IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	
	)	Chapter 11
NVN Liquidation, Inc., *et al*., f/k/a NOVAN, INC.,[1]	)	Case No. 23-10937 (LSS)
	)	(Jointly Administered)
Debtors.	)	

COMBINED DISCLOSURE STATEMENT AND CHAPTER 11 PLAN OF LIQUIDATION PROPOSED BY THE DEBTORS

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[1] The Debtors in these chapter 11 cases, along with the last four digitals of the Debtors' federal tax identification number (if applicable), are: NVN Liquidation, Inc., (f/k/a Novan, Inc.) (7682) and EPI Health, LLC (9118). The corporate headquarters and the mailing address for the Debtors is P.O. Box 64, Pittsboro, NC 27312.

TABLE OF CONTENTS

Page

DISCLAIMER 1

INTRODUCTION 2

ARTICLE I DEFINED TERMS AND RULES OF INTERPRETATION 3

ARTICLE II CLASSIFICATION OF CLAIMS AND INTERESTS AND ESTIMATED RECOVERIES 15

2.1 **General Rules of Classification** 15
2.2 **Unimpaired Classes of Claims** 18
2.3 **Impaired Classes of Claims** 18
2.4 **Impaired Class of Equity Interests** 18

ARTICLE III BACKGROUND AND DISCLOSURES 18

3.1 **General Background** 18
3.2 **Events Leading to Chapter 11** 20
3.3 **The Chapter 11 Cases** 23

ARTICLE IV CONFIRMATION AND VOTING PROCEDURES 28

4.1 **Confirmation Procedure** 28
4.2 **Procedure for Objections** 29
4.3 **Requirements for Confirmation** 29
4.4 **Classification of Claims and Interests** 29
4.5 **Impaired Claims or Interests** 30
4.6 **Confirmation Without Necessary Acceptances; Cramdown** 31
4.7 **Feasibility** 32
4.8 **Best Interests Test and Liquidation Analysis** 32
4.9 **Acceptance of the Plan** 33

ARTICLE V CERTAIN RISK FACTORS TO BE CONSIDERED PRIOR TO VOTING 34

5.1 **The Plan May Not Be Accepted** 34
5.2 **The Plan May Not Be Confirmed** 34
5.3 **Distributions to Holders of Allowed Claims under the Plan May Be Inconsistent with Projections** 34
5.4 **Objections to Classification of Claims** 35
5.5 **Failure to Consummate the Plan** 35
5.6 **Failure to Meet Cramdown Requirements** 36

5.7 **Allowance of Claims May Substantially Dilute the Recovery to Holders of Claims under the Plan** 36
5.8 **Plan Releases May Not Be Approved** 36
5.9 **Certain Tax Considerations** 36
5.10 **Aclaris Appeal** 37
5.11 **Reduced Recoveries of Certain Retained Causes of Action Could Reduce the Recovery to Holders of Claims under the Plan** 37

ARTICLE VI TREATMENT OF UNCLASSIFIED CLAIMS 37

6.1 **Administrative Claims** 37
6.2 **Fee Claims** 38
6.3 **Tax Claims** 38

ARTICLE VII TREATMENT OF CLASSIFIED CLAIMS AND INTERESTS 39

7.1 **Class 1: Other Priority Claims** 39
7.2 **Class 2: Other Secured Claims** 39
7.3 **Class 3: NVN Unsecured Claims** 39
7.4 **Class 4: EPI Unsecured Claims** 40
7.5 **Class 5: Subordinated Claims** 40
7.6 **Class 6: Equity Interests** 40
7.7 **Reservation of Rights Regarding Claims and Interests** 40

ARTICLE VIII ACCEPTANCE OR REJECTION OF THE PLAN 40

8.1 **Classes Entitled to Vote** 40
8.2 **Acceptance by Impaired Classes of Claims or Interests** 40
8.3 **Presumed Acceptance by Unimpaired Classes** 40
8.4 **Presumed Rejections by Impaired Classes** 40
8.5 **Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code** 41
8.6 **Controversy Concerning Impairment** 41
8.7 **Elimination of Vacant Classes** 41

ARTICLE IX MEANS OF IMPLEMENTING THE PLAN 41

9.1 **Distributions on the Effective Date/Dissolution of Debtors** 41
9.2 **The Allocation Settlement** 41
9.3 **Liquidating Trust** 44
9.4 **Liquidating Trustee** 46
9.5 **Fees and Expenses** 49
9.6 **Liquidating Trustee as Estate Representative and Successor** 49
9.7 **Distributions** 49
9.8 **Creditors' Committee** 49
9.9 **Release of Liens** 50
9.10 **Exemption from Certain Transfer Taxes** 50
9.11 **Setoffs** 50

9.12 **Withdrawal of Plan** 50
9.13 **Insurance Preservation** 50
9.14 **Cancellation of Existing Securities and Agreements** 51

ARTICLE X EFFECT OF PLAN ON CLAIMS AND INTERESTS 51

10.1 **Binding Effect** 51
10.2 **Treatment of Claims** 51
10.3 **No Discharge of the Debtors** 51
10.4 **Injunction** 51
10.5 **Exculpation** 52
10.6 **Releases by the Debtors** 53
10.7 **Extinguishment of Intercompany Claims** 53
10.8 **Indemnification Obligations** 53
10.9 **Terms of Injunctions or Stays** 54

ARTICLE XI EXECUTORY CONTRACTS AND UNEXPIRED LEASES 54

11.1 **Executory Contracts and Unexpired Leases Deemed Rejected** 54
11.2 **Supplemental Bar Date for Rejection Damages** 54

ARTICLE XII RESERVES AND DISTRIBUTIONS 54

12.1 **Establishment of Reserves** 54
12.2 **Funding of Certain Reserves** 55
12.3 **Distributions for Claims Allowed as of the Effective Date** 55
12.4 **No Distributions on Disputed Claims** 55
12.5 **Distributions on Claims Allowed After the Effective Date** 55
12.6 **Objections to and Estimation of Claims** 56
12.7 **Delivery of Distributions and Undeliverable or Unclaimed Distributions** 56
12.8 **Interest on Claims** 57
12.9 **Withholding and Reporting Requirements** 57
12.10 **Miscellaneous Distribution Provisions** 58
12.11 ***De Minimis* Distribution Provisions** 58
12.12 **Distribution Record Date** 59
12.13 **Residual Assets** 59

ARTICLE XIII CONFIRMATION AND CONSUMMATION OF THE PLAN 59

13.1 **Conditions to Confirmation** 59
13.2 **Conditions to Effective Date** 59
13.3 **Consequences of Non-Occurrence of Effective Date** 60

ARTICLE XIV ADMINISTRATIVE PROVISIONS 60

14.1 **Retention of Jurisdiction** 60
14.2 **Amendments** 62

14.3 **Successors and Assigns** 63
14.4 **Governing Law** 63
14.5 **Corporate Action** 63
14.6 **Effectuating Documents and Further Transactions** 63
14.7 **Control Provision** 63
14.8 **Miscellaneous Rules.** 63
14.9 **Notices** 63
14.10 **No Admissions or Waiver** 65

DISCLAIMER

THIS COMBINED DISCLOSURE STATEMENT AND PLAN WAS COMPILED FROM INFORMATION OBTAINED FROM NUMEROUS SOURCES BELIEVED TO BE ACCURATE TO THE BEST OF THE DEBTORS' KNOWLEDGE, INFORMATION AND BELIEF. NO GOVERNMENTAL AUTHORITY HAS PASSED ON, CONFIRMED OR DETERMINED THE ACCURACY OR ADEQUACY OF THE INFORMATION CONTAINED HEREIN.

NOTHING STATED HEREIN SHALL BE (I) DEEMED OR CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, (II) ADMISSIBLE IN ANY PROCEEDING INVOLVING THE DEBTORS OR ANY OTHER PARTY, OR (III) DEEMED CONCLUSIVE EVIDENCE OF THE TAX OR OTHER LEGAL EFFECTS OF THE COMBINED DISCLOSURE STATEMENT AND PLAN ON THE DEBTORS OR HOLDERS OF CLAIMS OR INTERESTS. CERTAIN STATEMENTS CONTAINED HEREIN, BY NATURE, ARE FORWARD-LOOKING AND CONTAIN ESTIMATES AND ASSUMPTIONS. THERE CAN BE NO ASSURANCE THAT SUCH STATEMENTS WILL REFLECT ACTUAL OUTCOMES.

THE STATEMENTS CONTAINED HEREIN ARE MADE AS OF THE DATE HEREOF, UNLESS ANOTHER TIME IS SPECIFIED. THE DELIVERY OF THIS COMBINED DISCLOSURE STATEMENT AND PLAN SHALL NOT BE DEEMED OR CONSTRUED TO CREATE ANY IMPLICATION THAT THE INFORMATION CONTAINED HEREIN IS CORRECT AT ANY TIME AFTER THE DATE HEREOF. HOLDERS OF CLAIMS OR INTERESTS SHOULD NOT CONSTRUE THE CONTENTS OF THIS COMBINED DISCLOSURE STATEMENT AND PLAN AS PROVIDING ANY LEGAL, BUSINESS, FINANCIAL OR TAX ADVICE. EACH SUCH HOLDER SHOULD CONSULT WITH ITS OWN LEGAL, BUSINESS, FINANCIAL AND TAX ADVISORS AS TO ANY SUCH MATTERS CONCERNING THE COMBINED DISCLOSURE STATEMENT AND PLAN AND THE TRANSACTIONS CONTEMPLATED HEREBY.

THE PLAN CONTEMPLATES THE CONTINUING LIQUIDATION OF THE DEBTORS, PAYMENTS TO CERTAIN CREDITORS AND THE ESTABLISHMENT OF A LIQUIDATING TRUST GOVERNED BY THIS PLAN AND THE LIQUIDATING TRUST AGREEMENT. THE LIQUIDATING TRUST AGREEMENT WILL SET FORTH THE RIGHTS, POWERS, DUTIES AND RESPONSIBILITIES OF THE LIQUIDATING TRUSTEE, AS SUPPLEMENTED BY THE PROVISIONS OF THIS PLAN.

NO PARTY IS AUTHORIZED TO GIVE ANY INFORMATION WITH RESPECT TO THE COMBINED DISCLOSURE STATEMENT AND PLAN OTHER THAN WHAT IS CONTAINED IN THIS COMBINED DISCLOSURE STATEMENT AND PLAN. NO REPRESENTATIONS CONCERNING THE DEBTORS, OR THE VALUE OF THEIR PROPERTY HAVE BEEN AUTHORIZED BY THE DEBTORS OTHER THAN AS SET FORTH IN THIS COMBINED DISCLOSURE STATEMENT AND PLAN. ANY INFORMATION, REPRESENTATIONS OR INDUCEMENTS MADE TO OBTAIN AN ACCEPTANCE OF THE COMBINED DISCLOSURE STATEMENT AND PLAN OTHER THAN, OR INCONSISTENT WITH, THE INFORMATION CONTAINED HEREIN SHOULD

NOT BE RELIED UPON BY ANY HOLDER OF A CLAIM OR INTEREST. THIS COMBINED DISCLOSURE STATEMENT AND PLAN HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE, BANKRUPTCY RULE 3016(b), AND LOCAL RULE 3017-2, AND NOT IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER NON-APPLICABLE BANKRUPTCY LAWS. THIS COMBINED DISCLOSURE STATEMENT AND PLAN HAS NOT BEEN APPROVED OR DISAPPROVED BY THE SEC NOR HAS THE SEC PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN.

SEE ARTICLE V OF THIS COMBINED DISCLOSURE STATEMENT AND PLAN, ENTITLED "CERTAIN RISK FACTORS TO BE CONSIDERED PRIOR TO VOTING," FOR A DISCUSSION OF CERTAIN CONSIDERATIONS IN CONNECTION WITH A DECISION BY A HOLDER OF AN IMPAIRED CLAIM TO ACCEPT THE COMBINED DISCLOSURE STATEMENT AND PLAN.

HOLDERS OF CLAIMS ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN MUST RELY ON THEIR OWN EVALUATION OF THE DEBTORS AND THEIR OWN ANALYSES OF THE TERMS OF THE PLAN IN DECIDING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN. IMPORTANTLY, PRIOR TO DECIDING WHETHER AND HOW TO VOTE ON THE PLAN, EACH HOLDER OF A CLAIM IN A VOTING CLASS SHOULD REVIEW THE PLAN IN ITS ENTIRETY AND CONSIDER CAREFULLY ALL OF THE INFORMATION IN THE COMBINED DISCLOSURE STATEMENT AND PLAN.

IF THE PLAN IS CONFIRMED BY THE BANKRUPTCY COURT AND THE EFFECTIVE DATE OCCURS, ALL HOLDERS OF CLAIMS AGAINST AND INTERESTS IN THE DEBTORS (INCLUDING THOSE HOLDERS WHO DO NOT SUBMIT BALLOTS TO ACCEPT OR REJECT THE PLAN, WHO VOTE TO REJECT THE PLAN, OR WHO ARE NOT ENTITLED TO VOTE ON THE PLAN) WILL BE BOUND BY THE TERMS OF THE PLAN AND THE TRANSACTIONS CONTEMPLATED THEREBY.

INTRODUCTION

NVN Liquidation, Inc. (f/k/a Novan, Inc.) and EPI Health, LLC, the debtors and debtors in possession in these chapter 11 cases propose the following combined Disclosure Statement and Plan for the liquidation of the Debtors' remaining assets and distribution of the proceeds of the Estates' assets to the Holders of Allowed Claims against the Debtors as set forth herein. Each Debtor is a proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code.

This combined Disclosure Statement and Plan contains, among other things, a discussion of the Debtors' history, businesses, properties, operations, the chapter 11 cases, risk factors, summary and analysis of this Plan, and certain other related matters.

ALL HOLDERS OF CLAIMS AGAINST THE DEBTORS ARE ENCOURAGED TO READ THE COMBINED DISCLOSURE STATEMENT AND PLAN IN ITS ENTIRETY, AND TO

CONSULT WITH AN ATTORNEY, BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. SUBJECT TO CERTAIN RESTRICTIONS AND REQUIREMENTS SET FORTH IN SECTION 1127 OF THE BANKRUPTCY CODE, BANKRUPTCY RULE 3019, AND IN THE PLAN, THE DEBTORS RESERVE THE RIGHT TO ALTER, AMEND, MODIFY, REVOKE OR WITHDRAW THE PLAN, OR ANY PART THEREOF, PRIOR TO ITS SUBSTANTIAL CONSUMMATION.

ARTICLE I
DEFINED TERMS AND RULES OF INTERPRETATION

Defined Terms

1.1 "503(b)(9) Claims" means Claims arising under section 503(b)(9) of the Bankruptcy Code Filed against any of the Debtors on or before the General Bar Date.

1.2 "Aclaris Appeal" has the meaning set forth in section 3.3(d).

1.3 "Administrative Claim" means an unsecured Claim, including a Fee Claim and U.S. Trustee Fees, for payment of costs or expenses of administration specified in sections 503(b) and 507(a)(1) of the Bankruptcy Code, including the actual, necessary costs and expenses incurred after the Petition Date of preserving the Estates and operating the business of the Debtors (such as wages, salaries, or commissions for services rendered).

1.4 "Administrative Claim Bar Date" is defined in section 6.1.

1.5 "Administrative Claim Bar Date" means the first Business Day that is 30 days after the Effective Date, which shall be the deadline for filing requests for payment of Administrative Claims that arose on or after the Petition Date through the Effective Date.

1.6 "Affiliate" has the meaning set forth in section 101(2) of the Bankruptcy Code.

1.7 "Allowed" means, with respect to a Claim in a specified Class or an Allowed Administrative Claim, Tax Claim, or Fee Claim, such Claim is: (a) either (i) scheduled by the Debtors in their Schedules of assets and liabilities in a liquidated amount and not scheduled as contingent or disputed and not superseded by a proof of claim or subject to setoff; or (ii) asserted in the chapter 11 cases by a proof of claim which has been timely filed, or deemed timely filed with the Bankruptcy Court pursuant to the Bankruptcy Code, the Bankruptcy Rules or any applicable order of the Bankruptcy Court, or late filed with leave of Court; and (b) either (i) not objected to within the period fixed by the Bankruptcy Code, the Bankruptcy Rules and/or applicable orders of the Bankruptcy Court; or (ii) that has otherwise been allowed by a Final Order or pursuant to this Plan. An Allowed Claim: (y) includes a previously Disputed Claim to the extent such Disputed Claim becomes allowed when the context so requires; and (z) shall be net of any valid setoff amount, which amount shall be deemed to have been set off in accordance with the provisions of this Plan.

1.8 "Allocation Settlement" has the meaning ascribed to it in section 9.2.

1.9 "Amended Schedules Bar Date" has the meaning ascribed to it in section 3.3(g).

1.10 "Asset Purchase Agreements" shall mean (i) the Amended and Restated Asset Purchase Agreement, by and among Novan, EPI, and Ligand (or its designee or assignee), dated September 1, 2023; and (ii) the asset purchase agreement, dated as of August 28, 2023, by and among Debtors Novan and EPI, as sellers, and Mayne Pharma, as buyer, including for each such asset purchase agreement all schedules and exhibits thereto, and any further amendments entered into from time to time.

1.11 "Ballot" means the form approved by the Bankruptcy Court and distributed to Holders of Claims entitled to vote on this Plan on which is to be indicated an acceptance or rejection of this Plan.

1.12 "Bankruptcy Code" means title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq*., and as such title has been, or may be, amended from time to time, to the extent that any such amendment is applicable to these chapter 11 cases.

1.13 "Bankruptcy Court" means the United States Bankruptcy Court for the District of Delaware.

1.14 "Bankruptcy Rules" means the Federal Rules of Bankruptcy Procedure, the Official Bankruptcy Forms or the Local Rules of the Bankruptcy Court, and as each has been, or may be, amended from time to time, to the extent that any such amendment is applicable to these chapter 11 cases.

1.15 "Bar Date" means, with respect to any particular Claim, the applicable date set by the Bankruptcy Court as the last day for filing a proof of claim or a request for allowance of an Administrative Claim or a proof of interest, against the Debtors in these chapter 11 cases for the applicable Claim or Interest.

1.16 "Bar Date Motion" means the Debtors' Motion for Entry of an Order (I) Establishing Certain Bar Dates for Filing Proofs of Claim Against the Debtors, and (II) Granting Related Relief, Including Notice and Filing Procedures (D.I. 239).

1.17 "Bar Date Order" means the Order (I) Establishing Certain Bar Dates for Filing Proofs of Claim Against the Debtors, and (II) Granting Related Relief, Including Notice and Filing Procedures (D.I. 304).

1.18 "Business Day" means any day, other than a Saturday, Sunday or a legal holiday (as used in Bankruptcy Rule 9006(a)).

1.19 "Cash" means legal tender of the United States of America or its equivalents, including but not limited to bank deposits, checks, and other similar items.

1.20 "Causes of Action" mean any and all actions, suits, claims for relief, causes of action, Chapter 5 Causes of Action, accounts, controversies, agreements, promises, rights to legal remedies, rights to equitable remedies, rights to payment, and claims of the Debtors and

their Estates against any Person or Entity, whether known or unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured, unsecured and whether asserted or assertable directly or derivatively, in law, equity or otherwise, whether arising prior to or after the Petition Date. For the avoidance of doubt, the definition of Causes of Action includes, without limitation: (a) any rights of setoff, counterclaim, or recoupment and any claims under contracts or for breaches of duties imposed by law or in equity; or (b) the right to object to or otherwise contest Claims or Interests.

1.21 "Chapter 5 Causes of Action" mean any and all actual or potential claims and causes of action arising under Chapter 5 of the Bankruptcy Code, including claims, rights and causes of action arising under sections 544, 545, 547, 548, 549, 550, 551, and 553(b) of the Bankruptcy Code, including but not limited to, the recovery of preferences and fraudulent transfers from any entity that received cash or any other interest in property from any Debtor.

1.22 "Claim" means a claim against any Debtor or Debtors, as such term is defined in section 101(5) of the Bankruptcy Code.

1.23 "Claims Agent" means the Debtors' claims agent, Kurtzman Carson Consultants LLC.

1.24 "Claims Objection Deadline" means 180 days after the Effective Date, or such later date as may be ordered by the Bankruptcy Court; *provided*, *however*, that the Liquidating Trustee may seek extensions of this date from the Bankruptcy Court.

1.25 "Class" means a group of Claims or Interests described in Article II of this Plan.

1.26 "Confirmation Date" means the date the Bankruptcy Court enters the Confirmation Order on the docket of the chapter 11 cases.

1.27 "Confirmation Hearing" means the hearing held by the Bankruptcy Court to consider confirmation of the Plan pursuant to section 1128 of the Bankruptcy Code.

1.28 "Confirmation Order" means the order of the Bankruptcy Court confirming this Plan pursuant to, among others, section 1129 of the Bankruptcy Code.

1.29 "Creditors' Committee" means the Official Committee of Unsecured Creditors in these chapter 11 cases, as appointed by the U.S. Trustee and as may be reconstituted from time to time.

1.30 "D&O" means any current or former officer, director, or manager of any of the Debtors, solely in his or her capacity as such.

1.31 "D&O Insurance Policies" means all insurance policies (including but not limited to any "tail policy") issued or providing coverage for liabilities against any of the Debtors' D&Os, and all agreements, documents, or instruments relating thereto.

1.32 "Debtors" means NVN and EPI.

1.33 "DIP Financing Order" means the Final Order (I) Authorizing Debtors to (A) Obtain Postpetition Financing and (B) Use of Cash Collateral, (II) Granting Adequate Protection to the Prepetition Secured Lender, and (III) Granting Related Relief (D.I. 220).

1.34 "DIP Financing Facility" means the loan facility authorized by the DIP Financing Order.

