

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

In re:

OMEGA THERAPEUTICS, INC.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 25-10211 (BLS)

**DEBTOR’S MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS  
(I) AUTHORIZING THE DEBTOR TO (A) OBTAIN POSTPETITION FINANCING  
AND (B) UTILIZE CASH COLLATERAL, (II) GRANTING ADEQUATE  
PROTECTION TO THE PREPETITION LENDER, (III) MODIFYING THE  
AUTOMATIC STAY, (IV) SCHEDULING A FINAL HEARING, AND  
(V) GRANTING RELATED RELIEF**

The above-captioned debtor and debtor in possession (the “Debtor” or the “Company”) respectfully moves (the “Motion”) as follows:

**PRELIMINARY STATEMENT**

1. The Debtor seeks authority to enter into that certain DIP Facility (as defined below) to obtain postpetition financing consistent with the Superpriority DIP Facility Term Sheet, dated February 10, 2025 (the “DIP Term Sheet”) between the Debtor and the lender party thereto (the “DIP Lender”) and to access the Prepetition Lender’s (as defined below) cash collateral (“Cash Collateral”) each on the terms and conditions set forth herein and in the Interim Order (as defined below).<sup>2</sup> The DIP Facility is vital to the Debtor’s ability to run a value-maximizing sale process and prevent an imminent value-destructive wind-down and liquidation.

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<sup>1</sup> The Debtor’s federal tax identification number is: 81-3247585. The mailing address for the Debtor is 140 First Street, Suite 501, Cambridge, MA 02141.

<sup>2</sup> Capitalized terms used but not otherwise defined in this Motion shall have the meaning ascribed to such terms elsewhere in the DIP Term Sheet or the Interim Order.

2. The Debtor is a development-stage biotechnology company pioneering a new systematic approach to use mRNA therapeutics as programmable epigenetic medicines using its OMEGA Epigenomic Programming platform (the “OMEGA platform”). The OMEGA platform harnesses the power of epigenetics, the mechanism that controls gene expression and every aspect of an organism’s life from cell genesis, growth and differentiation to cell death. The OMEGA platform enables control of fundamental epigenetic processes to correct the root cause of disease by returning aberrant gene expression to a normal range without altering native nucleic acid sequences. *See Declaration of Kaan Certel in Support of Debtor’s Chapter 11 Petition and First Day Motions* (“First Day Declaration”), ¶ 8.

3. As an early-stage biotechnology company, the Debtor faces risks and uncertainties including, but not limited to, technical risks associated with the successful research, development and manufacturing of product candidates, development by competitors of new technological innovations, dependence on key personnel, protection of proprietary technology, compliance with government regulations, and the ability to secure additional capital to fund operations. *Id.* ¶ 10.

4. To help fund its research and development activities, on March 9, 2018, the Debtor entered into a Loan and Security Agreement (as amended to date, the “Loan Agreement”) with Banc of California (formerly known as Pacific Western Bank) (“BoC”). In 2023, the Loan Agreement was amended to, among other things, extend the maturity date for at least two (2) years and, in connection therewith, add a covenant that the Debtor maintain with BoC a balance of at least \$5,000,000 of unrestricted cash. *Id.* ¶ 11.

5. In fall of 2024, the Debtor engaged a financial advisor (the “Prior Financial Advisor”), who commenced a broad auction process, soliciting indications of interest for various

transaction types, including but not limited to, an acquisition, synergistic merger, reverse merger, business combination, strategic collaboration, licensing agreement, or other transaction. *Id.* ¶ 12. The Board formed a special committee of independent directors (the “Special Committee”) to consider a proposal received during the auction process, as well as alternatives thereto, including those arising out of the Prior Financial Advisor’s solicitation process. *Id.* ¶ 13.

6. However, on January 13, 2025, while the Special Committee’s process was ongoing, the Debtor received a notice of default (the “Notice”) under the Loan Agreement. *Id.* ¶ 14. Based on its assertion of alleged events of default, BoC declared all outstanding obligations under the Loan Agreement immediately due and payable, purportedly in accordance with Section 9.1(g) of the Loan Agreement, and set off and applied \$14,666,666.72 of deposits of the Debtor held by BoC to the balance of the Debtor’s obligations under the Loan Agreement (the “Cash Sweep”). *Id.* The Debtor believes the Cash Sweep was improper. *Id.*

7. The Board appointed a new independent director, Jeffrey T. Varsalone of VRS Restructuring Services, LLC, with expertise in restructuring matters and designated Mr. Varsalone as the sole member of the restructuring committee of the Board (the “Restructuring Committee”) to, among other things, act on behalf of the Debtor in any transaction with Flagship or the PM Entities (as defined in the First Day Declaration). *Id.* ¶ 17.

