effective and enforceable upon its entry.

2. The Debtors are hereby authorized to take all actions they deem necessary to effectuate the relief granted in this Final Order.

3. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation or interpretation of this Final Order.



**Schedule 1**

**(Utility Company List)**

<b>Utility Company</b>	<b>Corporate Address</b>	<b>Service</b>	<b>Account Nos. (if available)</b>	<b>Proposed Adequate Assurance</b>
CallTower Inc.	10701 S River Front Pkwy., Ste 450, South Jordan, UT 84095	Phone	8888274462	\$275
City of Durham	101 City Hall Plaza, Durham, NC 27701	Water and sewer	210159605242	\$125
Clean Harbors	42 Longwater Drive, Norwell, MA 02061	Hazardous Waste Disposal	NO30690	\$3,400
Dominion Energy North Carolina	P.O. Box 100256, Columbia, SC 29202-3256	Gas	5-2101-2817-81 23	\$3,100
Duke Energy	P.O. Box 70516, Charlotte, NC 28272	Electric	9100 9428 3716	\$4,250
Level 3 Communications, LLC	1025 Eldorado Blvd., Broomfield, CO 80021	Internet	5-HTLTYDQ6	\$355
Republic Services	5111 Chin Page Road, Durham, NC 27703-840505	Trash	309390033526	\$275
Segra	P.O. Box 1068, Waynesboro, VA 22980-0774	Internet	5251108	\$300
Segra	P.O. Box 1068, Waynesboro, VA 22980-0774	Phone	5172703	\$550
Spectrum	4145 S. Falkenburg Rd, Riverview, FL 33578	Cable		\$85
vCom	12657 Alcosta Blvd., Ste 418, San Ramon, CA 94585	Internet	001084-00003	\$130
Verizon Wireless	500 Technology Drive, Suite 550, Weldon Spring, MO 63304	Cellphone	442467760-000 01	\$1,220
Worksmart	100 Meredith Drive, Ste 200, Durham, NC 27713	Internet		\$1,000