1.35 "Disallowed" means with respect to any Claim or Interest or portion thereof, any Claim against or Interest in any of the Debtors which: (i) has been disallowed, in whole or part, by a Final Order; (ii) has been withdrawn by agreement of the Holder thereof and the Debtors or Liquidating Trustee in whole or in part; (iii) has been withdrawn, in whole or in part, by the Holder thereof; (iv) if listed in the Schedules as zero or as disputed, contingent, partially liquidated or unliquidated and in respect of which a proof of Claim or a proof of Interest, as applicable, has not been timely Filed or deemed timely Filed pursuant to the Plan, the Bankruptcy Code or any Final Order or other applicable law; (v) has been reclassified, expunged, subordinated or estimated to the extent that such reclassification, expungement, subordination or estimation results in a reduction in the Filed amount of any proof of Claim or proof of Interest; (vi) was not timely or properly Filed; (vii) is unenforceable to the extent provided in section 502(b) of the Bankruptcy Code; and (viii) where the Holder of a Claim is a Person or Entity from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code or that is a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, unless such Person, Entity or transferee has paid the amount, or turned over any such Property, for which such Person, Entity or transferee is liable under section 522(i), 542, 543, 550, or 553 of the Bankruptcy Code. In each case a Disallowed Claim or a Disallowed Interest is disallowed only to the extent of disallowance, withdrawal, reclassification, expungement, subordination or estimation.

1.36 "Disclosure Statement" means the disclosure statement, as amended, supplemented or modified from time to time, that is embodied within this combined Disclosure Statement and Plan and distributed in accordance with, among others, sections 1125, 1126(b) and 1145 of the Bankruptcy Code, Bankruptcy Rule 3017, Local Rule 3017-2 and other applicable law.

1.37 "Disputed Claim" means any Claim or Interest which has not yet been Allowed or Disallowed in accordance with the terms of this Plan. For the purposes of this Plan, a Claim shall be considered a Disputed Claim in its entirety before the time that an objection has been or may be filed if: (a) the amount or classification of the Claim specified in a relevant proof of claim exceeds the amount or classification of any corresponding Claim scheduled in the Debtors' Schedules of assets and liabilities; (b) any corresponding Claim scheduled by the Debtors has been scheduled as disputed, contingent or unliquidated; or (c) no corresponding Claim has been scheduled by the Debtors in their Schedules of assets and liabilities.

1.38 "Distribution" means the distribution of Cash or other property, as the case may be, in accordance with this Plan.

1.39 "Distribution Address" means the address for a Holder set forth in a proof of claim, as amended or supplemented. If no proof of claim is filed with respect to a

particular Claim, such defined term means the address for the Holder set forth in the Debtors' Schedules of assets and liabilities.

1.40 "Distribution Date" means the date determined by the Liquidating Trustee when Distributions will be made under the Plan.

1.41 "Distribution Record Date" means the record date for purposes of making Distributions under this Plan on account of Allowed Claims, which shall be the Confirmation Date.

1.42 "Effective Date" means the first date on which all of the conditions of Section 13.2 of the Plan have been satisfied or have been waived in writing.

1.43 "Entity" has the meaning set forth in section 101(15) of the Bankruptcy Code.

1.44 "EPI" means Debtor EPI Health, LLC.

1.45 "EPI Acquisition Cause of Action" means any Cause of Action that the Debtors or their Estates may have against Evening Post Group or any other Person or Entity in connection with the acquisition of EPI Health by the Debtors.

1.46 "EPI AR Causes of Action" means any Causes of Action against any Person or Entity that has any outstanding accounts receivable amounts owed to EPI, including, but not limited to, any adversary proceedings commenced by the Debtors prior to the Effective Date seeking to recover outstanding accounts receivable amounts.

1.47 "EPI Recovery" means the amount allocated to the Holders of General Unsecured Claim against EPI from the Retained Assets after the payment of all Allowed Administrative Claims, Fee Claims, Tax Claims, Other Secured Claims and Other Priority Claims in accordance with the Allocation Settlement.

1.48 "EPI Unsecured Claim" means a General Unsecured Claim against EPI.

1.49 "Estate" means the estate of each Debtor created by section 541 of the Bankruptcy Code on the Petition Date.

1.50 "Exculpated Parties" means the (a) D&Os, in their capacity as the directors and officers of the Debtors, (b) the Creditors' Committee and its members, in their capacity as members of the Creditors' Committee, (c) the Professionals, and (d) the Related Persons for each of the foregoing; provided, however, that in no instance shall a Non-Released Debtor Party be an Exculpated Party.

1.51 "Executory Contract" means a contract to which a Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

1.52 "Fee Claim" means a Claim for compensation or reimbursement of expenses of a Professional pursuant to section 327, 328, 330, 331 or 503(b) of the Bankruptcy

Code in connection with the chapter 11 cases, subject to the professional fee caps set forth in the Settlement Term Sheet. "Fee Claim" does not include any Claim for compensation or reimbursement of expenses related to services rendered after the Effective Date by the Liquidating Trustee Professionals.

1.53 "File," "Filed," or "Filing" means, respectively, file, filed, or filing with the Bankruptcy Court or KCC in these chapter 11 cases.

1.54 "Final Order" means an order or judgment of the Bankruptcy Court, as entered on the docket of the Bankruptcy Court, that has not been reversed, stayed, modified, or amended, and as to which (a) the time to appeal, seek review or rehearing or petition for certiorari has expired and no timely filed appeal or petition for review, rehearing, remand or certiorari is pending, or (b) any appeal taken or petition for certiorari filed has been resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought; provided, however, that the possibility that a motion under section 502(j) of the Bankruptcy Code, Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules or other rules governing procedure in cases before the Bankruptcy Court, may be filed with respect to such order shall not cause such order not to be a Final Order.

1.55 "General Bar Date" is defined in section 3.3(g) hereof.

1.56 "General Unsecured Claim" means any Claim that is not (a) an Administrative Claim; (b) a Tax Claim; (c) an Other Priority Claim; (d) an Other Secured Claim; (e) a Prepetition Secured Claim; or (f) a Subordinated Claim.

1.57 "Governmental Unit" has the meaning set forth in section 101(27) of the Bankruptcy Code.

1.58 "Governmental Bar Date" is defined in section 3.3(g) hereof.

1.59 "Holder" or "Holders" means a Person or an Entity holding a Claim or Interest.

1.60 "Impaired" means, when used in reference to a Claim or Interest, a Claim or Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

1.61 "Impaired Class" means a Class of Claims or Interests that is Impaired.

1.62 "Insider" has the meaning set forth in section 101(31) of the Bankruptcy Code.

1.63 "Intercompany Claims" means any Claim held by a Debtor against another Debtor or any Interest held by a Debtor in another Debtor, including, without limitation: (a) any account reflecting intercompany book entries by a Debtor with respect to another Debtor, (b) any Claim not reflected in such book entries that is held by a Debtor against another Debtor, and (c) any derivative Claim asserted by or on behalf of one Debtor against another Debtor.

1.64 "Interest" means an equity security, within the meaning of section 101(16) of the Bankruptcy Code, in the Debtors.

1.65 "Interim Approval and Procedures Order" means the *Order (I) Approving the Combined Disclosure Statement and Plan on an Interim Basis for Solicitation Purposes Only; (II) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Combined Disclosure Statement and Plan; (III) Approving the Form of Ballots and Solicitation Packages; (IV) Establishing the Voting Record Date; (V) Scheduling a Combined Hearing for Final Approval of the Adequacy of Disclosures in, and Confirmation of, the Combined Disclosure Statement and Plan; and (VI) Granting Related Relief* (D.I. 476).

1.66 "Interim Compensation Procedures Order" means the Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Retained Professionals (D.I. 107), entered by the Bankruptcy Court on October 16, 2020.

1.67 "Lien" means: (a) a judicial lien as defined in section 101(36) of the Bankruptcy Code; (b) a lien as defined in section 101(37) of the Bankruptcy Code; (c) a security interest as defined in section 101(51) of the Bankruptcy Code; (d) a statutory lien as defined in section 101(53) of the Bankruptcy Code; and (e) any other lien, interest, charge or encumbrance.

1.68 "Ligand" means LNHC, Inc., an affiliate of Ligand Pharmaceuticals Inc.

1.69 "Ligand Sale Order" means the Order (I) Approving Asset Purchase Agreement, (II) Authorizing the Sale of the Debtors' Development Assets and Certain of the Commercial Assets Free and Clear of All Encumbrances to LNHC, Inc., (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief (D.I. 291).

1.70 "Liquidating Trust" means the trust to be created on the Effective Date for the benefit of the Holders of Allowed Claims.

1.71 "Liquidating Trust Agreement" means the trust agreement, in form and substance reasonably acceptable to the Debtors and the Creditors' Committee, to be filed as part of the Plan Supplement, which will, among other things: (a) establish and govern the Liquidating Trust; (b) set forth the respective powers, duties and responsibilities of the Liquidating Trustee; and (c) provide for Distributions to Holders of Allowed Claims in accordance with Article VII hereof.

1.72 "Liquidating Trust Assets" means the Retained Assets held by the Debtors, all of which are being transferred pursuant to this Plan to the Liquidating Trust upon the Effective Date.

1.73 "Liquidating Trust Distributions" mean Distributions of Cash pursuant to the Plan and Liquidating Trust Agreement as may be authorized from time to time by the Liquidating Trustee.

1.74 "Liquidating Trust Operating Reserve" means the reserve established under the Liquidating Trust and maintained by the Liquidating Trustee pursuant to Section 12.1 of this Plan for the purpose of satisfying the ongoing expenses of administering the Liquidating Trust.

1.75 "Liquidating Trustee" means an individual, to be identified in the Plan Supplement, who will be appointed as of the Effective Date in accordance with the Settlement Term Sheet, as trustee of the Liquidating Trust and shall be responsible for the duties, powers, and affairs of the Liquidating Trust in accordance with the Liquidating Trust Agreement.

1.76 "Liquidating Trustee Professionals" means the agents, financial advisors, attorneys, consultants, independent contractors, representatives, and other professionals retained by the Liquidating Trustee (in their capacities as such).

1.77 "Local Rules" means the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

1.78 "Mayne" means Mayne Pharma LLC.

1.79 "Mayne Sale Order" means the Order (I) Approving Asset Purchase Agreement, (II) Authorizing the Sale of the Debtors' Assets Free and Clear of All Encumbrances to Mayne Pharma LLC, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief (D.I. 292).

1.80 "Non-Released Debtor Parties" means those certain Persons or Entities, if any, that are identified pursuant to the Plan Supplement.

1.81 "Novan" means Debtor NVN Liquidation, Inc. f/k/a Novan, Inc. while it was operating prior to the Petition Date.

1.82 "NVN" means Debtor NVN Liquidation, Inc. f/k/a Novan, Inc.

1.83 "NVN Recovery" means the amount allocated to the Holders of General Unsecured Claim against NVN from the Retained Assets after the payment of all Allowed Administrative Claims, Fee Claims, Tax Claims, Other Secured Claims and Other Priority Claims in accordance with the Allocation Settlement.

1.84 "NVN Unsecured Claim" means a General Unsecured Claim against NVN.

1.85 "Objection" means any objection, application, motion, complaint or any other legal action seeking, in whole or in part, to disallow, determine, liquidate, classify, reclassify, establish the priority of, expunge, subordinate or estimate any Claim (including any objection or opposition to any request for allowance or payment of any Administrative Claim).

1.86 "Other Priority Claim" means any Claim entitled to priority under section 507(a) of the Bankruptcy Code that is not a Tax Claim.

1.87 "Other Secured Claim" means a Claim, other than a Prepetition Secured Claim, that is: (a) secured by a valid and perfected Lien on property in which an Estate has an interest, but only to the extent of the value of the Holder's interest in the applicable Estate's interest in such property as determined pursuant to section 506(a) of the Bankruptcy Code; or (b) subject to setoff under section 553 of the Bankruptcy Code, but only to the extent of the amount subject to setoff, as determined pursuant to section 553 of the Bankruptcy Code.

1.88 "Person" is defined in section 101(41) of the Bankruptcy Code.

1.89 "Petition Date" means July 17, 2023, the date the Debtors commenced their chapter 11 cases in the Bankruptcy Court.

1.90 "Plan" means this plan of liquidation under chapter 11 of the Bankruptcy Code, together with any amendments or modifications hereto as the Debtors may file hereafter in accordance with the terms of this Plan (such amendments or modifications only being effective upon compliance with section 14.2 of the Plan), that is embodied within this combined Disclosure Statement and Plan.

1.91 "Plan Claim Reserve" has the meaning ascribed to it in Section 12.1 of the Plan.

1.92 "Plan Documents" means the documents, other than this Plan, to be executed, delivered, assumed or performed in connection with the consummation of this Plan, including, without limitation, the documents to be included in the Plan Supplement, and any and all exhibits to the Plan and the Disclosure Statement.

1.93 "Plan Supplement" means the supplemental appendix to this Plan, filed with the Bankruptcy Court not less than seven (7) calendar days prior to the Voting Deadline, which contains, among other things: (a) draft forms or signed copies, as the case may be, of the Liquidating Trust Agreement, and(b) the identity of the Liquidating Trustee; (c) the schedule of Non-Released Debtor Parties, if any; (d) the Schedule of Assumed Executory Contracts and Unexpired Leases, if any, and (e) any schedules, lists, or documents that supplement or clarify aspects of this Plan and are identified as part of the Plan Supplement.

1.94 "Pro Rata" means the proportion that an Allowed Claim in a particular Class bears to the aggregate amount of Allowed Claims in that respective Class, or the proportion that Allowed Claims in a particular Class bear to the aggregate amount of Allowed Claims in a particular Class and other Classes entitled to share in the same recovery as such Allowed Claim under the Plan, as applicable.

1.95 "Professional" or collectively "Professionals," means any professional Person or Entity employed in these chapter 11 cases by Bankruptcy Court order pursuant to sections 327, 328, 363, or 1103 of the Bankruptcy Code.

1.96 "Purchasers" means Ligand and Mayne.

1.97 "Rejection Damages Bar Date" is defined in section 3.3(g).

1.98 "Related Persons" means collectively with respect to any Person, such Person's predecessors, successors, assigns and present and former Affiliates (whether by operation of law or otherwise) and subsidiaries, and each of their respective current and former officers, directors, principals, employees, equity holders (regardless of whether such interests are held directly or indirectly), members, managers, managed accounts or funds, fund advisors, advisory or committee board members, partners, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, in each case acting in such capacity at any time.

1.99 "Released Party" means collectively, (a) the Debtors, (b) the Creditors' Committee, and (c) the respective Related Persons and Professionals for each of the foregoing; provided, however, that in no instance shall a Non-Released Debtor Party be a Released Party.

1.100 "Retained Assets" means all assets of the Debtors and the Estate, including, but not limited to: (a) all of the Debtors' Cash; (b) all Retained Causes of Action; (c) all rights of setoff, recoupment, and other defenses against Claims; (d) all of Debtors' rights under the Asset Purchase Agreements and any other documents related to the Sales; (e) all Debtors' bank accounts; (f) all documents, communications and information, without regard to whether such documents, communications and information are subject to the attorney-client privilege not transferred as part of the Sales; and (g) any other assets and any proceeds realized or received from such assets that were not sold pursuant to the Sale Orders, if any, existing immediately prior to the Effective Date.

1.101 "Retained Causes of Action" means any and all Causes of Action as of the Effective Date (for the avoidance of doubt, not including Causes of Action sold pursuant to the Sale Orders), whether direct or derivative, that are not waived, released, compromised, or settled pursuant to this Plan or a Bankruptcy Court order, which shall vest in the Liquidating Trust, including specifically, but not limited to, (i) the EPI AR Causes of Action; (ii) the EPI Acquisition Cause of Action and (iii) the Supplier Cause of Action.

1.102 "Sales" means the sales of the Debtors' assets to the Purchasers pursuant to the Sale Orders.

1.103 "Sale Motion" means the Motion of Debtors for Entry of Orders (I)(A) Approving Bidding Procedures for Sale of Substantially All of Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances and Designating Ligand Pharmaceuticals as a Stalking Horse Bidder, (B) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (C) Approving Assumption and Assignment Procedures and (D) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof; (II)(A) Approving the Sale of the Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances After the Auction and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) in the Alternative, Approving the Sale of the Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances to Ligand Pharmaceuticals If Not Approved as the Stalking Horse Bidder (D.I. 16).

1.104 "Sale Orders" means the Ligand Sale Order and the Mayne Sale Order.

1.105 "Schedules" mean the schedules of assets and liabilities, schedules of Executory Contracts and unexpired leases and statements of financial affairs Filed by the Debtors pursuant to section 521 of the Bankruptcy Code and in substantial accordance with the Official Bankruptcy Forms, as the same may have been amended, modified or supplemented from time to time.

1.106 "Secured Claim" means, pursuant to section 506 of the Bankruptcy Code, that portion of a Claim that is (a) secured by a valid, perfected and enforceable security interest, lien, mortgage, or other encumbrance, that is not subject to avoidance under applicable bankruptcy or nonbankruptcy law, in or upon any right, title or interest of the Debtors in and to property of the Estate, to the extent of the value of the holder's interest in such property as of the relevant determination date, or (b) Allowed as such pursuant to the terms of this Plan (subject to the Confirmation Order becoming a Final Order). The defined term Secured Claim includes any Claim that is (i) subject to an offset right under applicable law as of the Petition Date, and (ii) a secured claim against the Debtors pursuant to sections 506(a) and 553 of the Bankruptcy Code.

1.107 "Solicitation Materials" means all solicitation materials with respect to the Plan, including the Disclosure Statement and related ballots, which have been approved by the Bankruptcy Court pursuant to the Interim Approval and Procedures Order.

1.108 "Subordinated Claim" means any Claim subject to subordination, whether pursuant to a Final Order of the Bankruptcy Court under section 510 of the Bankruptcy Code or by written consent of the Holder of such Claim, whether such Final Order is entered or such consent is given prior to or following the Effective Date.

1.109 "Supplier Cause of Action" means any Cause of Action against any Person or Entity related to the Debtors' Rhofade business that occurred prior to the closing of the Sales.

1.110 "Tax Claim" means any Claim of a Governmental Unit of the kind entitled to priority in payment under sections 502(i) and 507(a)(8) of the Bankruptcy Code.

1.111 "Unclaimed Distributions" mean any Cash or other distributable property unclaimed on or after the Effective Date or the date on which an additional Distribution would have been made in respect of an Allowed Claim. Unclaimed Distributions shall include (a) checks (and the funds represented thereby) mailed to a Distribution Address and returned as undeliverable without a proper forwarding address, (b) funds for uncashed checks, (c) checks (and the funds represented thereby) not mailed or delivered because no Distribution Address to mail or deliver such property was available, and (d) any Distribution deemed to be an Unclaimed Distribution pursuant to section 12.7(b) of this Plan.

1.112 "Unimpaired" means, when used in reference to a Claim or Interest, any Claim or Interest that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

1.113 "U.S. Trustee Fees" mean fees payable pursuant to 28 U.S.C. § 1930, to the extent applicable to these chapter 11 cases.

1.114 "Voting Class" means a Class whose members are entitled to vote on this Plan.

1.115 "Voting Deadline" shall mean **January 18, 2024 at 4:00 p.m. (Prevailing Eastern Time)**, the date specified in the Disclosure Statement, the Ballots, the Interim Approval and Procedures Order or related Solicitation Materials approved by the Bankruptcy Court as the last date for Holders of Claims entitled to vote on this Plan to submit their ballots with respect to this Plan, as such date may be extended.

Rules of Interpretation

1.116 Unless otherwise specified, all section or exhibit references in this Plan are to the respective section in, or exhibit to, this Plan. The words "herein," "hereof," "hereto," "hereunder," and other words of similar import refer to this Plan as a whole and not to any particular section, subsection, or clause contained therein, unless the context requires otherwise. The words "include" and "including" shall mean "include, without limitation," or "including," as the case may be. Whenever from the context it is appropriate, each term, whether stated in the singular or the plural, will include both the singular and the plural. Any term that is not otherwise defined herein, but used in the Bankruptcy Code or the Bankruptcy Rules, is used as defined in the Bankruptcy Code or the Bankruptcy Rules, as applicable. Further, captions and headings to articles and sections are inserted for convenience of reference only and shall not limit or otherwise affect the provisions hereof or the interpretation of the Disclosure Statement and Plan,

1.117 Any reference in this Plan to a contract, instrument, release, or other agreement or documents being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions, and any reference in this Plan to an existing document or exhibit filed or to be filed means such document or exhibit as it may have been or may be amended, modified, or supplemented. Subject to the provisions of any contract, certificates or articles of incorporation, by-laws, instruments, release, or other agreements or documents entered into in connection with this Plan, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, federal law, including the Bankruptcy Code and Bankruptcy Rules.

1.118 The captions and headings in this Plan are for convenience of reference only and shall not limit or otherwise affect the provisions hereof. Any reference to any entity as a holder of a Claim or Interest includes that entity's successors and assigns.

Appendices and Plan Documents

1.119 All Plan Documents and appendices to the Plan are incorporated into the Plan by reference and are a part of the Plan as if set forth in full herein. The documents contained in the exhibits and Plan Supplement shall be approved by the Bankruptcy Court pursuant to the Confirmation Order. The following documents shall be provided to the Debtors by the Committee for filing as part of the Plan Supplement: (a) draft forms or signed copies, as the case may be, of the Liquidating Trust Agreement, (b) the identity of the Liquidating Trustee; (c) the

schedule of Non-Released Debtor Parties, if any. Copies of the Plan Documents are available free of charge at https://www.kccllc.net/novan/.

ARTICLE II
CLASSIFICATION OF CLAIMS AND INTERESTS AND ESTIMATED RECOVERIES

THE PROJECTED RECOVERIES SET FORTH IN THE TABLE BELOW ARE ESTIMATES ONLY AND ARE THEREFORE SUBJECT TO CHANGE.

2.1 **General Rules of Classification**. The Plan groups the Debtors together solely for the purposes of describing treatment under the Plan, confirmation of the Plan, and making distributions in accordance with the Plan in respect of Claims against and Interests in the Debtors under the Plan. Notwithstanding such groupings, the Plan constitutes a separate chapter 11 plan of liquidation for each Debtor. The Plan is not premised upon and will not cause the substantive consolidation of any of the Debtors, with the recovery for Holders of Allowed General Unsecured Claims of NVN being the NVN Recovery and the recovery for Holders of Allowed General Unsecured Claims of EPI being the EPI Recovery in accordance with the Allocation Settlement provided for in Section 9.2 of this Plan. A Holder of an Allowed Claim against more than one Debtor on a theory of joint and several liability shall only be entitled to a single recovery in distribution. For brevity and convenience, the classification and treatment of Claims and Interests have been arranged into one table set below in this section. Such classification shall not affect any Debtor's status as a separate legal entity, change the organizational structure of the Debtors, constitute a change of control of any Debtor for any purpose, cause a merger or consolidation of any legal entities or cause the transfer of any assets. Except as otherwise provided by or permitted under the Plan, all Debtors shall continue to exist as separate legal entities.