8. Subsequently, after extensive arm’s-length negotiations, the Debtor obtained a senior secured bridge term loan dated February 3, 2025 (the “Prepetition Note”) from Pioneering Medicines 08-B, Inc. (“PM08-B”, the “Prepetition Lender” and/or the “DIP Lender”) an affiliate of Flagship Pioneering, Inc. (“Flagship”). Certain funds affiliated with Flagship collectively hold a majority of the common stock of the Debtor. *Id.* ¶ 13; *see also Declaration of Lisa Lansio in Support of Debtor’s Motion for Entry of Interim and Final Orders (I) Authorizing*

*the Debtor to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Adequate Protection to Prepetition Lender, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief (the “Lansio Declaration”), ¶ 11.*

9. The Prepetition Note enabled the Debtor to retain the employees the Debtor believed were necessary to maintain the value of its assets and prepare for this chapter 11 bankruptcy process, by which it will seek to implement a value-maximizing sale process of all or substantially all of the Debtor’s assets pursuant to section 363 of the Bankruptcy Code (the “Sale”). Additionally, and as set forth in the Restructuring Support Agreement by and between the Debtor and PM08-B (the “RSA”), the Debtor, at the direction of the Restructuring Committee, has secured PM08-B as both the stalking horse buyer and post-petition lender to act as a springboard for a robust post-petition marketing process. Lansio Decl. ¶ 14; First Day Decl. ¶ 18.

10. Ultimately, the Debtor agreed to the terms of the proposed DIP Facility and use of Cash Collateral, which is expected to provide the Debtor with sufficient runway to execute a value-maximizing sale transaction on reasonable terms under the circumstances. Lansio Decl. ¶ 14. The proposed DIP Facility consists of (i) a superpriority senior secured debtor-in-possession new money delayed-draw term loan facility (the “DIP Facility”) in an aggregate principal amount of \$9,820,908, of which (a) \$3,931,953 shall be available to the Debtor within three (3) business days of the entry of the Interim Order, (b) an additional \$2,810,669 shall be available to the Debtor for borrowing solely in accordance with the Budget within three (3) business days of the entry of the Final Order (the “New Money DIP Loans”), and (c) the remaining \$3,078,286 shall be available to the Debtor within three (3) business days of the entry of an order approving an Acceptable 363 Sale (as defined in the DIP Term Sheet); and (ii) (a) a roll-up (“Roll-Up” and, together with the New Money DIP Loans, the “DIP Loans”) of the Prepetition Note Obligations (as defined in the

Interim Order) on a dollar-for-dollar basis effective upon the entry of the Interim Order equal to the outstanding principal amount of \$1,475,178 plus \$165,000 in fees and expenses.

11. The DIP Facility will be secured by liens that are senior to the Prepetition Liens (as defined in the Interim Order).

12. The Debtor's cash on hand, as of the Petition Date, is subject to the liens of the Prepetition Lender, and, therefore, constitutes Cash Collateral. *Lansio Decl.* ¶¶ 9, 12. The DIP Facility will provide the Debtor with access to the use of Cash Collateral on a consensual basis. *Id.* ¶ 21.

13. The Debtor requires the proceeds from the DIP Loans to fund operations during the Chapter 11 Case. As of today's date, the Debtor has approximately \$450,000 in cash on hand and it expects that it will need incremental new money liquidity of approximately \$9.8 million to operate postpetition and pursue a sale transaction. *See Declaration of Ryan Mersch in Support of Debtor's Motion for Entry of Interim and Final Orders (I) Authorizing the Debtor to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Adequate Protection to Prepetition Lender, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* (the "Mersch Declaration"), ¶¶ 9, 13. Absent immediate access to the DIP Facility and the Cash Collateral, the Debtor will have insufficient liquidity to satisfy, among other things, (i) its working capital and business operating needs, (ii) the administrative costs of this Chapter 11 Case, and (iii) funding requirements necessary to run a value-maximizing sale process for the benefit of all stakeholders. *Id.* ¶¶ 11, 13-14. Any delay or inability to draw under the DIP Facility and use the Cash Collateral will require the Debtor to cease operations and cause immediate and irreparable harm to the value of the Debtor's estate to the detriment of all stakeholders. *Id.* ¶ 15.