The information in the table below is provided in summary form for illustrative purposes only and is subject to material change based on certain contingencies, including the claims reconciliation process. Actual recoveries may vary widely within these ranges, and without any changes to any of the assumptions underlying these amounts could result in material adjustments to recovery estimates provided herein and the actual Distributions received by creditors. The projected recoveries are based on information available to the Debtors as of the date hereof and reflect the Debtors' estimates as of the date hereof only. In addition to the cautionary notes contained elsewhere in the combined Disclosure Statement and Plan, the Debtors emphasize that they make no representation as to the accuracy of these recovery estimates. The Debtors expressly disclaim any obligation to update any estimates or assumptions after the date hereof on any basis (including new or different information received or errors discovered).

A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. A Claim or Interest is also placed in a particular Class for the purpose of receiving Distributions pursuant to this Plan only to the extent that such Claim or Interest is an Allowed Claim in that Class and such Claim or Interest has not been paid, released or otherwise settled prior to the Effective Date.

All Claims and Interests, except Administrative Claims, Fee Claims and Tax Claims, are placed in the Classes set forth below. In accordance with section 1123(a)(1) of the

Bankruptcy Code, Administrative Claims, Fee Claims and Tax Claims, as described herein, have not been classified, and the respective treatment of such unclassified Claims is set forth below in Article VI of the Plan. The categories of Claims and Interests listed below classify Claims and Interests for all purposes, including voting, confirmation and distribution pursuant to the Plan and sections 1122 and 1123(a)(1) of the Bankruptcy Code.

Class/ Designation	**Plan Treatment**	**Status**	**Projected Recovery**	**Estimated Amount**
Class 1: Other Priority Claims	Each Holder of an Allowed Class 1 Claim shall receive Cash in an amount equal to the unpaid portion of such Allowed Other Priority Claim.	Unimpaired Not entitled to vote Deemed to accept Plan	100%	$300,000-$400,000
Class 2: Other Secured Claims	Each Holder of an Allowed Class 2 Claim shall receive, at the option of the Debtors, as applicable: (i) Cash in an amount equal to the Allowed amount of such Claim; (ii) reinstatement of such Holder's Allowed Other Secured Claim; (iii) such other treatment sufficient to render such Holder's Allowed Other Secured Claim Unimpaired; or (iv) return of the applicable collateral in satisfaction of the Allowed amount of such Other Secured Claim.	Unimpaired Not entitled to vote Deemed to accept Plan	100%	$1,500,000-$1,900,000[2]
Class 3: NVN Unsecured Claims	**If Class 3 accepts this Plan (i.e., 66 2/3% in claim amount and majority in number),** each Holder of an Allowed NVN Unsecured Claim shall receive, in full and final satisfaction, and release of and in exchange for its Allowed Class 3 Claim, either: (A) its Pro Rata share of the NVN Recovery; or (B) such other	Impaired Entitled to vote	1%-2%	$9,000,000-$12,000,000[3]

[2] This number primarily includes alleged setoff and recoupment against EPI accounts receivables.

[3] This number assumes the settlement of the Intercompany Claim of EPI against NVN as part of the Allocation Settlement described in section 9.2 herein.

Class/ Designation	Plan Treatment	Status	Projected Recovery	Estimated Amount
	treatment which the Debtors (with the consent of the Committee) or the Liquidating Trustee, as applicable, and the Holder of such Allowed NVN Unsecured Claim have agreed upon in writing. **If Class 3 does not vote to accept the Plan, Class 3 will receive no Distribution on account of their Class 3 Claims.**			
Class 4: EPI Unsecured Claims	Each Holder of an Allowed EPI Unsecured Claim shall receive, in full and final satisfaction, and release of and in exchange for its Allowed Class 4 Claim, either: (A) its Pro Rata share of the EPI Recovery; or (B) such other treatment which the Debtors (with the consent of the Committee) or the Liquidating Trustee, as applicable, and the Holder of such Allowed EPI Unsecured Claim have agreed upon in writing.	Impaired Entitled to vote	15%-20%	$24,000,000-$27,000,000
Class 5: Subordinated Claims	Each Holder of an Allowed Class 5 Claim shall receive no Distribution on account of their Subordinated Claims.	Impaired Not entitled to vote Deemed to reject Plan	0%	$0
Class 6: Equity Interests	On the Effective Date, all Equity Interests shall be deemed canceled, extinguished and discharged and of no further force or effect, and the Holders of Equity Interests shall not be entitled to receive or retain any property on account of such Interests.	Impaired Not entitled to vote Deemed to reject Plan	0%	N/A

2.2 **Unimpaired Classes of Claims**.

Class 1: Other Priority Claims. Class 1 shall consist of Other Priority Claims against the Debtors. Class 1 Claims are Unimpaired by the Plan and the Holders of Allowed Class 1 Claims are deemed to accept the Plan and, therefore, are not entitled to vote on the Plan.

Class 2: Other Secured Claims. Class 2 shall consist of Other Secured Claims against the Debtors. Class 2 Claims are Unimpaired by the Plan and the Holders of Allowed Class 2 Claims are deemed to accept the Plan and, therefore, are not entitled to vote on the Plan.

2.3 **Impaired Classes of Claims**.

Class 3: NVN Unsecured Claims. Class 3 shall consist of all Allowed General Unsecured Claims against NVN. The Class 3 Claims are Impaired by the Plan and entitled to vote to accept or reject the Plan.

Class 4: EPI Unsecured Claims. Class 4 shall consist of all Allowed General Unsecured Claims against EPI. The Class 4 Claims are Impaired by the Plan and entitled to vote to accept or reject the Plan.

Class 5: Subordinated Claims. Class 5 shall consist of all Subordinated Claims. Because Holders of Class 5 Subordinated Claims will receive no Distribution under the Plan, Holders of Class 5 Subordinated Claims are deemed to reject the Plan and, therefore, not entitled to vote on the Plan.

2.4 **Impaired Class of Equity Interests**.

Class 6: Equity Interests. Class 6 shall consist of all Equity Interests. Because Holders of Class 6 Equity Interests will receive no Distribution under the Plan, Holders of Class 6 Equity Interests are deemed to reject the Plan and, therefore, not entitled to vote on the Plan.

ARTICLE III
BACKGROUND AND DISCLOSURES

3.1 **General Background**.[4]

(a) *The Debtors' Businesses*.

The Debtors were a medical dermatology enterprise primarily focused on researching, developing and commercializing innovative therapeutic products for skin diseases in the United States. Founded in 2006, as of the Petition Date, Novan (now NVN) was a publicly

[4] Further information regarding the Debtors' business, assets, capital structure, and the circumstances leading to the filing of the chapter 11 cases is set forth in detail in the *Declaration of Paula Brown Stafford in Support of Debtors' Chapter 11 Petitions and First Day Motions* (D.I. 4) (the "First Day Declaration"), which is incorporated by reference herein.

traded company with its shares listed on the Nasdaq Stock Market (ticker symbol: NOVN).[5] Novan was and (as NVN) continues to be a corporation organized under the laws of the State of Delaware. Historically, Novan maintained its approximately 20,000 square foot headquarters and manufacturing facility at 4020 Stirrup Creek Drive, Suite 110, Durham, North Carolina. Presently, since the post-petition asset sales described below, the Debtors' address is P.O. Box 64, Pittsboro, North Carolina.

Novan was developing SB206 (berdazimer gel, 10.3%) as a topical prescription gel for the treatment of viral skin infections, with a current focus on molluscum contagiosum ("Molluscum"). Novan's Molluscum program was progressing through the U.S. Food and Drug Administration's ("FDA") New Drug Application ("NDA") process since January 2023 and had hoped to receive the FDA's approval on or before January 5, 2024. If approved, Novan had hoped to commercialize SB206 by the end of the first half of 2024, subject to securing additional capital. In addition to the regulatory progression of SB206, Novan also had plans to progress SB204, a topical monotherapy for the treatment of acne, which would require commencing a pivotal Phase 3 study, in addition to other product candidates, subject to additional funding.

In addition to its prepetition research and developmental work, in the first quarter of 2022, Novan completed an acquisition of Debtor EPI Health. The acquisition was intended to equip the Debtors with a commercial infrastructure including sales, marketing, and communications, as well as a dedicated market access and pharmacy relations team, and position the Debtors as a fully integrated dermatology company with a pipeline of development candidates focused primarily on dermatological indications supported by a commercial platform to market and sell therapeutic products for skin diseases. By the acquisition, the Debtors procured five branded prescription drugs, and a license and commercialization agreement for another prescription drug. The Debtors actively promoted three of the dermatological products in the United States through May 31, 2023—Rhofade, Wynzora, and Minolira—and derived revenue from the sale of these branded products through pharmaceutical wholesalers as well as direct to pharmacies. These prescription dermatological therapies are targeted to patients with rosacea, plaque psoriasis, and acne, respectively. The Debtors also have two other branded prescription drugs in their portfolio, Sitavig and Cloderm. Just prior to the Petition Date, the Debtors began the process of transferring Wynzora back to its owner, leaving Debtor EPI Health with four drugs in its commercial portfolio—Rhofade, Minolira, Sitavig and Cloderm that could be sold during the chapter 11 cases.

A more detailed summary of the Debtors' research and development portfolio and commercial portfolio can be found in the First Day Declaration and the Debtors' Annual Report on Form 10-K, filed on March 30, 2023, and in their Quarterly Reports on Form 10-Q filed on August 11, 2022, November 14, 2022, and May 15, 2023.

[5] NVN was delisted shortly after the Petition Date and, through this Plan, all outstanding equity will be cancelled.

(b) *The Debtors' Prepetition Capital Structure*.

i. Bay View Factoring Agreement

In early December 2022, Debtor EPI Health entered into an accounts receivable-backed factoring agreement (the "Factoring Agreement") with Bay View Funding, a wholly-owned subsidiary of Heritage Bank of Commerce ("Bay View"). Pursuant to the Factoring Agreement, Debtor EPI Health sold certain trade accounts receivable to Bay View from time to time, with recourse. The factoring facility provided for EPI Health to have access to the lesser of (i) $15.0 million, or (ii) the sum of all undisputed receivables purchased by Bay View multiplied by 70% (which percentages may be adjusted by Bay View in its sole discretion), less any reserved funds. Upon receipt of any advance, Debtor EPI Health had sold and assigned all of its rights in such receivables and all proceeds thereof. The factoring of the accounts receivable was on a recourse basis. The proceeds were used to fund general working capital needs of the consolidated business. As described below, this Factoring Agreement was terminated during the chapter 11 cases.

ii. Bridge Loan

On July 14, 2023, the Debtors entered into a prepetition secured loan (the "Bridge Loan") with Ligand to provide the Debtors with $3 million worth of liquidity secured by all of the Debtors' assets. As of the Petition Date, the Debtors had just over $3,000,000 in principal, interest and fees owing on the Bridge Loan. As described below, the Bridge Loan was rolled into the DIP Financing Facility approved by the Bankruptcy Court and eventually paid in full during the chapter 11 cases.

iii. Trade and Miscellaneous Unsecured Debt

In addition to the Debtors' funded debt, the Debtors estimate that, as of the Petition Date, they had approximately $27.3 million in unpaid trade and other ordinary course obligations.[6]

iv. Equity

Novan was a publicly traded company with its shares listed on the Nasdaq Stock Market (ticker symbol: NOVN).

3.2 **Events Leading to Chapter 11**.

The Debtors incurred losses each year since their inception, having suffered a net loss of $31.3 million in 2022. Since its inception, Debtor NVN was a research and development company that acquired Debtor EPI Health and its commercial product portfolio in 2022. The value proposition of the EPI Health acquisition was, in part, to provide the combined Debtors with the commercial infrastructure needed to launch SB206, if approved, while also having a commercial

[6] This estimate does not reflect the total Allowed Claims against the Estates. The Debtors have not completed their claims reconciliation process. Therefore, the actual amount of Allowed Claims may vary materially from this estimate.

product portfolio that could effectively generate sufficient revenue with the goal to cover the operating expenditures of the commercial business.

While the business had generated revenues from its commercial products, they were not sufficient to get to the break-even point based in part on the deterioration of revenue deductions systemic in the pharmaceutical industry related to payors and patient assistance programs. However, even if the commercial business had been able to operate at break-even, the Debtors would still have needed to raise additional capital to progress the SB206 potential approval and commercialization. While the Debtors historically relied heavily on debt and equity financings to fund operations, and despite the revenues generated from the commercial sales and management's best efforts to stabilize operations, the Debtors' business prospects significantly declined in the months prior to filing these chapter 11 cases. Several factors contributed to this decline. Chief among them was the Debtors' need for significant cash resources to execute their business plan, advance regulatory development and approval of SB206, and prepare to launch and commercialize SB206, if approved, which became increasingly difficult as a result of many factors.

Factors which impacted the Debtors' financial situation, as it related to the commercial business, included a deteriorating gross-to-net deduction environment experienced throughout the pharmaceutical industry and supply chain disruptions. Gross-to-net deductions are amounts that reduce gross revenue of a product, what is commonly referred to as the wholesaler acquisition cost less contract price discounts, cash discounts, rebates, and returns that are the result of collaborating with third-party partners including patient co-pay assistance coupons and the pharmacy benefit managers ("PBMs"). PBMs are third-party companies that function as intermediaries between insurance providers and pharmaceutical companies. Soaring costs with both the PBMs and co-pay assistance programs, greatly reduced the cash flow from the commercial business of the Debtors. As disclosed in the Debtors' Form 10-K filed on March 30, 2023, the Debtors' lead commercial asset, Rhofade, also experienced supply chain disruptions due to its third-party manufacturer having multiple batches of finished goods not being available for sale by the Debtor due to manufacturing issues resulting in product out-of-specification problems and validation testing errors. This disruption of supply created a cascading impact in March 2023 and again in early June 2023. Product sales declined and the Debtors were unable to utilize their accounts receivable factoring facility to bring working capital into the business. Further, key vendors were unable to be paid, which resulted in those vendors discontinuing their services which exacerbated the Debtors' ability to sell product, once it ultimately became available. While the Debtors had been evaluating supply chain challenges and advised investors of the risk in their public filings, these specific supply chain issues, mixed with the limited liquidity of the Debtors, had an acute and immediate impact to the operating cash flow of the Debtors.

Factors which impacted the Debtors' financial situation, as it related to the research and development business, related to the ongoing need to fund the SB206 asset progression primarily through equity raises and/or strategic relationships. The general capital market and economic conditions had proven difficult to navigate for the purposes of raising additional capital. The Debtors marketed a potential equity offering following the announcement of their NDA submission in January 2023. Following that marketing effort, the Debtors were only able to secure an offering in March 2023 for gross proceeds of $6 million. Following the end of the lock-up period associated with the March 2023 offering, the Debtors evaluated other potential equity offerings and strategic transactions but ultimately concluded that the quantum of potential

proceeds, with the potential dilution to stockholders, would not be sufficient to advance operations of the business for any substantial period.

Furthermore, in its Form 10-Q for the quarter ended March 31, 2023, the Debtors disclosed the following as it relates to financial challenges related to its commercial and research and development business:

- The Debtors had reported a net loss in all fiscal periods since inception and, as of March 31, 2023, had an accumulated deficit of $324.4 million.
- As of March 31, 2023, the Debtors had total cash and cash equivalents of $12.5 million and a working capital deficit of $11.2 million.
- The Debtors disclosed that its cash runway was into late second quarter of 2023.
- The Debtors disclosed that they would continue to generate losses for the foreseeable future, and expect the losses to increase as they continue the development of, and seek regulatory approvals for, the product candidates and begin activities to prepare for potential commercialization of SB206, if approved.
- The Debtors concluded that the prevailing conditions and ongoing liquidity risks, coupled with current forecasts, including costs associated with implementing the SB206 prelaunch strategy and commercial preparation, raised substantial doubt about its ability to continue as a going concern.

The Debtors subsequently notified the market in a press release on June 5, 2023 that they would update the market following their annual stockholder meeting on June 6, 2023. In a presentation following the annual stockholder meeting, the Debtors disclosed that the unaudited consolidated cash balance was approximately $13.1 million as of April 30, 2023 and that the commercial segment working capital deficit was approximately $17.4 million as of April 30, 2023. The Debtors further disclosed that they were evaluating a wide range of opportunities to access capital, including long-term financing (debt), commercial asset(s) disposition, and/or capital market access, that they were continuing actions to delay, defer or avoid certain R&D, Commercial and G&A costs, and that if they were unable to successfully access capital or enter into some other strategic transaction in the coming weeks, the Debtors would then need to proceed to wind down operations.

In an attempt to mitigate these adverse economic and operational circumstances and the lack of access to capital markets, in the months leading up to the chapter 11 cases, the Debtors initiated various cost-cutting measures to preserve liquidity. These efforts included: implementing pay cuts, not paying discretionary bonuses for calendar year 2022, a reduction-in-force in May 2023 consisting of 39 employees, reducing discretionary research and development expenses, voluntary reduction of the CEO's salary, reducing commercial marketing and related expenses, and other restructuring initiatives. These extensive cost-cutting measures were not sufficient enough to help the Debtors cover their ongoing and projected future cash requirements. With their operating cash running low, the Debtors retained Morris, Nichols, Arsht & Tunnell LLP ("Morris Nichols") as bankruptcy counsel, Raymond James & Associates ("Raymond James") as

investment bankers, and SierraConstellation Partners, LLC ("SCP") as financial advisors, to assist the Debtors in pursuing various strategic alternatives, including a bankruptcy filing.

While the Debtors were proactively seeking a strategic partner and/or additional investors for years prior to the filing of the chapter 11 cases, Raymond James was retained in early June 2023 to begin a marketing process seeking potential financing or strategic buyers. The Debtors and their professionals worked vigorously in June and July of 2023 evaluating the Debtors' options and exploring paths to address the difficulties facing the company. Concurrently with the Debtors' prepetition marketing process, the Debtors and their advisors began seeking financing to bridge the companies' cash requirements until they could reach definitive agreements on potential partnership and/or sale transactions and potentially to a further point when the Debtors may have had greater clarity from the FDA on the potential to receive approval for SB206 in January 2024.

During this process, leading up to the filing of the chapter 11 cases, the Debtors (with the assistance of Raymond James in the last few months prior to the bankruptcy filings) contacted approximately 30 potential strategic buyers in the Debtors' industry. Of those potential strategic partners, 14 executed non-disclosure agreements. The Debtors and their advisors explored both in- and out-of-court financing or purchase options with these potential strategic partners. Raymond James and the Debtors also reached out to approximately 10 potential financing parties that regularly lend in Chapter 11 cases. Due to the nature of the Debtors' assets, none of the potential parties were willing to provide postpetition financing.

Several weeks before the bankruptcy filing, the Debtors, with the assistance of their advisors, determined that an out-of-court sale or restructuring was impractical and pivoted towards preparing for a bankruptcy-facilitated transaction. During this time, the Debtors engaged in negotiations with five (5) potential strategic partners for the financing of the Debtors and/or purchase of the Debtors' assets in bankruptcy. Towards the end of this process, several of the potential strategic partners had dropped out.

In the two weeks prior to the chapter 11 filings, the Debtors engaged in extensive negotiations with Ligand and a couple of other potential partners concerning the submission of a potential Stalking Horse Bid (as defined below) and providing a DIP Financing Facility. On July 16, 2023, the Debtors determined that the combined DIP Financing Facility and Stalking Horse Bid submitted by Ligand was the highest and best offer received to date for the sale of the substantially all of the Debtors' assets. The results were the proposed Stalking Horse Bid, the proposed DIP Financing Facility and the chapter 11 process described immediately below.

3.3 **The Chapter 11 Cases**.

(a) *Generally.*

On July 17, 2023—the Petition Date—the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court. The commencement of a chapter 11 case creates an estate that is comprised of all of the legal and equitable interests of the debtor as of that date. The Bankruptcy Code provides that the debtor may continue to operate its business and remain in possession of its property as a "debtor in possession." Since the Petition

Date, the Debtors have continued to operate their business as debtors and debtors in possession. By order entered July 18, 2023 (D.I. 34), the chapter 11 cases are jointly administered for procedural purposes only. No trustee or examiner has been appointed in the chapter 11 cases. On July 28, 2023 (D.I. 72), the Office of the U.S. Trustee appointed the Creditors' Committee in the chapter 11 cases.

The filing of the Debtors' bankruptcy petitions on the Petition Date triggered the immediate imposition of the automatic stay under section 362 of the Bankruptcy Code, which, with limited exceptions, enjoins all collection efforts and actions by creditors, the enforcement of Liens against property of the Debtors and both the commencement and the continuation of prepetition litigation against the Debtors. With certain limited exceptions and/or modifications as permitted by order of the Bankruptcy Court, the automatic stay will remain in effect from the Petition Date until the Effective Date of the Plan.

(b) *"First Day" Motions and Related Applications*.

On the Petition Date, the Debtors filed a number of "first-day" motions and applications designed to ease the Debtors' transition into chapter 11, maximize the value of the Debtors' assets and minimize the effects of the commencement of the chapter 11 cases. On July 28, 2023, the Bankruptcy Court entered orders providing various first-day relief, including interim or final orders approving:

- *Motion of Debtors for Entry of an Order Authorizing the Joint Administration of Debtors' Chapter 11 Case* (D.I. 3);

- *Motion of the Debtors for Entry of an Order Authorizing the Debtors to (A) File a Consolidated List of Creditors in Lieu of Submitting a Separate Mailing Matrix for Each Debtor, (B) File a Consolidated List of the Debtors Thirty Largest Unsecured Creditors and (C) File Under Seal Portions of the Creditor Matrix and Other Filings Containing Certain Personal Identification Information* (D.I. 6);

- *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Continue Their Existing Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Their Bank Accounts and Existing Business Forms, (D) Implement Changes to the Existing Cash Management System as Necessary, and (E) Continue Ordinary Course Intercompany Transactions, (II) Waiving the Requirements of 11 U.S.C. § 345(b) and the U.S. Trustees Operating Guidelines, and (III) Granting Related Relief* (D.I. 7);

- *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Pay Certain Prepetition Employment Obligations and (B) Maintain Employee Benefits Programs and (II) Granting Related Relief* (D.I. 8);

- *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* (D.I. 9);

- *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing Debtors to Pay Certain Prepetition Taxes and Related Obligations and (II) Authorizing Banks to Honor and Process Checks and Transfers Related to Such Prepetition Taxes and Related Obligations* (D.I. 10);

- *Motion of Debtors for Entry of Interim and Final Orders Authorizing Debtors to (I) Continue Their Insurance Program, (II) Pay All Prepetition and Postpetition Obligations with Respect Thereto, and (III) Authorizing Banks to Honor and Process Checks and Transfers Related to Such Insurance Obligations* (D.I. 11);

- *Debtors' Motion for Interim and Final Orders (I) Authorizing Payment of Prepetition Claims of Certain Critical Vendors and (II) Granting Related Relief* (D.I. 12); *and*

- *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Lender, (III) Scheduling Final Hearing, and (IV) Granting Related Relief* (D.I. 15).

(c) *Retention of Professional Advisors*.

Pursuant to orders entered in late August and early September, the Bankruptcy Court authorized the Debtors to retain and employ (a) Morris Nichols, as their bankruptcy counsel (D.I. 219), (b) Kurtzman Carson Consultants LLC ("KCC"), as their administrative advisor (D.I. 296), (c) SCP, as their financial advisor (D.I. 212), (d) Raymond James, as their investment banker (D.I. 214), and (e) Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, LLP ("Smith Anderson"), as their corporate counsel.

Pursuant to orders entered on September 7, 2023, the Bankruptcy Court authorized the Creditors' Committee to retain and employ (a) Goodwin Procter LLP, as its lead bankruptcy counsel (D.I. 266); (b) Womble Bond Dickinson (US) LLP as its co-counsel (D.I. 267); and (c) Dundon Advisers LLC as its financial advisor (D.I. 268).

(d) *The Sale of Substantially All of the Debtors' Assets*

The Debtors filed the chapter 11 cases in order to pursue a sale of all or substantially all of their assets with the goal of maximizing the recovery for their estates and creditors. Prior to

the Petition Date, the Debtors and Ligand negotiated the $15 million DIP Financing Facility (with $3 million as part of the Bridge Loan to fund the Debtors into bankruptcy with an additional $12 million to fund the Chapter 11 Cases postpetition) as well as a "stalking horse" asset purchase agreement, whereby Ligand agreed to credit bid the DIP Financing Facility in exchange for substantially all of the Debtors' assets. Using Ligand's bid (the "Stalking Horse Bid") as a floor, the Debtors and Raymond James marketed the Debtors' assets, seeking to solicit and secure the highest and best offers to maximize recoveries for the stakeholders of the Estates. To that end, on the Petition Date, the Debtors filed the Sale Motion.

In the Sale Motion, the Debtors set forth the proposed process (the "Bidding Procedures") by which the Debtors would solicit bids and run an auction (the "Auction") for the sale of substantially all of the Debtors' assets. The proposed Bidding Procedures set the Stalking Horse Bid as the floor for the Debtors assets, but permitted the assets to be sold in two separate lots consisting of (1) the Debtors' research and development portfolio, including SB206, which were defined in the Bidding Procedures as the "R&D Assets," and (2) the Debtors' commercial portfolio, which were defined in the Bidding Procedures as the "Commercial Assets." The Sale Motion also provided that any sale of the R&D Assets would be required to include the assumption and assignment of a royalty agreement by and between the Debtors and Ligand as well as limited bid protections in exchange for Ligand being willing to act as the Stalking Horse Bidder for the sale of the Debtors' assets.

After the filing of the Sale Motion, the Debtors, with the assistance of the Creditors' Committee, continued to negotiate with Ligand to revise certain of the Bidding Procedures to ensure that the approved Bidding Procedures were properly tuned to maximize the value received by the estates for the sale of the Debtors' assets while also properly compensating Ligand for being the Stalking Horse Bidder as well as agreeing to be the Debtors' postpetition lender.

On August 15, 2023, the Bankruptcy Court entered the *Order (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, and (II) Granting Related Relief* (D.I. 166) (the "Bidding Procedures Order"). The Bidding Procedures Order included a number of concessions secured by the Debtors and the Creditors' Committee that improved the Bidding Procedures and helped to maximize the value received by the estates for the sale of the Debtors' assets.

Pursuant to the Bidding Procedures Order, and in addition to Ligand's Stalking Horse Bid, Mayne submitted a bid for a portion of the Debtors' Commercial Assets—Rhofade—and the Debtors determined that such bid was a Qualified Bid as set forth in the Bidding Procedures Order. No other bids were received and Ligand declined to overbid Mayne for the Commercial Assets related to Rhofade. Thus, the result of the sale process was (a) Ligand purchasing the entirety of the R&D Assets as well as the Commercial Assets related to Sitavig for a purchase price of $12,150,000 (USD) plus the payment of any contractual cure amounts related to Sitavig and (b) Mayne purchasing the Commercial Assets related to Rhofade for a purchase price of $8,000,000 plus the plus the payment of any contractual cure amounts related to Rhofade. The

Commercial Assets related to Minolira and Cloderm have not yet been sold.

On September 12, 2023, the Bankruptcy Court entered the Ligand Sale Order and the Mayne Sale Order. By September 27, 2023, both sales approved by the Sale Orders had closed. In connection with the closing of the Sales, the DIP Financing Facility was paid in full. Under the Allocation Settlement provided for in Section 9.2 of this Plan, proceeds from the sale of the R&D Assets will be allocated to the NVN Recovery and proceeds from the sale of the Commercial Assets will be allocated to the EPI Recovery, after paying the DIP Financing Facility in full and certain other expenses related to the Sales.

After the closing of the sale of the Commercial Assets related to Rhofade to Mayne, a creditor of the Debtor, Aclaris Therapeutics, Inc. ("Aclaris"), filed a notice of appeal of the Mayne Sale Order to the United States District Court for the District of Delaware, alleging that the Bankruptcy Court erred in entering the Mayne Sale Order permitting the sale free and clear of certain of Aclaris's alleged rights in Rhofade (the "Aclaris Appeal"). The Debtors believe that this appeal is without merit and is, among other things, entirely foreclosed by operation of section 363(m) of the Bankruptcy Code.

(e) *The Termination of the Factoring Agreement*

On July 31, 2023, the Debtors filed the *Debtors' Motion for Entry of an Order Pursuant to 11 U.S.C. §§ 105(a) and 363(b) and Fed. R. Bankr. P. 9019 Approving Settlement with CSNK Working Capital Finance Corp. d/b/a Bay View Funding* (D.I. 81) (the "Termination Motion"). Pursuant to the Termination Motion, the Debtors and Bay View agreed to terminate the Factoring Agreement and for Bay View to return certain collateral to the Debtors. As described in the Termination Motion, the trade accounts receivable extended pursuant to the Factoring Agreement were sold by EPI Health. After further negotiations between Bay View and the Creditors' Committee, the Bankruptcy Court entered an order (D.I. 199) approving the Termination Motion with additional concessions from Bay View secured by the Committee. Pursuant to the order, Debtor EPI recovered approximately $2,269,299 from Bay View (the "Bay View Settlement Amount"). Under the Allocation Settlement provided for in Section 9.2 of this Plan, proceeds from the Bay View Settlement Amount will be allocated to the EPI Recovery.

(f) *Bar Dates Pursuant to the Bar Date Order*

On August 29, 2023, the Debtors filed the Bar Date Motion and on September 20, 2023, the Bankruptcy Court entered the Bar Date Order. Pursuant to the Bar Date Order, the Bankruptcy Court established the following Bar Dates:

(1) General Bar Date: **October 25, 2023 at 5:00 p.m. (prevailing Eastern Time)** as the deadline for each person or entity, including individuals, partnerships, corporations, joint ventures, trusts, but not including Governmental Units, to file a Proof of Claim in respect of a prepetition claim (as defined in section 101(5) of the Bankruptcy Code), including, for the avoidance of doubt, secured claims, claims asserted under section 503(b)(9) of the Bankruptcy Code, unsecured priority claims, and unsecured non-priority claims;

(2) Governmental Bar Date: **January 16, 2024**, as the deadline for Governmental Units to file a Proof of Claim in respect of a prepetition claim against the Debtors;

(3) Amended Schedules Bar Date: the later of (i) the General Bar Date or the Governmental Bar Date, as applicable, or (ii) **5:00 p.m. (prevailing Eastern Time)** on the date that is 30 days from the date on which the Debtors provide notice of a previously unfiled Schedule or an amendment or supplement to the Schedules as the deadline by which claimants holding claims affected by such filing, amendment or supplement must file Proofs of Claim with respect to such claim; and

(4) Rejection Damages Bar Date: the later of (i) the General Bar Date or the Governmental Bar Date, as applicable, or (ii) **5:00 p.m. (prevailing Eastern Time)** on the date that is 30 days following service of an order approving rejection of any executory contract or unexpired lease of the Debtors as the deadline by which claimants asserting claims resulting from the Debtors' rejection of an executory contract or unexpired lease must file Proofs of Claim for damages arising from such rejection.

(g) *The Wind-Down of the Estates*

Following the sale of substantially all of the Debtors' assets to the Purchasers, the Debtors are focused principally on winding down their business and preserving Cash held in the Estates. The Debtors' Retained Assets currently consist of proceeds of the Sales after the payment of the DIP Financing Facility and various administrative expenses, the Bay View Settlement Amount, certain accounts receivable (including the EPI AR Causes of Action to the extent any accounts receivable remain outstanding as of the Effective Date), all other Retained Causes of Action, and all assets related to Minolira and Cloderm, if not sold or abandoned by the Debtors prior to the Effective Date (and, if sold, the proceeds of such sale(s) would also be Retained Assets). This Plan provides for the Debtors' Retained Assets to be distributed to Holders of Allowed Claims in accordance with the terms of the Plan.

ARTICLE IV
CONFIRMATION AND VOTING PROCEDURES

4.1 **Confirmation Procedure.** On December 19, 2023, the Bankruptcy Court entered the Interim Approval and Procedures Order conditionally approving the combined Disclosure Statement and Plan for solicitation purposes only and authorizing the Debtors to solicit votes to accept or reject the Plan. The Confirmation Hearing has been scheduled for **January 25, 2024 at 10:00 a.m. (prevailing Eastern Time)** to consider (a) final approval of the combined Disclosure Statement and Plan as providing adequate information pursuant to section 1125 of the Bankruptcy Code and (b) confirmation of the Plan pursuant to section 1129 of the Bankruptcy Code. The Confirmation Hearing may be adjourned from time to time by the Debtors without further notice, except for an announcement of the adjourned date made at the Confirmation Hearing or by filing a notice with the Bankruptcy Court.

4.2 **Procedure for Objections.** Any objection to final approval of the combined Disclosure Statement and Plan as providing adequate information pursuant to section 1125 of the Bankruptcy Code and/or confirmation of the Plan must be made in writing and filed with the Bankruptcy Court and served on (a) counsel for the Debtors, Morris, Nichols, Arsht & Tunnell LLP, 1201 Market Street, 16th Floor, Wilmington, Delaware 19801 (Attn: Derek C. Abbott, Esq. (dabbott@morrisnichols.com)); (b) counsel to the Creditors' Committee, Goodwin Procter, LLP, The New York times Building, 620 Eighth Avenue, New York, New York 10018 (Attn: Howard Steel (hsteel@goodwinlaw.com) and Barry Bazian (bbazian@goodwinlaw.com)); and (c) the U.S. Trustee for the District of Delaware, Caleb Boggs Federal Building, 844 King Street, Suite 2207, Wilmington, DE 19801, Attn: Linda Casey, linda.casey@usdoj.gov in each case, by no later than **January 18, 2024 at 4:00 p.m. (prevailing Eastern Time)**. Unless an objection is timely filed and served, it may not be considered by the Bankruptcy Court at the Confirmation Hearing.

4.3 **Requirements for Confirmation.** The Bankruptcy Court will confirm the Plan only if it meets all the applicable requirements of section 1129 of the Bankruptcy Code. Among other requirements, the Plan (a) must be accepted by all Impaired Classes of Claims or Interests or, if rejected by an Impaired Class, the Plan must not "discriminate unfairly" against, and be "fair and equitable" with respect to, such Class; and (b) must be feasible. The Bankruptcy Court must also find that: (i) the Plan has classified Claims and Interests in a permissible manner; (ii) the Plan complies with the technical requirements of Chapter 11 of the Bankruptcy Code; and (iii) the Plan has been proposed in good faith.

4.4 **Classification of Claims and Interests**.

Section 1123 of the Bankruptcy Code provides that a plan must classify the claims and interests of a debtor's creditors and equity interest holders. In accordance with section 1123 of the Bankruptcy Code, the Plan divides Claims and Interests into Classes and sets forth the treatment for each Class (other than those claims which, pursuant to section 1123(a)(1) of the Bankruptcy Code, need not be and have not been classified). The Debtors also are required, under section 1122 of the Bankruptcy Code, to classify Claims and Interests into Classes that contain Claims or Interests that are substantially similar to the other Claims or Interests in such Class.

The Bankruptcy Code also requires that a plan provide the same treatment for each claim or interest of a particular class unless the claim holder or interest holder agrees to a less favorable treatment of its claim or interest. The Debtors believe that the Plan complies with such standard. If the Bankruptcy Court finds otherwise, however, it could deny confirmation of the Plan if the holders of Claims or Interests affected do not consent to the treatment afforded them under the Plan.

A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. A Claim also is placed in a particular Class for the purpose of receiving distributions pursuant to the Plan only to the extent that such Claim is an Allowed Claim in that Class and such Claim has not been paid, released or otherwise settled prior to the Effective Date.

The Debtors believe that the Plan has classified all Claims and Interests in compliance with the provisions of section 1122 of the Bankruptcy Code and applicable case law. It is possible that a holder of a Claim or Interest may challenge the Debtors' classification of Claims or Interests and that the Bankruptcy Court may find that a different classification is required for the Plan to be confirmed. If this occurs, the Debtors intend, in accordance with the terms of the Plan, to make such modifications to the Plan as may be necessary to permit its confirmation. Any such reclassification could adversely affect Holders of Claims by changing the composition of one or more Classes and the vote required of such Class or Classes for approval of the Plan.

EXCEPT AS SET FORTH IN THE PLAN, UNLESS SUCH MODIFICATION OF CLASSIFICATION MATERIALLY ADVERSELY AFFECTS THE TREATMENT OF A HOLDER OF A CLAIM AND REQUIRES RE-SOLICITATION, ACCEPTANCE OF THE PLAN BY ANY HOLDER OF A CLAIM PURSUANT TO THIS SOLICITATION WILL BE DEEMED CONSENT TO THE PLAN'S TREATMENT OF SUCH HOLDER OF A CLAIM REGARDLESS OF THE CLASS TO WHICH SUCH HOLDER ULTIMATELY IS DEEMED A MEMBER.

The amount of any Impaired Claim that ultimately is Allowed by the Bankruptcy Court may vary from any estimated Allowed amount of such Claim and, accordingly, the total Claims that are ultimately Allowed by the Bankruptcy Court with respect to each Impaired Class of Claims may also vary from any estimates contained herein with respect to the aggregate Claims in any Impaired Class. Thus, the actual recovery ultimately received by a particular holder of an Allowed Claim may be adversely or favorably affected by the aggregate amount of Claims Allowed in the applicable Class. Additionally, any changes to the assumptions underlying the estimated Allowed amounts could result in material adjustments to recovery estimates provided herein or the actual distribution received by creditors. The projected recoveries are based on information available to the Debtors as of the date hereof and reflect the Debtors' views as of the date hereof only.

The classification of Claims and Interests and the nature of distributions to members of each Class are summarized herein. The Debtors believe that the consideration, if any, provided under the Plan to Holders of Claims reflects an appropriate resolution of their Claims taking into account the differing nature and priority (including contractual subordination, if any) of such Claims and Interests. The Bankruptcy Court must find, however, that a number of statutory tests are met before it may confirm the Plan. Many of these tests are designed to protect the interests of Holders of Claims or Interests who are not entitled to vote on the Plan, or do not vote to accept the Plan, but who will be bound by the provisions of the Plan if it is confirmed by the Bankruptcy Court.

4.5 **Impaired Claims or Interests**.

Pursuant to the provisions of the Bankruptcy Code, only classes of claims or interests that are Impaired under a plan may vote to accept or reject such plan. Generally, a claim or interest is Impaired under a plan if the holder's legal, equitable or contractual rights are changed under such plan. In addition, if the holders of claims or interests in an Impaired Class do not receive or retain any property under a plan on account of such claims or interests, such Impaired

Class is deemed to have rejected such plan under section 1126(g) of the Bankruptcy Code and, therefore, such holders are not entitled to vote on such plan.

Under the Plan, only Holders of Claims in Classes 3 and 4 are Impaired and are entitled to vote on the Plan. Under the Plan, Holders of Claims or Interests in Classes 5 and 6 are Impaired and will not receive or retain any property under the Plan on account of such Claims or Interests and, therefore, are not entitled to vote on the Plan and are deemed to reject the Plan. Under the Plan, Holders of Claims in Classes 1 and 2 are Unimpaired and, therefore, not entitled to vote on the Plan and are deemed to accept the Plan.

4.6 Confirmation Without Necessary Acceptances; Cramdown

In the event that any Impaired Class of Claims or Interests does not accept the plan, a debtor nevertheless may move for confirmation of the plan. A plan may be confirmed, even if it is not accepted by all Impaired Classes, if the plan has been accepted by at least one Impaired Class of claims, and the plan meets the "cramdown" requirements set forth in section 1129(b) of the Bankruptcy Code. Section 1129(b) of the Bankruptcy Code requires that a court find that a plan (a) "does not discriminate unfairly" and (b) is "fair and equitable," with respect to each non-accepting Impaired Class of claims or interests. Here, because Holders of Claims and Interests in Classes 5 and 6 are deemed to reject the Plan, the Debtors will seek confirmation of the Plan from the Bankruptcy Court by satisfying the "cramdown" requirements set forth in section 1129(b) of the Bankruptcy Code if the Holders of Claims in Classes 3 and/or 4 accept the Plan. The Debtors believe that such requirements are satisfied, in part, as no holder of a Claim or Interest junior to those in Classes 5 and 6 will receive any property under the Plan.

A plan does not "discriminate unfairly" if (a) the legal rights of a nonaccepting class are treated in a manner that is consistent with the treatment of other classes whose legal rights are similar to those of the nonaccepting class and (b) no class receives payments in excess of that which it is legally entitled to receive for its claims or interests, provided that a debtor may be afforded wide latitude for separately classifying and treating claims of the same priority based on, among other factors, the differing factual or legal nature or attributes of the claims or their holders. The Debtors believe that, under the Plan, all Impaired Classes of Claims or Interests are treated in a manner that is consistent with the treatment of other Classes of Claims or Interests that are similarly situated, if any, when taking into account the nature and attribute of such Claims and Interests and their Holders, and no Class of Claims or Interests will receive payments or property with an aggregate value greater than the aggregate value of the Allowed Claims or Allowed Interests in such Class. Accordingly, the Debtors believe that the Plan does not discriminate unfairly as to any Impaired Class of Claims or Interests.

The Bankruptcy Code provides a nonexclusive definition of the phrase "fair and equitable." In order to determine whether a plan is "fair and equitable," the Bankruptcy Code establishes "cram down" tests for secured creditors, unsecured creditors and equity holders, as follows:

> (a) Secured Creditors. Either (i) each Impaired secured creditor retains its liens securing its secured claim and receives on account of its secured claim deferred Cash payments having a present value

> equal to the amount of its allowed secured claim, (ii) each Impaired secured creditor realizes the "indubitable equivalent" of its allowed secured claim or (iii) the property securing the claim is sold free and clear of liens with such liens to attach to the proceeds of the sale and the treatment of such liens on proceeds to be as provided in clause (i) or (ii) above.
>
> (b) Unsecured Creditors. Either (i) each Impaired unsecured creditor receives or retains under the plan property of a value equal to the amount of its allowed claim or (ii) the holders of claims and interests that are junior to the claims of the dissenting class will not receive any property under the plan.
>
> (c) Equity Interests. Either (i) each holder of an equity interest will receive or retain under the plan property of a value equal to the greatest of the fixed liquidation preference to which such holder is entitled, the fixed redemption price to which such holder is entitled or the value of the interest or (ii) the holder of an interest that is junior to the nonaccepting class will not receive or retain any property under the plan.

As discussed above, the Debtors believe that the distributions provided under the Plan satisfy the absolute priority rule, where required.

4.7 **Feasibility**

Section 1129(a)(11) of the Bankruptcy Code requires that confirmation of a plan not be likely to be followed by liquidation, or the need for further financial reorganization, of the Debtors or any successor to the Debtors (unless such liquidation or reorganization is proposed in the Plan). Inasmuch as the Debtors' principal assets have been liquidated and the Plan provides for the distribution of all of the Cash proceeds of the Debtors' Assets to Holders of Claims that are Allowed as of the Effective Date in accordance with the Plan, for purposes of this test, the Debtors have analyzed the ability of the Liquidating Trust to meet its discreet obligations under the Plan. Based on the Debtors' analysis, the Liquidating Trust will have sufficient assets to accomplish its tasks under the Plan. Therefore, the Debtors believe that the liquidation pursuant to the Plan will meet the feasibility requirements of the Bankruptcy Code.

4.8 **Best Interests Test and Liquidation Analysis**

Even if a plan is accepted by the Holders of each class of Claims and Interests, the Bankruptcy Code requires a court to determine that such plan is in the best interests of all holders of claims or interests that are Impaired by that plan and that have not accepted the plan. The "best interests" test, as set forth in section 1129(a)(7) of the Bankruptcy Code, requires a court to find either that all members of an Impaired Class of Claims or Interests have accepted the plan or that the plan will provide a member who has not accepted the plan with a recovery of property of a value, as of the effective date of the plan, that is not less than the amount that such holder would recover if the debtor were liquidated under chapter 7 of the Bankruptcy Code.