14. Again, consistent with the RSA, the stalking horse bid (the “Stalking Horse Bid”) will be implemented through this Chapter 11 Case, and PM08-B has committed to a purchase price comprised of (i) a credit bid in an amount equal to the DIP Obligations, (ii) the assumption of assumed liabilities as set forth in the Stalking Horse Bid, and (iii) the payment of cure amounts for any assumed contracts and leases. First Day Decl. ¶ 19. Notably, the Stalking Horse Bid is subject to higher or otherwise better offers in accordance with the Debtor’s proposed bidding procedures. *Id.* The Debtor will continue marketing its assets throughout the Chapter 11 Case. *Id.*

15. For these reasons, as well as for the reasons set forth below, in the Lansio Declaration, in the Mersch Declaration, and in the First Day Declaration, the Debtor believes that entry into the DIP Facility is an exercise of the Debtor’s sound business judgment and will maximize value for the Debtor’s stakeholders. Accordingly, the Debtor respectfully requests that the Court approve the Debtor’s entry into the DIP Facility and authorizes its use of Cash Collateral.

### **RELIEF REQUESTED**

16. By this Motion, the Debtor seeks entry of an interim order substantially in the form attached hereto as **Exhibit A** (the “Interim Order”) and a final order (the “Final Order”) and, together with the Interim Order, the “Proposed Orders”), approving, among other things:

- (a) authorization for the Debtor, pursuant to sections 105, 361, 362, 363, 364, 503 and 507 of the Bankruptcy Code, to (i) use cash collateral, as such term is defined in section 363(a) of the Bankruptcy Code (“Cash Collateral”), and all other Prepetition Collateral (as defined herein), solely in accordance with the terms of the Interim Order, (ii) use the proceeds of the DIP Facility (as defined herein), solely in accordance with the terms of the DIP Documents, (iii) Roll-Up (as defined herein) the Prepetition Notes Obligations (as defined herein) into DIP Obligations (as defined herein), (iv) to provide adequate protection to the Prepetition Lender (to the extent set forth herein), and (iv) grant related relief;
- (b) authorization for the Debtor (the “DIP Borrower,”) to obtain postpetition financing on a senior secured superpriority basis (the “DIP Facility”) from Pioneering Medicines 08-B, Inc. (the “DIP Lender”), comprised of (i) a new money delayed-

draw term loan facility (the “New Money DIP Loans”) in an aggregate principal amount of \$9,820,908 of which (x) \$3,931,953 shall be available to the DIP Borrower within three (3) business days of the entry of this Interim Order, (y) an additional \$2,810,669 shall be available to the DIP Borrower for borrowing solely in accordance with the Budget within three (3) business days of the entry of a final order granting the relief requested in the Motion on a final basis (the “Final Order”) (subject to the terms and conditions set forth in the DIP Documents and the DIP Term Sheet, including the Conditions Precedent), and (z) the remaining \$3,078,286 shall be available to the DIP Borrower within three (3) business days of the entry of an order approving an Acceptable 363 Sale (as defined in the DIP Term Sheet) (subject to the terms and conditions set forth in the DIP Documents and the DIP Term Sheet, including the Conditions Precedent); and (ii) a roll-up (the “Roll-Up” and together with the New Money DIP Loans, the “DIP Loans”), upon entry of the Interim Order on the chapter 11 docket, by the DIP Lender of the Prepetition Note Obligations equal to the sum of outstanding principal (plus accrued and unpaid interest under the Prepetition Note and any unreimbursed costs, fees, expenses and indemnities in accordance with the Prepetition Note Documents) in the amount of \$1,475,178 plus \$165,000 in fees and expenses, in each case, pursuant to the terms and conditions set forth in the Interim Order, the DIP Budget (as defined herein), and that certain Superpriority DIP Facility Term Sheet executed by the DIP Borrower and the DIP Lender and annexed as Exhibit 2 to the Interim Order (as may be amended, restated, supplemented, waived, or otherwise modified from time to time in accordance with the terms hereof and thereof, the “DIP Term Sheet” and, together with the Interim Order, the Final Order, the DIP Budget, and any other schedules, exhibits, agreements, instruments, pledge agreements, guarantees, security agreements, intellectual property security agreements, control agreements, escrow agreements, instruments, notes, and documents executed in accordance and connection with any of the foregoing; each as amended, restated, supplemented, waived, or otherwise modified from time to time in accordance with the terms hereof and thereof, the “DIP Documents”);