To calculate the probable distribution to Holders of each Impaired Class of Claims and Interests if the debtor was liquidated under chapter 7, a court must first determine the aggregate dollar amount that would be generated from a debtor's assets if its chapter 11 cases were converted to chapter 7 cases under the Bankruptcy Code. To determine if a plan is in the best interests of each Impaired Class, the present value of the Distributions from the proceeds of a liquidation of the debtor's unencumbered assets and properties, after subtracting the amounts attributable to the costs, expenses and administrative claims associated with a chapter 7 liquidation, must be compared with the value offered to such Impaired Classes under the plan. If the hypothetical liquidation distribution to holders of claims or interests in any Impaired Class is greater than the distributions to be received by such parties under the plan, then such plan is not in the best interests of the holders of claims or interests in such Impaired Class.

Because the Plan is a liquidating plan, the "liquidation value" in the hypothetical chapter 7 liquidation analysis for purposes of the "best interests" test is substantially similar to the estimates of the results of the chapter 11 liquidation contemplated by the Plan. However, the Debtors believe that in a chapter 7 liquidation, there would be additional costs and expenses that the Estates would incur as a result of liquidating the Estates in a chapter 7 case.

The costs of liquidation under chapter 7 of the Bankruptcy Code would include the compensation of a trustee, as well as the costs of counsel and other professionals retained by the trustee. The Debtors believe such amount would exceed the amount of expenses that would be incurred in implementing the Plan and winding up the affairs of the Debtors. Conversion also would likely delay the liquidation process and ultimate distribution of the Retained Assets. The Estates would also be obligated to pay all unpaid expenses incurred by the Debtors during the chapter 11 cases (such as compensation for professionals) that are allowed in the chapter 7 cases.

Accordingly, the Debtors believe that Holders of Allowed Claims would receive less than anticipated under the Plan if the chapter 11 cases were converted to chapter 7 cases, and therefore, the classification and treatment of Claims and Interests in the Plan complies with section 1129(a)(7) of the Bankruptcy Code. Attached hereto as **Exhibit A** is a hypothetical chapter 7 liquidation analysis.

4.9 Acceptance of the Plan

The rules and procedures governing eligibility to vote on the Plan, solicitation of votes, and submission of ballots are set forth in the Interim Approval and Procedures Order.

For the Plan to be accepted by an Impaired Class of Claims, a majority in number and two-thirds in dollar amount of the Claims voting in such Class must vote to accept the Plan. At least one Voting Class, excluding the votes of Insiders, must vote to accept the Plan.

IF YOU ARE ENTITLED TO VOTE ON THE PLAN, YOU ARE URGED TO COMPLETE, DATE, SIGN AND PROMPTLY MAIL THE BALLOT YOU RECEIVE. PLEASE BE SURE TO COMPLETE THE BALLOT PROPERLY AND LEGIBLY AND TO IDENTIFY THE EXACT AMOUNT OF YOUR CLAIM AND THE NAME OF THE HOLDER. IF YOU ARE A HOLDER OF A CLAIM ENTITLED TO VOTE ON THE PLAN AND YOU DID NOT RECEIVE A BALLOT, YOU RECEIVED A DAMAGED BALLOT OR YOU LOST YOUR

BALLOT OR IF YOU HAVE ANY QUESTIONS CONCERNING THE PLAN OR PROCEDURES FOR VOTING ON THE PLAN, PLEASE CONTACT THE SOLICITATION AND CLAIMS AGENT VIA EMAIL WITH A REFERENCE TO "NOVAN" OR "NVN" OR "EPI" IN THE SUBJECT LINE; OR BY PHONE AT (888) 251-2954 (DOMESTIC) OR (310) 751-2614 (INTERNATIONAL) AND REQUEST TO SPEAK WITH A MEMBER OF THE SOLICITATION TEAM.

ARTICLE V
CERTAIN RISK FACTORS TO BE CONSIDERED PRIOR TO VOTING

THE PLAN AND ITS IMPLEMENTATION ARE SUBJECT TO CERTAIN RISKS, INCLUDING, BUT NOT LIMITED TO, THE RISK FACTORS SET FORTH BELOW. HOLDERS OF CLAIMS WHO ARE ENTITLED TO VOTE ON THE PLAN SHOULD READ AND CAREFULLY CONSIDER THE RISK FACTORS, AS WELL AS THE OTHER INFORMATION SET FORTH IN THE PLAN AND THE DOCUMENTS DELIVERED TOGETHER HEREWITH OR REFERRED TO OR INCORPORATED BY REFERENCE HEREIN, BEFORE DECIDING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN. THESE FACTORS SHOULD NOT, HOWEVER, BE REGARDED AS CONSTITUTING THE ONLY RISKS INVOLVED IN CONNECTION WITH THE PLAN AND ITS IMPLEMENTATION.

5.1 **The Plan May Not Be Accepted**.

The Debtors can make no assurances that the requisite acceptances to the Plan will be received, and the Debtors may need to obtain acceptances to an alternative plan of liquidation of the Debtors, or otherwise, that may not have the support of the creditors and/or may be required to liquidate the Estates under chapter 7 of the Bankruptcy Code. There can be no assurance that the terms of any such alternative restructuring arrangement or plan would be similar to or as favorable to creditors as those proposed in the Plan.

5.2 **The Plan May Not Be Confirmed**.

Even if the Debtors receive the requisite acceptances, there is no assurance that the Bankruptcy Court will confirm the Plan. Even if the Bankruptcy Court determined that the combined Disclosure Statement and Plan and the balloting procedures and results were appropriate, the Bankruptcy Court could still decline to confirm the Plan if it finds that any of the statutory requirements for confirmation have not been met. Moreover, there can be no assurance that modifications to the Disclosure Statement and Plan will not be required for Confirmation or that such modifications would not necessitate the resolicitation of votes. If the Plan is not confirmed, it is unclear what distributions Holders of Claims or Interests ultimately would receive with respect to their Claims or Interests in a subsequent plan of liquidation.

5.3 **Distributions to Holders of Allowed Claims under the Plan May Be Inconsistent with Projections**.

Projected Distributions and the Allocation Settlement are based upon good faith estimates of the total amount of Claims ultimately Allowed and the funds available for Distribution. There can be no assurance that the estimated Claim amounts set forth in the Plan are

correct. These estimated amounts are based on certain assumptions with respect to a variety of factors, including the amount and value of assets available for Distribution and the number and value of Claims ultimately Allowed in these cases. Both the actual amount of Allowed Claims in a particular Class and the funds available for Distribution to such Class may differ from the Debtors' estimates. If the total amount of Allowed Claims in a Class is higher than the Debtors' estimates, or the funds available for Distribution to such Class are lower than the Debtors' estimates, the percentage recovery to holders of Allowed Claims in such Class will be less than projected.

5.4 **Objections to Classification of Claims**.

Section 1122 of the Bankruptcy Code requires that the Plan classify Claims and Interests. The Bankruptcy Code also provides that the Plan may place a Claim or Interest in a particular Class only if such Claim or Interest is substantially similar to the other Claims or Interests of such Class. The Debtors believe that all Claims and Interests have been appropriately classified in the Plan. To the extent that the Bankruptcy Court finds that a different classification is required for the Plan to be confirmed, the Debtors would seek to (i) modify the Plan to provide for whatever classification might be required for Confirmation and (ii) use the acceptances received from any Holder of Claims pursuant to this solicitation for the purpose of obtaining the approval of the Class or Classes of which such Holder ultimately is deemed to be a member. Any such reclassification of Claims, although subject to the notice and hearing requirements of the Bankruptcy Code, could adversely affect the Class in which such Holder was initially a member, or any other Class under the Plan, by changing the composition of such Class and the vote required for approval of the Plan. There can be no assurance that the Bankruptcy Court, after finding that a classification was inappropriate and requiring a reclassification, would approve the Plan based upon such reclassification. Except to the extent that modification of classification in the Plan requires resolicitation, the Debtors will, in accordance with the Bankruptcy Code and the Bankruptcy Rules, seek a determination by the Bankruptcy Court that acceptance of the Plan by any holder of Claims pursuant to this solicitation will constitute a consent to the Plan's treatment of such holder, regardless of the Class as to which such holder is ultimately deemed to be a member. The Debtors believe that they would be required to resolicit votes for or against the Plan only when a modification adversely affects the treatment of the Claim or Interest of any holder.

The Bankruptcy Code also requires that the Plan provide the same treatment for each Claim or Interest of a particular Class unless the Holder of a particular Claim or Interest agrees to a less favorable treatment of its Claim or Interest. The Debtors believe that the Plan complies with the requirement of equal treatment. To the extent that the Bankruptcy Court finds that the Plan does not satisfy such requirement, the Bankruptcy Court could deny confirmation of the Plan. Issues or disputes relating to classification and/or treatment could result in a delay in the confirmation and consummation of the Plan and could increase the risk that the Plan will not be consummated.

5.5 **Failure to Consummate the Plan**.

The Plan provides for certain conditions that must be satisfied (or waived) prior to Confirmation and for certain other conditions that must be satisfied (or waived) prior to the Effective Date. As of the date of the Plan, there can be no assurance that any or all of the conditions

in the Plan will be satisfied (or waived). Accordingly, there can be no assurance that the Plan will be confirmed by the Bankruptcy Court. Further, if the Plan is confirmed, there can be no assurance that the Plan will be consummated.

5.6 **Failure to Meet Cramdown Requirements**.

To the extent that either Holders of Class 3 NVN Unsecured Claims and/or Class 4 EPI Unsecured Claims do not vote to accept the Plan the Court, the Debtors intend to seek to cramdown the Plan. However, the Bankruptcy Court may find that the cramdown requirements described in Section 4.6 of this Plan are not met. To the extent that only Class 3 or Class 4 approve Plan and the cramdown requirements are not met, the Debtors may only seek confirmation of the Debtor-entity that approves the Plan.

5.7 **Allowance of Claims May Substantially Dilute the Recovery to Holders of Claims under the Plan**.

There can be no assurance that the estimated Claim amounts set forth in the Plan are correct, and the actual Allowed amounts of Claims may differ from the estimates. The estimated amounts are based on certain assumptions with respect to a variety of factors. Should these underlying assumptions prove incorrect, the actual Allowed amounts of Claims may vary from those estimated herein, thereby materially reducing the recovery to the Holders of Class 3 and 4 General Unsecured Claims under the Plan.

5.8 **Plan Releases May Not Be Approved**.

There can be no assurance that the releases, as provided in Article X of the Plan, will be granted. Failure of the Bankruptcy Court to grant such relief may result in a plan of liquidation that differs from the Plan or the Plan not being confirmed.

5.9 **Certain Tax Considerations**.

There are a number of material income tax considerations, risks and uncertainties associated with the plan of liquidation of the Debtors described in this combined Disclosure Statement and Plan.

THE U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. NOTHING HEREIN SHALL CONSTITUTE TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A HOLDER'S PARTICULAR CIRCUMSTANCES. ACCORDINGLY, HOLDERS ARE URGED TO CONSULT THEIR TAX ADVISORS ABOUT THE UNITED STATES FEDERAL, STATE AND LOCAL, AND APPLICABLE FOREIGN INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.

5.10 **Aclaris Appeal**.

Aclaris seeks a sizable administrative claim in the Aclaris Appeal in the amount of approximately $1.34 million. While the Debtors do not believe the appeal has merit, if successful, Aclaris's administrative claim could dilute recovery for Holders of General Unsecured Claims.

5.11 **Reduced Recoveries of Certain Retained Causes of Action Could Reduce the Recovery to Holders of Claims under the Plan.**

Estimated proceeds of certain Retained Causes of Action, including amounts related to the EPI AR Causes of Action, are included in the estimated distributions under the Plan set forth, among other sections, in sections 2.1, 4.8 and 9.2 of the Plan. There can be no assurance at this time that these estimated proceeds are entirely correct, and the actual proceeds may differ from the estimates. The estimated proceeds are based on certain assumptions with respect to a variety of factors. Should these underlying assumptions prove incorrect, the actual proceeds may vary from those estimated herein, thereby materially reducing the recovery to the Holders of Class 4 EPI Unsecured Claims under the Plan.

ARTICLE VI
TREATMENT OF UNCLASSIFIED CLAIMS

Pursuant to section 1126(f) of the Bankruptcy Code, Holders of Unimpaired Claims are conclusively presumed to have accepted this Plan. The Holders of Administrative Claims, Fee Claims, Tax Claims, Other Priority Claims, and Other Secured Claims are not Impaired under this Plan.

6.1 **Administrative Claims.** Unless otherwise agreed to by the Holder of an Allowed Administrative Claim, each Holder of an Allowed Administrative Claim (other than Holders of Fee Claims and Claims for U.S. Trustee Fees) will receive in full and final satisfaction of its Administrative Claim an amount of Cash equal to the Allowed amount of such Administrative Claim either: (a) if an Administrative Claim is Allowed on or prior to the Effective Date, on the Effective Date or as soon as reasonably practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due or as soon as reasonably practicable thereafter); (b) if such Administrative Claim is not Allowed as of the Effective Date, no later than thirty (30) days after the date on which an order Allowing such Administrative Claim becomes a Final Order; (c) if such Allowed Administrative Claim is based on liabilities incurred by the Debtors in the ordinary course of their business after the Petition Date in accordance with the terms and conditions of the particular transaction giving rise to such Allowed Administrative Claim; (d) at such time as may be agreed upon by (i) if prior to the Effective Date, such Holder, the Debtors, and the Creditors' Committee or (ii) if after the Effective Date, such Holder and the Liquidating Trustee; or (e) at such time and upon such terms as set forth in an order of the Bankruptcy Court.

Holders of Administrative Claims accruing from the Petition Date through the Effective Date, other than Holders of Fee Claims and Claims for U.S. Trustee Fees, must file with the Claims Agent and serve on the Liquidating Trustee requests for payment, in writing, together with supporting documents, substantially complying with the Bankruptcy Code, the Bankruptcy Rules and the Local Rules, so as to be actually received on or before the Administrative Claim Bar

Date. Any Person or Entity required to timely file such Claim but fails to do so shall not be treated as a creditor with respect to such Claim for the purpose of voting and distribution in these chapter 11 cases on account of such Claim. The notice of Confirmation to be delivered pursuant to Bankruptcy Rules 2002(c)(3) and 2002(f) shall set forth the Administrative Claim Bar Date and shall constitute notice of such Bar Date.

For the avoidance of doubt, this deadline does not apply to 503(b)(9) Claims and the deadline for Filing requests for payment of such 503(b)(9) Claims was the General Bar Date, and this deadline set by the Bar Date Order is not extended by this combined Disclosure Statement and Plan nor the Confirmation Order.

With respect to U.S. Trustee Fees, all fees due, payable , and/or may come due to the U.S. Trustee pursuant to section 1930 of Title 28 of the United States Code ("Quarterly Fees") on account of the period before the Effective Date shall be paid by the Debtors on the Effective Date, or as soon as practicable thereafter to the extent said amount was not yet due and/or billed. After the Effective Date, (i) the Debtors and the Liquidating Trustee shall be jointly and severally liable to pay all Quarterly Fees accruing from and after the Effective Date until the earliest to occur of the particular Debtor's case being converted to a case under chapter 7 of the Bankruptcy Code, dismissed, or closed; and (ii) the Liquidating Trustee shall file quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee, which reports shall include a separate schedule of disbursements made by the Liquidating Trust during the applicable period. The U.S. Trustee shall not be required to file a request for payment of its Quarterly Fees, which shall be deemed an Administrative Claim against the Debtors and their Estates.

6.2 **Fee Claims**. All requests for payment of Fee Claims for services rendered and reimbursement of expenses incurred prior to the Confirmation Date must be filed and served in accordance with the Interim Compensation Procedures Order by the date that is thirty (30) days after the Effective Date. The Bankruptcy Court shall determine the Allowed amounts of such Fee Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Code. If an application for a Fee Claim is not Filed within thirty days after the Effective Date, such Fee Claim shall be deemed waived and the Holder of such Claim shall be forever barred from receiving payment on account thereof. The notice of Confirmation to be delivered pursuant to Bankruptcy Rules 2002(c)(3) and 2002(f) shall set forth the deadline to file requests for payment of Fee Claims.

6.3 **Tax Claims**. Unless otherwise agreed to by the Holder of an Allowed Tax Claim, each Holder of an Allowed Tax Claim will receive in full and final satisfaction of such Allowed Tax Claim Cash in an amount equal to the unpaid portion of such Allowed Tax Claim either: (a) if a Tax Claim is Allowed on or prior to the Effective Date, on the Effective Date by the Debtors; (b) if such Tax Claim is not Allowed as of the Effective Date, no later than thirty (30) days after the date on which an order Allowing such Tax Claim becomes a Final Order; (c) at such time as may be agreed upon by (i) if prior to the Effective Date, such Holder, the Debtors, and the Creditors' Committee or (ii) if after the Effective Date, such Holder and the Liquidating Trustee; or (d) at such time and upon such terms as set forth in an order of the Bankruptcy Court; *provided*, *however*, that all Allowed Tax Claims that are not due, payable, and/or that may become due on or before the Effective Date shall be paid by the Liquidating Trustee in the ordinary course of business as they become due, or as soon as practicable thereafter to the extent said amount was not

yet due and/or payable. Any Claim or demand for any penalty (a) will be subject to treatment as a General Unsecured Claim, if and to the extent it is an Allowed Claim, and (b) the Holder of an Allowed Tax Claim shall not assess or attempt to collect such amounts from the Debtors, the Estates, the Liquidating Trustee, or the Liquidating Trust except as a General Unsecured Claim, if and to the extent it is an Allowed Claim.

ARTICLE VII
TREATMENT OF CLASSIFIED CLAIMS AND INTERESTS

The Claims in Classes 1 and 2 are Unimpaired, conclusively deemed to accept the Plan and are not entitled to vote on the Plan. The Claims in Classes 3 and 4 are Impaired and entitled to vote to accept or reject this Plan. Holders of Claims in Class 5 and Interests in Class 6 are conclusively deemed to reject the Plan and, therefore, are not entitled to vote on the Plan.

7.1 **Class 1: Other Priority Claims**. Unless otherwise agreed to by the Holder of an Allowed Other Priority Claim, each Holder of an Allowed Other Priority Claim will receive in full and final satisfaction of such Allowed Other Priority Claim an amount of Cash equal to the unpaid portion of such Allowed Other Priority Claim either: (a) if an Other Priority Claim is Allowed on or prior to the Effective Date, on the Effective Date or as soon as reasonably practicable thereafter; (b) if such Other Priority Claim is not Allowed as of the Effective Date, no later than thirty (30) days after the date on which an order Allowing such Other Priority Claim becomes a Final Order; (c) at such time as may be agreed upon by (i) if prior to the Effective Date, such Holder, the Debtors, and the Creditors' Committee or (ii) if after the Effective Date, such Holder and the Liquidating Trustee; or (d) at such time and upon such terms as set forth in an order of the Bankruptcy Court.

7.2 **Class 2: Other Secured Claims.** Except to the extent that a Holder of an Allowed Other Secured Claim agrees to different treatment, on the later of the Effective Date and the date that is ten (10) Business Days after the date such Other Secured Claim becomes an Allowed Claim, or as soon thereafter as is reasonably practicable, each Holder of an Allowed Other Secured Claim will receive, on account of such Allowed Claim, (a) Cash in an amount equal to the Allowed amount of such Claim; (b) reinstatement of such Holder's Allowed Other Secured Claim; (c) such other treatment sufficient to render such Holder's Allowed Other Secured Claim Unimpaired; or (d) return of the applicable collateral in satisfaction of the Allowed amount of such Other Secured Claim.

7.3 **Class 3: NVN Unsecured Claims**.

If Class 3 accepts this Plan (i.e., 66 2/3% in claim amount and majority in number), except to the extent that the Holder of an Allowed Claim in Class 3 agrees to less favorable treatment (or such other treatment which the Debtors (with the consent of the Committee) or the Liquidating Trustee, as applicable, and the Holder of such Holder of an Allowed Class 3 Claim have agreed upon in writing), each holder of an Allowed Claim in Class 3 shall receive, on the Effective Date, in full and final satisfaction, settlement, and release of and in exchange for its Allowed Class 3 Claim its Pro Rata Share of the NVN Recovery.

If Class 3 does not vote to accept the Plan, Class 3 will receive no Distribution on account of their Class 3 Claims pursuant to the Plan.

7.4 **Class 4: EPI Unsecured Claims.** Except to the extent that the Holder of an Allowed Claim in Class 4 agrees to less favorable treatment (or such other treatment which the Debtors (with the consent of the Committee) or the Liquidating Trustee, as applicable, and the Holder of an Allowed Class 4 Claim have agreed upon in writing), each Holder of an Allowed Claim in Class 4 shall receive, on the Effective Date, in full and final satisfaction, settlement, and release of and in exchange for its Allowed Class 4 Claim its Pro Rata Share of the EPI Recovery.

7.5 **Class 5: Subordinated Claims.** Holders of Subordinated Claims shall receive no Distribution on account of their Subordinated Claims pursuant to the Plan.

7.6 **Class 6: Equity Interests**. On the Effective Date, all Equity Interests shall be cancelled and each Holder of an Equity Interest in any Debtor shall receive no Distribution pursuant to the Plan.

7.7 **Reservation of Rights Regarding Claims and Interests**. Except as otherwise explicitly provided in the Plan, nothing shall affect the Debtors' rights and defenses, both legal and equitable, with respect to any Claims or Interests, including, but not limited to, all rights with respect to legal and equitable defenses to alleged rights of setoff or recoupment.

ARTICLE VIII
ACCEPTANCE OR REJECTION OF THE PLAN

8.1 **Classes Entitled to Vote**. Because Claims in Classes 3 and 4 are Impaired and Holders thereof will receive or retain property or an interest in property under the Plan, only the Holders of Class 3 and 4 Claims shall be entitled to vote to accept or reject the Plan.

8.2 **Acceptance by Impaired Classes of Claims or Interests**. In accordance with section 1126(c) of the Bankruptcy Code, and except as provided in section 1126(e) of the Bankruptcy Code, an Impaired Class of Claims shall have accepted the Plan if the Plan is accepted by the Holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Allowed Claims in such Class that have timely and properly voted to accept or reject the Plan. In accordance with section 1126(d) of the Bankruptcy Code and except as provided in section 1126(e) of the Bankruptcy Code, an Impaired Class of Interests shall have accepted the Plan if such Plan is accepted by Holders of at least two-thirds (2/3) in amount of the Allowed Interests in such Class that have timely and properly voted to accept or reject the Plan.

8.3 **Presumed Acceptance by Unimpaired Classes**. Because Claims in Classes 1 and 2 are Unimpaired, pursuant to section 1126(f) of the Bankruptcy Code, Holders of Claims in Classes 1 and 2 are deemed to have accepted the Plan and, therefore, Holders of such Claims are not entitled to vote to accept or reject the Plan.

8.4 **Presumed Rejections by Impaired Classes**. Because Holders of Subordinated Claims in Class 5 and Holders of Interests in Class 6 are not entitled to receive or retain any property under the Plan, pursuant to section 1126(g) of the Bankruptcy Code, Holders

of Subordinated Claims in Class 5 and Holders of Interests in Class 6 are presumed to have rejected the Plan and are not entitled to vote to accept or reject the Plan.

8.5 **Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code**. To the extent that any Impaired Class rejects the Plan or is deemed to have rejected the Plan, the Debtors reserve the right to request Confirmation of the Plan, as it may be modified from time to time, under section 1129(b) of the Bankruptcy Code. The Debtors reserve the right to alter, amend, modify, revoke, or withdraw the Plan, the documents submitted in support thereof or any schedule or exhibit, including to amend or modify it to satisfy the requirements of section 1129(b) of the Bankruptcy Code, if necessary.

8.6 **Controversy Concerning Impairment**. If a controversy arises as to whether any Claim or Interest is Impaired under the Plan, the Bankruptcy Court shall determine such controversy on or before the Confirmation Date.

8.7 **Elimination of Vacant Classes**. Any Class of Claims or Interests that does not contain, as of the date of the commencement of the Confirmation Hearing, a Holder of an Allowed Claim or Interest, or a Holder of a Claim temporarily allowed under Bankruptcy Rule 3018, shall be deemed deleted from the Plan for all purposes, including for purposes of determining acceptance.

ARTICLE IX
MEANS OF IMPLEMENTING THE PLAN

In addition to the provisions set forth elsewhere in this Plan, the following shall constitute the means of execution and implementation of this Plan.

9.1 **Distributions on the Effective Date/Dissolution of Debtors**. On the Effective Date, the Debtors shall make any Distributions for Administrative Claims, Tax Claims, Other Secured Claims or Other Priority Claims that are Allowed on or prior to the Effective Date.

On the Effective Date, the Debtors shall be dissolved, in accordance with applicable state law, without the necessity for any other or further actions to be taken by or on behalf of the Debtors or payments to be made in connection therewith.

On the Effective Date, the Liquidating Trustee shall provide for the retention and storage of the books, records, and files that shall have been delivered to the Liquidating Trust until such time as all such books, records, and files are no longer required to be retained under applicable law, and file a certificate informing the Bankruptcy Court of the location at which such books, records, and files are being stored.

9.2 **The Allocation Settlement**. The Plan implements a structure by which Holders of Allowed General Unsecured Claims against NVN and Holders of Allowed General Unsecured Claims against EPI each receive a ratable share of the Retained Assets attributable to NVN or EPI, respectively, pursuant to a settlement between the NVN and EPI Estates that takes into account the proceeds received from the Sales of the assets of NVN and EPI after apportioning and deducting the fees and expenses attributable to NVN, EPI or both. This allocation of the Retained Assets is the source of the NVN Recovery for the Holders of Allowed NVN Unsecured

Claims, and the EPI Recovery for the Holders of Allowed EPI Unsecured Claims. The Allocation Settlement also resolves the Intercompany Claim of EPI against NVN to enable the Holders of Allowed General Unsecured Claims against NVN to receive a Distribution while providing the Holders of Allowed General Unsecured Claims against EPI to receive some benefit from the Intercompany Claim of EPI against NVN.

The Debtors and the Committee worked cooperatively to determine this Allocation Settlement, using the following methodology:

1. In the first step, the Debtors and the Committee divided the Retained Assets among NVN and EPI, including Cash, as follows:

    - Other than Retained Causes of Action of NVN, which are discussed separately below, those Retained Assets attributable to NVN consist of cash held in Novan's bank accounts as of the Petition Date along with the proceeds from the sale of all or substantially all of Novan's R&D Assets to Ligand pursuant to the Ligand Sale Order.

    - Other than Retained Causes of Action of NVN, which are discussed separately below, those Retained Assets attributable to EPI consist of: (i) the proceeds from the sale of the Rhofade Commercial Assets to Mayne pursuant to the Mayne Sale Order; (ii) the proceeds from the sale of the Sitavig Commercial Assets to Ligand pursuant to the Ligand Sale Order; (iii) the proceeds of the prepetition sales of EPI pharmaceuticals collected as part of the Bay View Factoring Settlement; and (iv) the proceeds of the EPI AR Causes of Action collected, or to be collected, which also represent prepetition sales of EPI pharmaceuticals as well as any other Retained Causes of Action attributable to EPI.

2. In the second step, the Debtors and the Committee allocated the costs of the Allowed Administrative Claims, Fee Claims, Tax Claims, Other Secured Claims and Other Priority Claims between NVN and EPI that: (a) have been paid during the course of the bankruptcy cases (referred to as the "Cost Allocation (estimated through 11/10)" in the chart below) and (b) are estimated to be paid on or prior to the Effective Date (referred to as the "Cost Allocation (estimated post 11/10, admin and priority)" in the chart below) as follows:

    - Professional fees and U.S. Trustee fees were generally split evenly between the entities because each of the Debtors relied on such professionals to administer the Chapter 11 Cases.

    - Vendor payments, critical vendor and cure payments, and employee administrative expenses were largely attributable to Novan, as many of those expenditures were for entities that provided services directly for the benefit of Novan prior to and during the bankruptcy cases, although some were attributable to EPI. Given that Novan continued as an operating unit during the bankruptcy while EPI was mothballed, the Debtors were able to provide a reasonable estimate concerning these expenditures and determine they could be applied to Novan or EPI, as appropriate.

- Banker fees related to the Sales were allocated in accordance with each Sale's respective flow of funds and fees related to the DIP financing were split 80%/20% between Novan and EPI to account for the respective credit bid values assigned to those assets prior to the Sales.

3. The Debtors then subtracted the Retained Assets attributable to each respective Debtor by the allocated cost to each respective Debtor to determine an estimated recovery available for Holders of Allowed Unsecured Claims in Classes 3 and 4. Because both Debtors benefited from certain expenditures and because not all allocated costs have been actually paid to date, this allocation methodology is not exact.

4. As can be seen in the chart below, because of the amount of the expenses attributable to NVN, a strict allocation of costs would appear to leave little to no Retained Assets being available to fund the NVN Recovery. This is ***before*** taking into account the Intercompany Claim of EPI against NVN, which is listed in an amount of $9,570,302.60 on the Debtors' Schedules. However, as this estimate includes both projected future administrative and priority expenses, and is based upon an allocation that could be readjusted in NVN's favor, the Debtors and the Committee have worked to create this Allocation Settlement and implement it through this Plan, which provides a guaranteed recovery to Holders of Allowed Class 3 NVN Unsecured Claims.

	Preliminary Cost Sharing Split		
	$		
	Novan	EPIH	Total
Retained Assets			
Beginning Cash (at 7/14)	372,838	-	372,838
R&D Asset Sale to Ligand	12,000,000	-	12,000,000
Rhofade Commercial Assets to Mayne	-	8,000,000	8,000,000
Sitavig Commercial Assets to Ligand	-	150,000	150,000
Bay View Factoring Settlement	-	2,269,299	2,269,299
EPI AR Causes of Action	-	2,479,375	2,479,375
Total Retained Assets	**12,372,838**	**12,898,674**	**25,271,512**
Cost Allocation (estimated through 12/8)			
Bridge and DIP Financing Fees	780,000	196,500	976,500
DIP Interest	149,561	37,390	186,951
Investment Banking Fees	1,326,451	1,189,428	2,515,879
Other Professional Fees	1,664,645	1,664,645	3,329,289
Vendor Payments	2,788,053	477,548	3,265,601
Critical Vendor and Cure Payments	1,780,567	197,841	1,978,408
Employee Administrative Expenses	2,348,669	522,434	2,871,103
Other/Contingency	82,323	229,732	312,056
Total Outflows	**10,920,269**	**4,515,518**	**15,435,787**
Net Cash Flow (estimate through 12/8)	**1,452,569**	**8,383,156**	**9,835,725**
Cost Allocation (estimated post 12/8, admin and priority)			
Other Professional Fees (accrued, estimated, holdbacks)	1,358,276	1,358,276	2,716,552
Vendor Payments (estimated)	1,240,214	2,914	1,243,128
Employee and Post-Close Administrative Expenses	110,221	222,157	332,377
Tax/Priority Claim Est.	140,608	93,739	234,347
Other/Contingency	36,000	24,000	60,000
Total Outflows (estimated post 12/8)	2,885,319	1,701,085	4,586,404
Net Cash Flow (estimate through 12/8)	**(1,432,750)**	**6,682,071**	**5,249,321**

5. The above chart reflects the steps referenced above in coming to the Allocation Settlement. To avoid uncertainty and to guarantee that Holders of Allowed Class 3 Claims will share in at least some recovery, EPI will contribute $200,000 to the NVN Recovery and the Intercompany Claim of EPI against NVN, in an amount of $9,570,302.60, will not participate in distributions from the NVN Recovery, leaving the EPI Recovery at approximately $5,050,000. ***This distribution to Holders of Allowed Class 3 Claims will be available only if Class 3 votes to accept the Plan***.

6. Additionally, in partial recovery to EPI based upon the Intercompany Claim of EPI against NVN, EPI (and the EPI Recovery) shall share *pro rata* (50%-50%) with NVN (and the NVN Recovery) in the net proceeds of any recovery on any Retained Causes of Action that are NVN assets, including the EPI Acquisition Cause of Action, 50%/50% until the Intercompany Claim of EPI against NVN is satisfied.

The Debtors and the Committee believe the contribution and sharing arrangement proposed in the Allocation Settlement reflects a fair division of the Assets of the Estates and represents a fair distribution as to costs of these chapter 11 cases between the two entities.

Furthermore, as part of the claims reconciliation process, the Liquidating Trustee will reconcile: (i) the Class 3 NVN Unsecured Claims,[7] after which the Liquidating Trustee will make a Distribution of the NVN Recovery to Holders of Allowed Class 3 NVN Unsecured Claims; and (ii) the Class 4 EPI Unsecured Claims, after which the Liquidating Trustee will make a Distribution of the EPI Recovery to Holders of Allowed Class 4 EPI Unsecured Claims.

These recoveries are subject to change prior to the Effective Date. Such recovery may also be diminished after the Effective Date by Administrative Claims, Tax Claims, Other Secured Claims and Other Priority Claims that are not Allowed as of the Effective Date but are subsequently Allowed. These recoveries could also be impacted if any of the Retained Causes of Action, including but not limited to the EPI AR Causes of Action, do not yield the expected recoveries to EPI.

9.3 **Liquidating Trust**.

(a) **Establishment of the Liquidating Trust**. The Liquidating Trust shall be established and shall become effective on the Effective Date.

(b) **Vesting of Liquidating Trust Assets**. Upon the occurrence of the Effective Date, (a) the members of each Debtor's board of directors or managers, as the case may be, shall be deemed to have resigned; and (b) the Liquidating Trust Assets shall be transferred to the Liquidating Trust in accordance with this Plan. The Liquidating Trust Assets shall vest in the Liquidating Trust free and clear of all Liens, claims, and interests. Upon transfer of the Liquidating Trust Assets, the Debtors shall have no further duties or responsibilities in connection with the implementation of this Plan.

[7] The Intercompany Claims, having already been accounted for within the Allocation Settlement, will not need to be separately reconciled.

(c) **Liquidating Trust Assets**. The Liquidating Trust Assets include the: (a) Debtors' Cash, (b) Retained Causes of Action, (c) all rights of setoff, recoupment, and other defenses against Claims, (d) all Debtors' rights under the Asset Purchase Agreements and any other documents related to the Sale, (e) all Debtors' bank accounts, (f) all documents, communications and information, without regard to whether such documents, communications and information are subject to the attorney-client privilege; and (g) any other assets not sold pursuant to the Sale Orders, if any, existing immediately prior to the Effective Date.

(1) Cash as of the Effective Date

All Cash held by the Debtors as of the Effective Date will transfer to the Liquidating Trust. The Debtors expect the Cash as of the Effective Date to be approximately $5,250,000.

(2) Retained Causes of Action

All Retained Causes of Action will be contributed to the Liquidating Trust including, without limitation, all Causes of Action held by any Debtor or its Estates as of the Effective Date against the Non-Released Debtor Parties and all rights of any nature with respect thereto, but, in each case, any causes of action against the Non-Released Debtor Parties shall be *limited* to the proceeds and recoveries from the Debtors' D&O Insurance Policies and no individual Non-Released Debtor Party shall be held personally liable. As the Committee's investigation is ongoing, the Committee shall provide the Debtors a schedule of D&Os to be included as Non-Released Debtor Parties (if any) to be filed as part of the Plan Supplement. The Retained Causes of Action also include, but are not limited to, the EPI Acquisition Cause of Action, the Supplier Cause of Action, and the EPI AR Causes of Action.

The Retained Causes of Action, to the extent not liquidated prior to the Effective Date by the Debtors, are therefore being preserved and contributed by the Debtors to the Liquidating Trust so that these Causes of Action may be investigated and prosecuted, if possible, by the Liquidating Trustee with any recoveries resulting therefrom to be distributed to the beneficiaries of the Liquidating Trust. The Liquidating Trust shall have the authority and standing to bring and litigate all Retained Causes of Action. No Entity may rely on the absence of a specific reference in this Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against it as any indication that the Liquidating Trust will pursue or not pursue any and all available Causes of Action. The Liquidating Trustee and the Debtors expressly reserve all rights to prosecute any and all Causes of Action of the Debtors against any Entity, except as otherwise expressly provided in the Plan or to the extent released pursuant to other Orders of the Bankruptcy Court.

Pursuant to the Sale Orders, Ligand and Mayne purchased certain of the Debtors' Causes of Action, which, for the avoidance of doubt, are not Retained Causes of Action.

(3) Rights Pursuant to the Sale Orders and to Books and Records

The Debtors will transfer all of the Debtors' rights pursuant to the Asset Purchase Agreements approved pursuant to the Sales Orders to the Liquidating Trust. This includes, among other things, rights under Section 5.5 of each of the respective Asset Purchase Agreements

that provides the Debtors access to any books and records transferred as part of the Sales to allow a Liquidating Trustee to access such books and records. To the extent any documents remained with the Debtors, all documents, communications and information, without regard to whether such documents, communications and information are subject to the attorney-client privilege held be the Debtors shall transfer to the Liquidating Trustee.

(4) Remaining Assets as of the Effective Date

Except as set forth herein, the Debtors will transfer all remaining assets in their possession as of the Effective Date to the Liquidating Trust.

(d) **Trust Distributions**. All Distributions to the Holders of (i) Allowed General Unsecured Claims and (ii) Administrative Claims, Tax Claims, Other Secured Claims and Other Priority Claims that are not Allowed as of the Effective Date but subsequently Allowed, shall be from the Liquidating Trust. The Liquidating Trust shall among other things (x) hold and administer the reserves set forth in section 12.1 of this Plan (and make Distributions therefrom) and (y) administer the Liquidating Trust Assets. The Liquidating Trustee shall distribute the Liquidating Trust Assets in accordance with the Plan and the Liquidating Trust Agreement.

(e) **Duration of the Trust**. The Liquidating Trust shall have an initial term of two years; *provided*, *however*, that, if warranted by the facts and circumstances, then the Liquidating Trustee shall be authorized to extend the Liquidating Trust. The Liquidating Trust may be terminated earlier than its scheduled termination if the Liquidating Trustee has administered all the Liquidating Trust Assets and performed all other duties required by this Plan and the Liquidating Trust Agreement. As soon as practicable after the final Distribution Date, the Liquidating Trustee shall seek entry of a Final Order closing the chapter 11 cases pursuant to section 350(a) of the Bankruptcy Code.

9.4 **Liquidating Trustee**.

(a) **Appointment**. The initial Liquidating Trustee shall be appointed by the Debtors in consultation with the Creditors' Committee. The appointment of the Liquidating Trustee shall be approved in the Confirmation Order and be effective as of the Effective Date. Successor Liquidating Trustee(s) shall be appointed as set forth in the Liquidating Trust Agreement.

(b) **Term**. The Liquidating Trustee's term, including without limitation the term of any Successor Liquidating Trustee(s), shall expire upon termination of the Liquidating Trust pursuant to this Plan and/or the Liquidating Trust Agreement.

(c) **Removal**. The U.S. Trustee or any Creditor may request the removal of the Liquidating Trustee for "cause" pursuant to a motion Filed with the Bankruptcy Court and served upon (a) the Liquidating Trustee and its counsel, (b) the U.S. Trustee (if not the movant) and (c) all other Entities that have formally requested notice pursuant to Bankruptcy Rule 2002. In connection with any such motion to remove the Liquidating Trustee, "cause" will include: (a) the Liquidating Trustee's willful failure to perform his, her or its material duties hereunder,

which is not remedied within thirty (30) days of notice; (b) the Liquidating Trustee's death; (c) the Liquidating Trustee's mental or physical incapacity that materially and adversely affects the Liquidating Trustee's ability to perform his, her or its duties under the Plan; (d) the Liquidating Trustee's commission of an act of fraud, theft or embezzlement in connection with the Liquidating Trustee's duties under this Plan; (e) the Liquidating Trustee's conviction for the commission of a felony with all appeals having been exhausted or appeal periods lapsed; *provided*, *however*, that no "cause" shall exist involving clause (a) above until the Liquidating Trustee first has failed to cure such failure within thirty (30) days of having been given written notice of such failure. For purposes of the foregoing, no act or failure to act on the part of the Liquidating Trustee shall be considered "willful" unless it is done, or permitted to be done, by the Liquidating Trustee without reasonable belief that the Liquidating Trustee's action or omission was in the best interests of the Debtors.

(d) **Powers and Duties**. The Liquidating Trustee shall be the exclusive representative of the Debtors' Estates and shall have the rights and powers set forth in the Liquidating Trust Agreement including, but not limited to, the rights and powers of a trustee under the Bankruptcy Code. The Liquidating Trustee shall be governed in all things by the terms of the Liquidating Trust Agreement and this Plan. The Liquidating Trustee shall administer the Liquidating Trust, and the Liquidating Trust Assets, and make Distributions in accordance with this Plan and the Liquidating Trust Agreement. In addition, the Liquidating Trustee shall, in accordance with the terms of this Plan, take all actions necessary to wind down the affairs of the Debtors consistent with this Plan and applicable non-bankruptcy law. Subject to the terms of the Liquidating Trust Agreement, the Liquidating Trustee shall be authorized, empowered and directed to take all actions necessary to comply with this Plan and exercise and fulfill the duties and obligations arising hereunder, including, without limitation:

(i) To exercise all power and authority that may be or could have been exercised and take all actions that may be or could have been taken by the Debtors with like effect as if authorized, exercised and taken by unanimous action of the Debtors' partners, members, officers, directors and equity holders; including, without limitation; sign on behalf of each Debtor; access, close, and/or liquidate Debtor bank accounts, insurance policies and/or other accounts; amendment of the certificates of incorporation and by-laws of the Debtors, merger of any Debtor into another Debtor, the dissolution of any Debtor and the assertion or waiver of any Debtors' attorney/client privilege;

(ii) To implement Distributions to Holders of Allowed Claims as provided for or contemplated by the Plan and take other actions consistent with the Plan and the implementation thereof, including the establishment and maintenance of appropriate reserves in accordance with this Plan and the Liquidating Trust Agreement, in the name of the Debtors or the Liquidating Trustee, even in the event of the dissolution of the Debtors;

(iii) Subject to the applicable provisions of the Plan, to administer the winding-up of the affairs of the Debtors;

(iv) To take all actions necessary to preserve and maximize the value of the Liquidating Trust Assets;

(v) To prosecute the Retained Causes of Action transferred to the Liquidating Trust, by which the Liquidating Trust is hereby granted standing to prosecute any of such Retained Causes of Action and the authority to settle such Retained Causes of Action without Bankruptcy Court approval;

(vi) To maintain customary insurance coverage for the protection of the Liquidation Trustee and professionals on and after the Effective Date.

(vii) To object to any Claims (Disputed or otherwise), and to defend, compromise and/or settle any Claims prior to or following objection without the necessity of approval of the Bankruptcy Court;

(viii) To make decisions, without further Bankruptcy Court approval, regarding the retention or engagement of professionals, employees and consultants by the Liquidating Trust and to pay, from the Liquidating Trust Operating Reserve, (i) the charges incurred by the Liquidating Trust on or after the Effective Date for services of professionals, without application to the Bankruptcy Court, and (ii) disbursements, expenses or related support services relating to the winding down of the Debtors and implementation of the Plan, without application to the Bankruptcy Court;

(ix) To cause, on behalf of the Liquidating Trust, the Debtors, and their Estates all necessary tax returns and all other appropriate or necessary documents related to municipal, State, Federal or other tax law to be prepared or filed timely, in accordance with the Plan, including to sign said documents on behalf of each Debtor;

(x) To maintain appropriate books and records (including financial books and records) to govern the liquidation and distribution of the Liquidating Trust Assets, *provided*, *however*, that any abandonment or destruction of books and records shall require Bankruptcy Court approval, upon notice and a hearing;

(xi) To pay fees incurred pursuant to 28 U.S.C. § 1930(a)(6) and to file with the Bankruptcy Court and serve on the U.S. Trustee quarterly post-confirmation financial reports for each of the Debtors until such time as such reports are no longer required, or the Bankruptcy Court orders otherwise, a final decree is entered closing these chapter 11 cases or the chapter 11 cases are converted or dismissed;

(xii) To dissolve the Liquidating Trust if the Liquidating Trustee determines, in reliance on such professionals as it may retain, that

the expense of administering the Liquidating Trust so as to make a final Distribution is likely to exceed the value of the remaining Liquidating Trust Assets;

(xiii) To seek one or more final decrees closing the Debtors' chapter 11 cases;

(xiv) To do all other acts or things consistent with the provisions of this Plan that the Liquidating Trustee deems reasonably necessary or desirable with respect to implementing this Plan; and

(xv) To be the Estate representative and successor of the Debtors and the Creditors' Committee for all purposes.