- (c) authorizing the DIP Borrower to incur the principal, interest, fees, costs, expenses, obligations (whether contingent or otherwise), and all other amounts (including, without limitation, all “DIP Obligations” (as defined in the DIP Term Sheet), as and when due and payable under and in accordance with each of the DIP Documents (collectively, the “DIP Obligations”); and
- (d) authorizing the Debtor to enter into the DIP Term Sheet and any other schedules, exhibits, agreements, instruments, pledge agreements, guarantees, security agreements, intellectual property security agreements, control agreements, escrow agreements, instruments, notes, and documents executed in connection with any of the foregoing.

### **JURISDICTION AND VENUE**

17. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b). Venue of this case and the Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

18. The Debtor consents pursuant to rule 9013-1(f) of the Local Rules of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

19. The statutory bases for the relief requested herein are sections 105(a), 361, 362, 363, 364, and 507 of title 11 of the United States Code (the “Bankruptcy Code”), as supplemented by rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Local Rules 2002-1, 4001-1, 4001-2, and 9013-1.

**CONCISE STATEMENT PURSUANT TO BANKRUPTCY RULE 4001**

20. In accordance with Bankruptcy Rules 4001(b), (c), and (d), and Local Rule 4001-2, below is a concise statement and summary<sup>3</sup> of the material terms of the proposed DIP Facility and use of Cash Collateral:

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<sup>3</sup> The summaries and descriptions of the terms and conditions for the financing and the provisions of the Proposed Orders set forth in this Motion are intended solely for informational purposes to provide the Court and parties in interest with an overview of the significant terms thereof. The summaries and descriptions are qualified in their entirety by the DIP Term Sheet, DIP Facility and Proposed Orders. In the event there is any conflict between this Motion and the Interim or Final Order, the Interim or Final Order (as applicable) will control in all respects. In addition, in the event there is any conflict between the summaries in this Motion and the DIP Term Sheet, the DIP Term Sheet will control in all parts.

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| <p><b>Amount</b></p> <p>Fed. R. Bankr. P. 4001(c)(1)(B)</p> <p>Local Rule 4001-2(a)(i)(A), (O).</p> <p>Interim Order, at 2.</p> <p>Term Sheet, at 2.</p> | <p>The DIP Facility is comprised of up to \$9,820,908, the New Money DIP Loans, plus the Roll Up in the amount of \$1,475,178 plus \$165,000 in fees and expenses (subject to the Challenge Period).</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <p><b>Use of Proceeds</b></p> <p>Fed. R. Bankr. P. 4001(c)(1)(B)</p> <p>Interim Order, ¶¶ L, 7.</p> <p>Term Sheet, at 5-6.</p>                           | <p>Subject to entry of the Financing Orders, the DIP Borrower shall use the proceeds of the DIP Facility to pay the DIP Lender in accordance with the DIP Documents and solely in accordance with the DIP Budget as follows:</p> <ul style="list-style-type: none"> <li>(i) to fund the operating expenses of the DIP Borrower,</li> <li>(ii) to fund the administration of the Chapter 11 Case, an Acceptable 363 Sale, and a chapter 11 plan and related matters, including the claims resolution process, and the wind-down of the Debtor's estate;</li> <li>(iii) to fund the reasonable, documented, and allowed fees and expenses of the DIP Borrower's professionals; and</li> <li>(iv) to pay other amounts as set forth in and subject to the DIP Budget.</li> </ul>                                                                                                                                                                                                                                                                                              |
| <p><b>Conditions of Closing and Borrowing</b></p> <p>Fed. R. Bankr. P. 4001(c)(1)(B)</p> <p>Local Rule 4001-2(a)(i)(E)</p> <p>Term Sheet, at 14-17.</p>  | <p>The obligations of the DIP Lender to make any DIP Loans shall be conditioned on the satisfaction or waiver of the following:</p> <ul style="list-style-type: none"> <li>1. with respect to the availability of the First New Money DIP Loan Commitments and the Roll Up: <ul style="list-style-type: none"> <li>a. The DIP Lender shall have received a fully executed and delivered borrowing certificate;</li> <li>b. the entry by the Bankruptcy Court of the Interim Order in form and substance acceptable to the DIP Lender in its sole and absolute discretion;</li> <li>c. any "first day" order implicating cash management or permitted Debtor payments shall be in form and substance acceptable to the DIP Lender in its sole and absolute discretion;</li> <li>d. the Stalking Horse APA and the Sale Motion shall be in form and substance acceptable to DIP Lender and shall include the proposed form of Sale Order;</li> <li>e. no default or Event of Default shall have occurred under the RSA or Prepetition Note Documents.</li> </ul> </li> </ul> |

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|  | <ul style="list-style-type: none"> <li>f. the representations and warranties of the DIP Borrower under the DIP Documents shall be true and correct in all respects (or in the case of representations and warranties with a “materiality” qualifier, true and correct in all material respects);</li> <li>g. no trustee or examiner having shall have been appointed with respect to the DIP Borrower or its properties; and</li> <li>h. there shall exist no unstayed action, suit, investigation, litigation or proceeding pending or (to the knowledge of the DIP Borrower) threatened in writing in any court or before any arbitrator or governmental instrumentality (other than the Chapter 11 Cases or the consequences that would normally result from the commencement and continuation of the Chapter 11 Cases) that could reasonably be expected to have a Material Adverse Effect.</li> </ul> <p>2. with respect to the availability of the Second New Money DIP Loan Commitments:</p> <ul style="list-style-type: none"> <li>a. The DIP Lender shall have received a fully executed and delivered borrowing certificate;</li> <li>b. the entry of (i) the Final Order in form and substance acceptable to the DIP Lender in its sole and absolute discretion and (ii) a final order, in form and substance acceptable to the DIP Lender in its sole and absolute discretion, approving the bid procedures for an Acceptable 363 Sale and naming the DIP Lender (or its designee) as stalking horse bidder;</li> <li>c. any “second day” order implicating cash management or permitted Debtor payments and/or the sale of the Debtor’s assets shall be in form and substance acceptable to the DIP Lender in its sole and absolute discretion;</li> <li>d. no trustee or examiner having shall have been appointed with respect to the DIP Borrower or its properties;</li> <li>e. all reasonable and documented out-of-pocket costs, fees and expenses required to be paid to the DIP Lender or the Prepetition Lender pursuant to this DIP Term Sheet, the DIP Documents or the Financing Orders shall have been paid;</li> <li>f. there shall exist no unstayed action, suit, investigation, litigation or proceeding pending or (to the knowledge of the DIP Borrower) threatened in writing in any court or before any arbitrator or governmental instrumentality (other than the Chapter 11 Case or</li> </ul> |
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|  | <p>the consequences that would normally result from the commencement and continuation of the Chapter 11 Case) that could reasonably be expected to have a Material Adverse Effect;</p> <ul style="list-style-type: none"> <li>g. no default or Event of Default shall have occurred or be continuing under the DIP Documents, RSA or the Prepetition Note Documents; and</li> <li>h. the representations and warranties of the DIP Borrower under the DIP Documents shall be true and correct in all respects (or in the case of representations and warranties with a “materiality” qualifier, true and correct in all material respects).</li> </ul> <p>3. with respect to the availability of the Final New Money DIP Loan Commitments</p> <ul style="list-style-type: none"> <li>a. The DIP Lender shall have received a fully executed and delivered borrowing certificate.</li> <li>b. no trustee or examiner having shall have been appointed with respect to the DIP Borrower or its assets, operations, or properties;</li> <li>c. all reasonable and documented out-of-pocket costs, fees and expenses required to be paid to the DIP Lender or the Prepetition Lender pursuant to this DIP Term Sheet, the DIP Documents or the Financing Orders shall have been paid;</li> <li>d. there shall exist no unstayed action, suit, investigation, litigation or proceeding pending or (to the knowledge of the DIP Borrower) threatened in writing in any court or before any arbitrator or governmental instrumentality (other than the Chapter 11 Cases or the consequences that would normally result from the commencement and continuation of the Chapter 11 Cases) that could reasonably be expected to have a Material Adverse Effect;</li> <li>e. no default or Event of Default shall have occurred or be continuing under the DIP Documents, RSA or the Prepetition Note Documents; and</li> <li>f. the representations and warranties of the DIP Borrower under the DIP Documents shall be true and correct in all respects (or in the case of representations and warranties with a “materiality” qualifier, true and correct in all material respects).</li> <li>g. An Acceptable 363 Sale shall have closed and, if the DIP Lender is not the Successful Bidder, the DIP Obligations, Prepetition Note</li> </ul> |
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|                                                                                                                          | Obligations (if any), and the Bid Protections have been indefeasibly paid in full in cash.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Case Milestones</b><br><br>Fed. R. Bankr. P. 4001(c)(1)(B)<br><br>Local Rule 4001-2(a)(i)(H)<br><br>Term Sheet, Ex. B | <b>DIP Facility Milestones</b> <ol style="list-style-type: none"> <li>1. Not later than one (1) business day after the Petition Date, the DIP Borrower shall have filed with the Bankruptcy Court a motion seeking approval of the DIP Facility, the Interim Order, and all fees, expenses, and other obligations thereunder.</li> <li>2. Not later than three (3) days after the Petition Date, the Bankruptcy Court shall have entered the Interim Order.</li> <li>3. Not later than thirty (30) days after the Petition Date, the Bankruptcy Court shall have entered the Final Order.</li> </ol><br><b>363 Sale Milestone</b> <ol style="list-style-type: none"> <li>1. Not later than five (5) days after the Petition Date, the DIP Borrower shall have filed the Sale Motion in a form acceptable to the DIP Lender, which shall seek approval of an Acceptable 363 Sale.</li> <li>2. Not later than thirty (30) days after the Petition Date, the Bankruptcy Court shall have entered a bidding procedures order, in form and substance reasonably acceptable to the DIP Lender, approving the Sale Motion for an Acceptable 363 Sale.</li> <li>3. Not later than fifty-five (55) days following the Petition Date shall be the date specified for the auction, if necessary.</li> <li>4. Not later than sixty (60) days after the Petition Date, the Bankruptcy Court shall have entered the Sale Order approving an Acceptable 363 Sale.</li> <li>5. The closing of the Acceptable 363 Sale shall be no later than seventy (70) days following the Petition Date.</li> </ol> |