(e) **Limitation of Liability; Exculpation of Liquidating Trustee**. To the greatest extent permitted by law, the Liquidating Trust will provide for the exculpation and indemnity of the Liquidating Trustee.

9.5 **Fees and Expenses**. Except as otherwise provided in this Plan, compensation of the Liquidating Trustee and the actual costs and expenses of the Liquidating Trustee and the Liquidating Trust (including, without limitation, the actual fees and expenses of the Liquidating Trustee Professionals) shall be paid from the Liquidating Trust Operating Reserve. The Liquidating Trustee shall pay the actual reasonable fees and expenses of the Liquidating Trustee Professionals, as necessary to discharge the Liquidating Trustee's duties under this Plan and the Liquidating Trust Agreement. Payments to the Liquidating Trustee shall not require notice to any party, or an order of the Bankruptcy Court approving such payments.

9.6 **Liquidating Trustee as Estate Representative and Successor**. Pursuant to sections 1123(a)(5)(B), 1123(b)(3), and 1123(b)(6) of the Bankruptcy Code, the Liquidating Trustee shall be the representative of the Debtors' Estates and successor to the Debtors for all purposes. The Liquidating Trustee shall have all rights and powers of a trustee under the Bankruptcy Code. The Liquidating Trustee also shall be the successor to the Creditors' Committee for all purposes.

9.7 **Distributions**. Except as otherwise provided in this Plan, the Liquidating Trustee shall make Distributions of Cash in accordance with the Liquidating Trust Agreement; *provided*, *however*, that the Liquidating Trustee may postpone any Distribution if the Liquidating Trustee determines that the amount of such Distribution would be too small to justify the administrative costs associated with making it. The Liquidating Trustee shall make continuing efforts to dispose of the Liquidating Trust Assets, make timely Distributions, and not unduly prolong the duration of the Liquidating Trust.

9.8 **Creditors' Committee**. On the Effective Date, the Creditors' Committee will be deemed dissolved and cease to exist, and members thereof shall be released from all rights and duties from or related to these chapter 11 cases. The dissolution of the Creditors' Committee under this Section shall not prevent any Professional from: (i) filing a Fee Claim for service provided to the Creditors' Committee (as well as defending any objections) and receiving payment for fees and costs with respect to the same; (ii) filing objections to applications

for payment of fees and expenses rendered prior to the Effective Date; and (iii) participating in the Aclaris Appeal or any appeal pending as of the Effective Date or filed thereafter, the outcome of which could affect the treatment of Holders of General Unsecured Claims (including Holders of Allowed Priority Claims and 503(b)(9) Claims), including, but not limited to, any cases, controversies, suits or disputes arising in connection with the Consummation, interpretation, implementation or enforcement of the Plan or the Confirmation Order.

9.9 **Release of Liens**. Except as otherwise provided in this Plan, the Confirmation Order, or in any document, instrument, or other agreement created in connection with this Plan, on the Effective Date, all mortgages, deeds of trust, Liens, or other security interests against the property of the Estates shall be released. The Liquidating Trustee shall have the authority to file lien releases in connection with the foregoing.

9.10 **Exemption from Certain Transfer Taxes**. Pursuant to section 1146(a) of the Bankruptcy Code, any transfers from any of the Debtors to the Liquidating Trust or by the Debtors to any other Entity pursuant to this Plan shall not be subject to any stamp tax or similar tax, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forgo the collection of any such tax or governmental assessment and to accept for filing and recordation any applicable instruments or documents without the payment of any such tax or governmental assessment.

9.11 **Setoffs**. On or after the Effective Date, the Liquidating Trustee, may, pursuant to applicable law (including section 553 of the Bankruptcy Code), offset against any Claim, including an Administrative Claim, before any Distribution is made on account of such Claim, any and all of the claims, rights and Causes of Action of any nature that the Debtors or the Liquidating Trustee may hold against the Holder of such Claim.

9.12 **Withdrawal of Plan**. The Debtors reserve the right, subject to the prior written consent of the Creditors' Committee, to revoke and withdraw or modify this Plan at any time prior to the Confirmation Date or, if the Debtors are for any reason unable to consummate this Plan after the Confirmation Date, at any time up to the Effective Date. If the Debtors revoke or withdraw this Plan, (a) nothing contained in this Plan shall be deemed to constitute a waiver or release of any claims by or against the Debtors or to prejudice in any manner the rights of the Debtors or any Entity in any further proceeding involving the Debtors and (b) the result shall be the same as if the Confirmation Order were not entered, this Plan was not filed and the Effective Date did not occur.

9.13 **Insurance Preservation**. Nothing in this Plan shall diminish or impair the enforceability of any insurance policies and related agreements that may cover Claims and Causes of Action against the Debtors, the D&Os or any other Entity. Without limiting the foregoing, and notwithstanding anything else in this Plan, (i) nothing in this Plan shall limit any insured from obtaining coverage under any of the Debtors' insurance policies and related agreements, *provided*, *however*, that other orders of the Bankruptcy Court, whether entered before or after the Effective Date, may limit insureds from obtaining the proceeds of such coverage for reasons other than this Plan and shall not be affected by this Plan; and (ii) nothing in this Plan (including, without limitation, any provision that purports to be preemptory or supervening or grants an injunction, discharge, or a release) shall in any way operate to impair, diminish, or waive,

or have the effect of impairing, diminishing or waiving, the legal or contractual rights, claims, defenses, liabilities or obligations of any Entity, including, without limitation, the Debtors, the Creditors' Committee, the Liquidating Trust, the Liquidating Trustee, the D&Os and any insurers, pursuant to any insurance policies and related agreements, including, without limitation, the terms, conditions, limitations, exclusions, and endorsements thereof, that may cover Claims or Causes of Action against the Debtors, the Estates, the Liquidating Trust, the Liquidating Trustee, the D&Os, any insurers or any other Entity.

9.14 **Cancellation of Existing Securities and Agreements**. On the Effective Date, notwithstanding anything to the contrary in the Plan, every document, agreement, or instrument evidencing any Interest against or Claim in the Debtors, shall be deemed cancelled without further act or action under any applicable agreement, law, regulation, order, or rule and the obligations of the Debtors under any such document, agreement, or instrument evidencing any Interest or Claim, as the case may be, shall be deemed extinguished; provided, that, the provisions of any such document, agreement or instrument that governs the rights of the holder of a Claim or Interest shall continue in full force and effect solely to the extent necessary to allow Holders of Allowed Unsecured Claims to receive Distributions or exercise rights under the Plan.

ARTICLE X
EFFECT OF PLAN ON CLAIMS AND INTERESTS

10.1 **Binding Effect**. This Plan shall be binding upon and inure to the benefit of the Debtors, all present and former Holders of Claims and Interests, and their respective successors and assigns, including, but not limited to, the Liquidating Trust and the Liquidating Trustee.

10.2 **Treatment of Claims**. Notwithstanding anything contained in this Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and their respective Distributions and treatments under this Plan take into account and conform to the relative priority and rights of the Claims and the Interests in each Class with due regard to any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, sections 510(b) and (c) of the Bankruptcy Code or otherwise. As of the Effective Date, any and all such rights described in the preceding sentence are extinguished by this Plan.

10.3 **No Discharge of the Debtors**. Pursuant to section 1141(d)(3) of the Bankruptcy Code, Confirmation will not discharge Claims against the Debtors; provided, however, that no Holder of any Claim or Interest may, on account of such Claim or Interest, seek or receive any payment or other Distribution from, or seek recourse against, any of the Estates, the Liquidating Trust, the Liquidating Trustee and/or their respective successors, assigns and/or property, except as expressly provided in this Plan.

10.4 **Injunction**.

(a) **From and after the Effective Date, all Persons and Entities who have held, hold, or may hold Claims or Equity Interests that have been released, dismissed, cancelled, settled or waived, or are subject to exculpation, under this Plan or the**

Confirmation Order, are permanently enjoined from taking any of the following actions against the Estate, the Released Parties, the Liquidating Trust, the Liquidating Trustee, or any of their respective property or assets, on account of any such Claims or Equity Interests: (i) commencing or continuing, in any manner or in any place, any action or proceeding seeking to collect or to recover in any manner against, or assert control or dominion over, the assets; (ii) enforcing, attaching, collecting, or recovering in any manner against the assets, any judgment, award, decree or order; (iii) creating, perfecting, or enforcing any Lien or encumbrance against the assets; (iv) asserting setoff unless such setoff was formally asserted in a timely Filed proof of Claim or in a pleading Filed with the Bankruptcy Court prior to entry of the Confirmation Order (notwithstanding any indication in any proof of Claim or otherwise that such Holder asserts, has, or intends to preserve any right of setoff) or right of subrogation of any kind against any debt, liability, or obligation due to the Debtors; and (v) commencing or continuing in any manner any action or other proceeding of any kind on account of, in connection with or with respect to any such Claims or Interests; *provided, however*, that such Persons and Entities shall not be precluded from exercising their rights under and consistent with the terms of this Plan or the Confirmation Order.

(b) **Upon the Bankruptcy Court's entry of the Confirmation Order, all Holders of Claims and Interests, and other parties in interest, along with their Related Parties, shall be enjoined from taking any actions to interfere with the implementation or substantial consummation of this Plan by the Debtors, the Liquidating Trustee and/or their respective Related Parties (except the Non-Released Debtor Parties), as applicable.**

(c) **By accepting distributions pursuant to this Plan, each holder of an Allowed Claim will be deemed to have specifically consented to the Injunctions set forth in this Section.**

10.5 **Exculpation**. **Notwithstanding anything contained in this Plan to the contrary, the Exculpated Parties, and any property of any of the foregoing Persons, shall not have or incur any liability to any Entity for any act taken or omitted to be taken from the Petition Date through the Effective Date in connection with, related to or arising from the formulation, negotiation, preparation, dissemination, implementation, or administration of this Plan, the Solicitation Materials, the Disclosure Statement, or any contract, instrument, or other agreement or document created or entered into in connection with this Plan, or any other act taken or omitted to be taken from the Petition Date through the Effective Date in connection with or in contemplation of the restructuring of the Debtors, these chapter 11 cases, or the confirmation or consummation of this Plan, including but not limited to (i) formulating, preparing, disseminating, implementing, confirming, consummating or administrating this Plan (including soliciting acceptances or rejections thereof if necessary); (ii) the Disclosure Statement, or any contract, instrument, release or other agreement or document entered into or any action taken or not taken in connection with this Plan; (iii) the Settlement Term Sheet; or (iv) any Distributions made pursuant to this Plan, except for acts constituting willful misconduct, bad faith, or gross negligence, and in all respects such parties shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under this Plan. Notwithstanding the foregoing, for the avoidance of doubt, this Section of the Plan shall not (i) exculpate or release the Exculpated Parties from anything**

other than as expressly identified in the first sentence of this Section, (ii) prevent or limit the ability of the Debtors or the Liquidating Trustee to object to a Claim of an Exculpated Party on any basis other than matters exculpated or released in this Section, (iii) prevent or limit the ability of the Debtors or the Liquidating Trustee to object to, or defend against, on any basis, any Administrative Claim of an Exculpated Party for substantial contribution, or (iv) exculpate or release the Liquidating Trustee or the Liquidating Trust Professionals with respect to any act taken or omitted to be taken after the Effective Date that would result in liability under the terms of the Liquidating Trust Agreement.

10.6 **Releases by the Debtors. Except as otherwise expressly provided in the Plan or the Confirmation Order, on the Effective Date, for good and valuable consideration, to the fullest extent permissible under applicable law, each of the Debtors and their Estates shall, and shall be deemed to, completely and forever release, waive, void, extinguish and discharge unconditionally, each and all of the Released Parties of and from any and all Claims, Causes of Action, obligations, suits, judgments, damages, debts, rights, remedies and liabilities of any nature whatsoever, whether liquidated or unliquidated, fixed or Contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, that are or may be based in whole or part on any act, omission, transaction, event or other circumstance taking place or existing on or prior to the Effective Date (including prior to the Petition Date) in connection with or related to any of the Debtors, including, without limitation, (i) the chapter 11 cases, (ii) the combined Plan and Disclosure Statement, (iii) the subject matter of, or the transaction or events giving rise to, any claim or equity interest that is treated in this Plan, (iv) the business or contractual arrangements between any Debtor and any Released Party, (v) the negotiation, formulation or preparation of this combined Plan and Disclosure Statement, the Plan Supplement, or related agreements, instruments or other documents, (vi) the Sale or its related transaction documents, and the negotiation, formulation or preparation of the Sale and the related transaction documents, (vii) the Settlement Term Sheet, and (viii) the confirmation or consummation of this Plan or the solicitation of votes on this Plan that may be asserted by or on behalf of any of the Debtors or their respective Estates, against any of the Released Parties. The foregoing releases shall not extend to: (i) the Non-Released Debtor Parties; and (ii) acts constituting willful misconduct, fraud, bad faith, or gross negligence.**

10.7 **Extinguishment of Intercompany Claims**. Following the Effective Date, any Claims that any of the Debtors may have against another Debtor shall be forever waived, released and extinguished for all purposes and no Debtor shall have a Claim or Administrative Claim Allowed against the Estate of any other Debtor. Notwithstanding the extinguishing of such claim, the Intercompany Claim of EPI against NVN as identified in the Schedules is and shall be treated as an Allowed Class 3 NVN Unsecured Claim in the amount of $9,570,302.60 and has been reconciled as part of the Allocation Settlement described in Section 9.2.

10.8 **Indemnification Obligations**. Except as otherwise provided in a previously entered Order of this Bankruptcy Court, this Plan or any contract, instrument, release, or other agreement or document entered into in connection with this Plan, including sections 9.12 and 11.1 of this Plan, any and all indemnification obligations that the Debtors have pursuant to a contract, instrument, agreement, certificate of incorporation, by-law, comparable organizational document or any other document, or applicable law, shall be rejected as of the Effective Date, to

the extent executory; *provided*, *however*, that (i) all rights, if any, of the D&Os, the Debtors, the Estates, the Creditors' Committee, the Liquidating Trust, and the Liquidating Trustee in and to any of the Debtors' insurance policies hereby are expressly reserved and are not limited in any way by this Plan; and (ii) nothing in this Plan shall be deemed to modify any indemnification obligations of the Debtors pursuant to an Order of this Bankruptcy Court concerning the retention or employment of a professional. Nothing in this Plan shall be deemed to release the Debtors' insurers from, or limit the obligations of any of the Debtors' insurers concerning any claims that might be asserted by insureds, additional insureds, or counter-parties to contracts or agreements providing for the indemnification by and of the Debtors, to the extent of available coverage. To the extent that this section 10.9 alters, affects, impairs, limits or otherwise modifies any insurance coverage of any person, this section 10.9 shall be of no force and effect as to the insurance coverage of such person.

10.9 **Terms of Injunctions or Stays.** Unless otherwise provided in this Plan, all injunctions or stays provided for in these chapter 11 cases pursuant to Bankruptcy Code sections 105 or 362, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Cases are closed.

ARTICLE XI
EXECUTORY CONTRACTS AND UNEXPIRED LEASES

11.1 **Executory Contracts and Unexpired Leases Deemed Rejected**. On the Effective Date, all of the Debtors' Executory Contracts will be deemed rejected as of the Effective Date in accordance with, and subject to, the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code, except with respect to any Executory Contract that: (a) the Debtors previously assumed, assumed and assigned or rejected, or (b) for which, prior to the Effective Date, the Debtors, Filed a motion to assume, assume and assign, or reject on which the Bankruptcy Court has not ruled. Entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of all rejections of Executory Contracts and unexpired leases pursuant to this Article and sections 365(a) and 1123 of the Bankruptcy Code.

11.2 **Supplemental Bar Date for Rejection Damages**. If the rejection of any Executory Contract or unexpired lease under this Plan gives rise to a Claim by the non-Debtor party or parties to such contract or lease, such Claim, to the extent that it is timely filed and is an Allowed Claim, shall be classified in Class 3 or 4, as appropriate; *provided*, *however*, that the General Unsecured Claim arising from such rejection shall be forever barred and shall not be enforceable against the Debtors, the Liquidating Trust, their successors or properties, unless a proof of such Claim is filed and served on the Liquidating Trustee within thirty (30) days after the date of notice of the entry of the order of the Bankruptcy Court rejecting the Executory Contract or unexpired lease which may include, if applicable, the Confirmation Order.

ARTICLE XII
RESERVES AND DISTRIBUTIONS

12.1 **Establishment of Reserves.** On the Effective Date and prior to making any Distributions, the Liquidating Trustee shall establish a reserve for Disputed Administrative Claims, Tax Claims, Other Priority Claims and Other Secured Claims (the "Plan Claim Reserve")

and shall transfer thereto the amount of Cash from the Retained Assets as deemed necessary by the Liquidating Trustee to fund the Plan Claim Reserve in accordance with the provisions of the Plan and the Liquidating Trust Agreement.

On the Effective Date and prior to making any Distributions from the NVN Recovery or the EPI Recovery, the Liquidating Trustee shall establish reserves for Disputed NVN Unsecured Claims and Disputed EPI Unsecured Claims and shall transfer thereto the amounts of Cash from the NVN Recovery and the EPI Recovery as deemed necessary by the Liquidating Trustee to provide Pro Rata Distributions to Holders of Allowed NVN Unsecured Claims from the NVN Recovery and to Holders of Allowed EPI Unsecured Claims from the EPI Recovery if such Disputed General Unsecured Claims become Allowed in accordance with the provisions of the Plan.

On the Effective Date and prior to making any Distributions, the Liquidating Trustee shall establish the Liquidating Trust Operating Reserve and shall transfer thereto $150,000 to be used in accordance with the Liquidating Trust Budget which such amount may be modified in the Liquidating Trust Agreement filed with the Plan Supplement.

12.2 **Funding of Certain Reserves**. With respect to the Plan Claim Reserve, the amount of Cash deposited into such reserve shall be equal to the amount of Cash that Holders of Disputed Claims in the Plan Claim Reserve would be entitled under this Plan if such Disputed Claims were Allowed Claims in the amount of such Disputed Claim or such lesser amount as authorized in Section 12.6 of this Plan.

12.3 **Distributions for Claims Allowed as of the Effective Date**. Except as otherwise provided herein, and only after the funding of the reserves, or as ordered by the Bankruptcy Court, all Distributions to be made on account of Claims that are Allowed Claims as of the Effective Date shall be made on the Effective Date by the Debtors as set forth in Section 9.1 of the Plan; *provided*, *however*, that Distributions for Allowed General Unsecured Claims in Classes 3 and 4 as of the Effective Date shall be made on a Distribution Date to be determined in the sole discretion of the Liquidating Trustee. Distributions on account of Claims that first become Allowed Claims after the Effective Date shall be made pursuant to the terms and conditions of this Plan. Notwithstanding any other provision of this Plan to the contrary, no Distribution shall be made on account of any Claim or portion thereof that (i) has been satisfied after the Petition Date pursuant to an order of the Bankruptcy Court; (ii) is listed in the Schedules as contingent, unliquidated, disputed or in a zero amount, and for which a Proof of Claim has not been timely filed; or (iii) is evidenced by a Proof of Claim that has been amended by a subsequently filed Proof of Claim that purports to amend the prior Proof of Claim.

12.4 **No Distributions on Disputed Claims**. No Distribution shall be made by the Liquidating Trustee with respect to a Disputed Claim until the same, or some portion thereof, becomes an Allowed Claim.

12.5 **Distributions on Claims Allowed After the Effective Date**. Payments and Distributions from the Liquidating Trust to each respective Holder on account of a Disputed Claim, to the extent that such Disputed Claim ultimately becomes an Allowed Claim, shall be made in accordance with provisions of this Plan that govern Distributions to such Holders of

Allowed Claims. Except as otherwise provided in this Plan, within ninety (90) days after such Disputed Claim becomes an Allowed Claim, the Liquidating Trustee shall distribute to such Holder any Cash from the applicable reserve that would have been distributed on the dates Distributions were previously made to Holders of Allowed Claims if such Disputed Claim had been an Allowed Claim on such dates.

All Distributions made under this Article on account of an Allowed Claim will be made together with any dividends, payments, or other Distributions made on account of, as well as any obligations arising from, the distributed property as if such Disputed Claim had been an Allowed Claim on the dates Distributions were previously made to Holders of Allowed Claims included in the applicable Class.

12.6 **Objections to and Estimation of Claims**. Unless otherwise provided in this Plan, after the Effective Date through the Claims Objection Deadline, the Liquidating Trustee shall have sole and exclusive standing to object to Claims in order to have the Bankruptcy Court determine the amount and treatment of any Claim. Subject to the terms of the Liquidating Trust Agreement, from and after the Effective Date, the Liquidating Trustee may settle or compromise any Disputed Claim without approval of the Bankruptcy Court. Except as otherwise provided in this Plan, if a party files a Proof of Claim and (i) the Debtors, or the Liquidating Trustee, as applicable, file an objection to that Claim or otherwise formally challenge the Claim or (ii) the Claim otherwise is a Disputed Claim under this Plan, then such Claim shall be Disputed unless Allowed or Disallowed by a Final Order or as otherwise set forth in this Plan. Except as otherwise provided in this Plan, all Proofs of Claim filed after the Effective Date shall be Disallowed and forever barred, estopped, and enjoined from assertion, and shall not be enforceable against the Debtors, the Estates or the Liquidating Trust, without the need for any objection by the Liquidating Trustee or any further notice to or action, order, or approval of the Bankruptcy Court.

Except as set forth in this Plan with respect to Administrative Claims, all objections to Claims must be filed and served on the Holders of such Claims by the applicable Claims Objection Deadline, as the same may be extended by the Bankruptcy Court. If an objection has not been filed to a Proof of Claim or the Schedules have not been amended with respect to a Claim that (i) was Scheduled by the Debtors but (ii) was not Scheduled as contingent, unliquidated, and/or disputed, by the applicable Claims Objection Deadline, as the same may be extended by order of the Bankruptcy Court, the Claim to which the Proof of Claim or Scheduled Claim relates will be treated as an Allowed Claim if such Claim has not been allowed earlier. Notice of any motion for an order extending the Claims Objection Deadline shall be required to be given only to those Entities that have requested notice in these chapter 11 cases, or to such Entities as the Bankruptcy Court shall order.

12.7 **Delivery of Distributions and Undeliverable or Unclaimed Distributions**.

(a) **Delivery of Distributions in General**. Distributions to Holders of Allowed Claims shall be made (i) at the addresses set forth on the Proofs of Claim filed by such Holders, (ii) at the addresses set forth in any written notices of address changes delivered to the Liquidating Trustee after the date of any related Proof of Claim, (iii) at the addresses reflected in the Schedules if no Proof of Claim has been filed and the Liquidating Trustee has not

received a written notice of a change of address, (iv) at the addresses set forth in the other records of the Debtors or the Liquidating Trustee at the time of the Distribution, or (v) any change of address as reflected on the Bankruptcy Court docket.

Distributions shall be made from the Liquidating Trust, as applicable, in accordance with the terms of this Plan and, if applicable, the Liquidating Trust Agreement.

In making Distributions under this Plan, the Liquidating Trustee may rely upon the accuracy of the claims register maintained by the Claims Agent in these chapter 11 cases, as modified by any Final Order of the Bankruptcy Court disallowing Claims in whole or in part.

(b) **Undeliverable and Unclaimed Distributions**. If the Distribution to any Holder of an Allowed Claim is returned to the Liquidating Trustee as undeliverable or is otherwise an Unclaimed Distribution, no further Distributions shall be made to such Holder unless and until the Liquidating Trustee is notified in writing of such Holder's then-current address, at which time all missed Distributions shall be made to such Holder without interest. If a Distribution is returned as undeliverable, the Liquidating Trustee shall use reasonable efforts to determine such Creditor's then-current address. Unclaimed Distributions shall be returned to the Liquidating Trust until such Distributions are claimed.

(c) **Treatment of Unclaimed Distributions**. Any Holder of an Allowed Claim that does not assert a Claim pursuant to this Plan for an Unclaimed Distribution within three (3) months after the final Distribution Date shall be deemed to have forfeited its Claim for such undeliverable or unclaimed Distribution and shall be forever barred and enjoined from asserting any such Claim for an Unclaimed Distribution against the Debtors and their Estates, the Liquidating Trustee, the Liquidating Trust, and their respective agents, attorneys, representatives, employees or independent contractors, and/or any of its and their property. In such cases, any Cash otherwise reserved for Unclaimed Distributions shall become the property of the Liquidating Trust free of any restrictions thereon and notwithstanding any federal or state escheat laws to the contrary and shall be distributed in accordance with the terms of this Plan and the Liquidating Trust Agreement. Nothing contained in this Plan or the Liquidating Trust Agreement shall require the Debtors or the Liquidating Trustee to attempt to locate any Holder of an Allowed Claim; provided, however, that in his, her or its sole discretion, the Liquidating Trustee may periodically publish notice of Unclaimed Distributions.

12.8 **Interest on Claims**. Except as specifically provided for in this Plan or the Confirmation Order, or required by applicable bankruptcy law, postpetition interest shall not accrue or be paid on any Claims, and no Holder shall be entitled to interest accruing on or after the Petition Date on any Claim. Except as specifically provided for in this Plan or the Confirmation Order, or required by applicable bankruptcy law, interest shall not accrue or be paid upon any Disputed Claim in respect of the period from the Petition Date to the date a final Distribution is made thereon if and after such Disputed Claim becomes an Allowed Claim.

12.9 **Withholding and Reporting Requirements**. In connection with this Plan and all Distributions under this Plan, the Liquidating Trustee shall, to the extent applicable, comply with all tax withholding, payment, and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all Distributions under this Plan shall be subject to any

such withholding, payment, and reporting requirements. The Liquidating Trustee shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding, payment, and reporting requirements. All amounts properly withheld from Distributions to a Holder as required by applicable law and paid over to the applicable taxing authority for the account of such Holder shall be treated as part of the Distributions to such Holder.

All Entities holding Claims shall be required to provide any information necessary to effect information reporting and withholding of such taxes. No Distribution shall be made to or on behalf of such Entity pursuant to this Plan unless and until such Entity has furnished such information. Any property to be distributed pursuant to this Plan shall be deemed: (i) pending the receipt of such information in the manner established by the Liquidating Trustee, an Undeliverable Distribution pursuant to section 12.7(b) of this Plan; or (ii) if such information is not received within thirty (30) days of the Liquidating Trustee sending its second request for such information, such distribution shall be forfeited and treated in accordance with section 12.7(c) of this Plan.

Notwithstanding any other provision of this Plan, (a) each Holder of an Allowed Claim that is to receive a Distribution pursuant to this Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any Governmental Unit, including income, withholding, and other tax obligations, on account of such Distribution, and (b) no Distribution shall be made to or on behalf of such Holder pursuant to this Plan unless and until such Holder has made arrangements satisfactory to the Debtors (for Distributions to be made on the Effective Date as set forth in Section 9.1 of the Plan) or Liquidating Trustee (for all other Distributions) for the payment and satisfaction of such withholding tax obligations or such tax obligation that would be imposed upon the Liquidating Trustee in connection with such Distribution.

12.10 **Miscellaneous Distribution Provisions**.

(a) **Method of Cash Distributions**. Any Cash payment to be made by the Debtors or Liquidating Trustee, as applicable, pursuant to this Plan will be in U.S. dollars and may be made, at the sole discretion of the Debtors or Liquidating Trustee, as applicable, by draft, check, wire transfer, or as otherwise required or provided in any relevant agreement or applicable law. In the case of foreign creditors, Cash payments may be made, at the option of the Debtors or Liquidating Trustee, as applicable, in such funds and by such means as are necessary or customary in a particular jurisdiction.

(b) **Distributions on Non-Business Days**. Any payment or Distribution due on a day other than a Business Day shall be made, without interest, on the next Business Day.

12.11 ***De Minimis* Distribution Provisions**. No Distribution shall be required to be made hereunder to any Holder of a Claim unless such Holder is to receive in such Distribution at least $100.00. Any Distribution not made pursuant to this Section 12.12 shall be treated as an Unclaimed Distribution and is subject to Section 12.8 hereof, without regard to any time limits in Section 12.8(c).

12.12 **Distribution Record Date**. The Liquidating Trustee will have no obligation to recognize the transfer of, or the sale of any participation in, any Allowed Claim that occurs after the close of business on the Distribution Record Date, and will be entitled for all purposes herein to recognize and distribute only to those Holders of Allowed Claims that are Holders of such Claims, or participants therein, as of the close of business on the Distribution Record Date. The Liquidating Trustee shall instead be entitled to recognize and deal for all purposes under this Plan with only those record Holders stated on the official claims register as of the close of business on the Distribution Record Date.

12.13 **Residual Assets**. After final Distributions have been made in accordance with the terms of the Plan, the unrestricted Cash remaining with the Liquidating Trust shall be remitted to a 501(c)(3) charity of the Liquidating Trustee's choice.

ARTICLE XIII
CONFIRMATION AND CONSUMMATION OF THE PLAN

13.1 **Conditions to Confirmation**. The following are conditions precedent to the occurrence of the Confirmation Date.

(a) A Final Order finding that the Disclosure Statement contains adequate information pursuant to section 1125 of the Bankruptcy Code shall have been entered by the Bankruptcy Court;

(b) Entry of a Confirmation Order that is reasonably acceptable to the Debtors and the Creditors' Committee;

(c) All documents contained in the exhibits and the Plan Supplement are in form and substance reasonably satisfactory to the Debtors and the Creditors' Committee and are approved by the Bankruptcy Court; and

(d) Approval of all provisions, terms, and conditions hereof shall be contained in the Confirmation Order.

13.2 **Conditions to Effective Date**. The following are conditions precedent to the occurrence of the Effective Date, each of which must be satisfied or waived in writing:

(a) The Confirmation Order shall have been entered and shall provide that the Debtors, the Liquidating Trust, and the Liquidating Trustee are authorized and directed to take all actions necessary or appropriate to enter into, implement, and consummate the contracts, instruments, releases, leases, indentures, and other agreements or documents created in connection with this Plan and effectuate, advance, or further the purposes thereof;

(b) The Confirmation Order, the Plan, and all Plan Exhibits shall be, in form and substance, reasonably acceptable to the Debtors and the Creditors' Committee, and shall have been executed and delivered by all parties signatory thereto;

(c) All other actions, documents, and agreements necessary to implement this Plan shall have been effected or executed;

(d) The Liquidating Trustee shall have sufficient Cash or other resources to fund the reserves in accordance with the Plan;

(e) The Confirmation Order shall have become a Final Order; and

(f) The Debtors shall have filed a Notice of Effective Date.

13.3 **Consequences of Non-Occurrence of Effective Date**. If the Effective Date does not timely occur, the Debtors reserve all rights to seek an order from the Bankruptcy Court directing that the Confirmation Order be vacated and that this Plan be null and void in all respects. If the Bankruptcy Court enters an order vacating the Confirmation Order, the time within which the Debtors may assume and assign or reject all Executory Contracts and unexpired leases not previously assumed, assumed and assigned, or rejected, shall be extended for a period of thirty (30) days after the date the Confirmation Order is vacated, without prejudice to further extensions.

ARTICLE XIV
ADMINISTRATIVE PROVISIONS

14.1 **Retention of Jurisdiction**. Notwithstanding confirmation of this Plan or occurrence of the Effective Date, and except as otherwise provided by applicable law, the Bankruptcy Court shall retain such jurisdiction as is legally permissible, including for the following purposes:

(a) To determine the allowability, classification, or priority of Claims upon objection of the Liquidating Trustee or any other party in interest entitled to file an objection, and the validity, extent, priority and nonavoidability of consensual and nonconsensual liens and other encumbrances;

(b) To issue injunctions or take such other actions or make such other orders as may be necessary or appropriate to restrain interference with this Plan or its execution or implementation by any Entity, to construe and to take any other action to enforce and execute this Plan, the Confirmation Order, or any other order of the Bankruptcy Court, to issue such orders as may be necessary for the implementation, execution, performance and consummation of this Plan and all matters referred to herein, and to determine all matters that may be pending before the Bankruptcy Court in these chapter 11 cases on or before the Effective Date with respect to any Entity;

(c) To protect the property of the Estates, including Liquidation Trust Assets, from claims against, or interference with, such property, including actions to quiet or otherwise clear title to such property or to resolve any dispute concerning Liens on property of the Estates or Liquidation Trust Assets;

(d) To determine any and all applications for allowance of Fee Claims;

(e) To determine any Other Priority Claim, Administrative Claims or any other request for payment of claims or expenses entitled to priority under section 507(a) of the Bankruptcy Code;

(f) To resolve any disputes arising under or related to the implementation, execution, consummation or interpretation of this Plan and the making of Distributions hereunder;

(g) To determine any and all motions related to the rejection, assumption or assignment of Executory Contracts or unexpired leases, or to determine any motion to reject an Executory Contract or unexpired lease pursuant to section 11.1 of this Plan;

(h) To determine all applications, motions, adversary proceedings, contested matters, actions, and any other litigated matters instituted in and prior to the closing of these chapter 11 cases, including any remands;

(i) To enter one or more Final Orders closing the Debtors' chapter 11 cases;

(j) To modify this Plan under section 1127 of the Bankruptcy Code, to remedy any defect, cure any omission, or reconcile any inconsistency in this Plan or the Confirmation Order so as to carry out its intent and purposes;

(k) To issue such orders in aid of consummation of this Plan and the Confirmation Order notwithstanding any otherwise applicable non-bankruptcy law, with respect to any Entity, to the full extent authorized by the Bankruptcy Code;

(l) To enable the Liquidating Trustee to prosecute any and all proceedings to set aside Liens and to recover any transfers, assets, properties or damages to which the Estates may be entitled under applicable provisions of the Bankruptcy Code or any other federal, state or local laws except as may be expressly waived pursuant to this Plan;

(m) To determine any tax liability of the Debtors or the Liquidating Trust pursuant to section 505 of the Bankruptcy Code, and to address any request by the Liquidating Trustee or the Liquidating Trust for a prompt audit pursuant to section 505(b) of the Bankruptcy Code;

(n) To enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified or vacated;

(o) To resolve any disputes concerning whether an Entity had sufficient notice of the chapter 11 cases, the Bar Date Order or the otherwise applicable Claims bar date, the hearing to consider approval of the Disclosure Statement or the Confirmation Hearing;

(p) To resolve any dispute or matter arising under or in connection with any order of the Bankruptcy Court entered in these chapter 11 cases;

(q) To resolve any disputes concerning any exculpation of a non-debtor hereunder or the injunction against acts, employment of process or actions against such non-debtor arising hereunder;

(r) To approve any Distributions, or objections thereto, under this Plan;

(s) To approve any offset exercised by the Liquidating Trustee; and

(t) To determine such other matters, and for such other purposes, as may be provided in the Confirmation Order or as may be authorized under provisions of the Bankruptcy Code.

14.2 **Amendments**.

(a) **Preconfirmation Amendment.** The Debtors, subject to the written consent of the Creditors' Committee, may modify this Plan at any time prior to the entry of the Confirmation Order, provided that this Plan, as modified, and the disclosure statement pertaining thereto meet applicable Bankruptcy Code requirements.

(b) **Postconfirmation Amendment Not Requiring Resolicitation.** After the entry of the Confirmation Order, the Debtors, subject to the written consent of the Creditors' Committee, may modify this Plan to remedy any defect or omission or to reconcile any inconsistencies in this Plan or in the Confirmation Order, as may be necessary to carry out the purposes and effects of this Plan, provided that: (i) the Debtors, with the written consent of the Creditors' Committee, obtain approval of the Bankruptcy Court for such modification, after notice and a hearing; and (ii) such modification shall not materially and adversely affect the interests, rights, treatment or Distributions of any Class of Allowed Claims or Interests under this Plan.

(c) **Postconfirmation and Pre-consummation Amendment Requiring Resolicitation.** After the Confirmation Date and before substantial consummation of this Plan, the Debtors, subject to the written consent of the Creditors' Committee, may modify this Plan in a way that materially or adversely affects the interests, rights, treatment, or Distributions of a Class of Claims or Interests, provided that: (i) this Plan, as modified, meets applicable Bankruptcy Code requirements; (ii) the Debtors, with the written consent of the Creditors' Committee, obtain Bankruptcy Court approval for such modification, after notice and a hearing; (iii) such modification is accepted by at least two-thirds in amount, and more than one-half in number, of Allowed Claims or Interests voting in each Class materially or adversely affected by such modification; and (iv) the Debtors comply with section 1125 of the Bankruptcy Code with respect to this Plan as modified.

14.3 **Successors and Assigns**. The rights, benefits and obligations of any person or entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, the heirs, executors, administrators, successors and/or assigns of such person or entity.

14.4 **Governing Law**. Except to the extent that the Bankruptcy Code, Bankruptcy Rules or other federal laws apply, the rights and obligations arising under this Plan shall be governed by and construed and enforced in accordance with the laws of the State of Delaware, without giving effect to principles of conflicts of law.

14.5 **Corporate Action**. Any matters provided for under this Plan involving the corporate structure of the Debtors or corporate action, as the case may be, to be taken by or required of the Debtors shall be deemed to have occurred and be effective as of the Effective Date and shall be authorized and approved in all respects, without any requirement of further action by the Debtors or the Liquidating Trustee, as the case may be.

14.6 **Effectuating Documents and Further Transactions**. The Debtors and the Liquidating Trustee shall be authorized to execute, deliver, file, or record such documents, contracts, instruments, releases, and other agreements and take such other actions as may be necessary to effectuate and further evidence the terms and conditions of this Plan.

14.7 **Control Provision**. To the extent this Plan is inconsistent with the Disclosure Statement or the Plan Supplement (including Liquidating Trust Agreement), this Plan controls over the Disclosure Statement and the Plan Supplement. However, if a Plan Supplement document (including the Liquidating Trust Agreement) expressly states that a specific provision controls over the Plan and Disclosure Statement, the Plan Supplement (including the Liquidating Trust Agreement) shall control. To the extent the Confirmation Order is inconsistent with this Plan, the Disclosure Statement or the Plan Supplement, the Confirmation Order (and any other orders of this Bankruptcy Court) controls over this Plan, the Disclosure Statement and the Plan Supplement.

14.8 **Miscellaneous Rules.** This combined Disclosure Statement and Plan is subject to the following miscellaneous rules: (i) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply, unless superseded herein or in the Confirmation Order; (ii) in computing any period of time prescribed or allowed by this Plan, the provisions of Bankruptcy Rule 9006(a) shall apply; and (iii) whenever this Plan provides that a payment or Distribution shall occur "on" any date, it shall mean "on, or as soon as reasonably practicable after", such date.

14.9 **Notices**. All notices or requests in connection with this Plan shall be in writing and will be deemed to have been given when received by mail and addressed to:

Liquidating Trustee:
To be provided in the Plan Supplement

Debtors:

MORRIS, NICHOLS, ARSHT & TUNNELL LLP
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Creditors' Committee:

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-and-

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edward.schnitzer@wbd-us.com

14.10 **No Admissions or Waiver**. Notwithstanding anything herein to the contrary, nothing contained in this Plan shall be deemed an admission or waiver by the Debtors with respect to any matter set forth herein, including liability on any Claim or the propriety of a Claim's classification.

/s/ Paula Brown Stafford
Paula Brown Stafford, CEO

Exhibit A

Liquidation Analysis

NVN Liquidation Inc.
Liquidation Analysis
$ in 000's

Assumed conversion date 1/31/2024

		Chapter 11 Plan Confirmation Scenario			Chapter 7 Liquidation Scenario		
			Recovery Scenario			Recovery Scenario	
	Item #	NVN Book Value	Estimated Value	% of Book Value	NVN Book Value	Estimated Value	% of Book Value
A Asset Proceeds							
Cash (Retained Assets)	1	12,373	12,373	100.0%	12,373	12,373	100.0%
EPIH Settlement Contribution	2	200	200	100.0%	-	-	0.0%
Total Asset Proceeds		**12,573**	**12,573**	**100.0%**	**12,373**	**12,373**	**100.0%**
B Liquidation Fees and Costs	3						
Operating Costs	4		118			118	
Professional, Legal, and Liquidator Fees	5		4,349			5,021	
Bridge & DIP Financing Fees and Interest	6		930			930	
Admin Expenses borne by EPIH	7		(1,372)			(1,372)	
Total Liquidation Fees and Costs			**4,025**			**4,696**	
Net Estimate Proceeds Available for Administrative and Priority Claims			**8,548**			**7,676**	

	Item #	Estimated Allowed Claim	Estimate Payable to Creditors	Recovery Estimate %		Estimate Payable to Creditors	Recovery Estimate %
C Administrative and Priority Claims							
503(b)9 Claims	8	-	-	0.0%		-	0.0%
Accrued Payroll and PTO	9	2,459	2,459	100.0%		2,459	100.0%
Administrative Claims	10	5,809	5,809	100.0%		5,218	89.8%
Priority Unsecured Claims	11	141	141	100.0%		-	0.0%
Total Administrative and Priority Claims		**8,408**	**8,408**	**100.0%**		**7,676**	**91.3%**
Net Estimate Proceeds Available for Unsecured Claims		**200**	**200**		**-**	**-**	
D Unsecured Claims							
General Unsecured Claims	12	10,500	200	1.9%		-	0.0%
Total Unsecured Claims		**10,500**	**200**	**1.9%**		**-**	**0.0%**
Net Estimate Proceeds Available for Equity			**-**			**-**	

EPI Health LLC
Liquidation Analysis
$ in 000's

Assumed conversion date 1/31/2024

	Item #	Chapter 11 Plan Confirmation Scenario			Chapter 7 Liquidation Scenario		
			Recovery Scenario			Recovery Scenario	
		EPIH Book Value	Estimated Value	% of Book Value	EPIH Book Value	Estimated Value	% of Book Value
A Asset Proceeds							
Cash (Retained Assets)	1	12,899	12,899	100.0%	12,899	12,899	100.0%
Total Asset Proceeds		**12,899**	**12,899**	**100.0%**	**12,899**	**12,899**	**100.0%**
B Liquidation Fees and Costs							
Operating Costs	2		254			254	
Professional, Legal, and Liquidator Fees	3		4,212			4,899	
Bridge & DIP Financing Fees and Interest	4		234			234	
Admin Expenses borne by EPIH	5		1,372			1,372	
EPIH Settlement Contribution	6		200			-	
Total Liquidation Fees and Costs			**6,272**			**6,759**	
Net Estimate Proceeds Available for Administrative and Priority Claims			**6,627**			**6,140**	

	Item #	Estimated Allowed Claim	Estimate Payable to Creditors	Recovery Estimate %		Estimate Payable to Creditors	Recovery Estimate %
C Administrative and Priority Claims							
503(b)9 Claims	7	-	-	0.0%		-	0.0%
Accrued Payroll and PTO	8	745	745	100.0%		745	100.0%
Administrative Claims	9	678	678	100.0%		678	100.0%
Priority Unsecured Claims	10	94	94	100.0%		94	100.0%
Total Administrative and Priority Claims		**1,517**	**1,517**	**100.0%**		**1,517**	**100.0%**
Net Estimate Proceeds Available for Unsecured Claims			**5,110**			**4,623**	
D Unsecured Claims							
General Unsecured Claims	11	25,500	5,110	20.0%		4,623	18.1%
Total Unsecured Claims		**25,500**	**5,110**	**20.0%**		**4,623**	**18.1%**
Net Estimate Proceeds Available for Equity			**-**			**-**	