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| <p><b>DIP Financing Maturity Dates</b></p> <p>Fed. R. Bankr. P. 4001(c)(1)(B)</p> <p>Term Sheet, at 3.</p>                      | <p>The maturity date of the DIP Facility (the “<u>Maturity Date</u>”) shall be the earliest to occur of the following, upon which the DIP Lender’s commitment to provide the DIP Loans and the DIP Facility shall terminate, and the DIP Obligations and any Prepetition Note Obligations that have not been discharged with Roll Up DIP Loans shall be indefeasibly paid in full in cash:</p> <ul style="list-style-type: none"> <li>a. 30 days after entry of the Petition Date (or such later date as the DIP Lender in its sole discretion may agree in writing with the Debtor) if the Final Order has not been entered on or prior to the expiration of such 30-day period;</li> <li>b. 70 days after the Petition Date (or such later date as the DIP Lender in its sole discretion may agree in writing with the Debtor);</li> <li>c. the consummation of a sale of all or substantially all of the assets of the Debtor;</li> <li>d. acceleration of or termination of the DIP Loans pursuant to the DIP Documents (as defined below); and</li> <li>e. the substantial consummation (as defined in Section 1101 of the Bankruptcy Code and which for purposes hereof shall be no later than the “effective date” thereof) of a plan filed in the Chapter 11 Case that is confirmed pursuant to an order entered by the Bankruptcy Court.</li> </ul> |
| <p><b>Interest Rate</b></p> <p>Fed. R. Bankr. P. 4001(c)(1)(B)</p> <p>Local Rule 4001-2(a)(i)(B)</p> <p>Term Sheet, at 2-3.</p> | <p><b>Interest Rate.</b> Interest shall accrue on the DIP Loans at the rate of 10% per annum, and shall be payable monthly, on the first (1st) business day of each month, in arrears, in accordance with the DIP Budget. Interest shall accrue in kind and shall be paid in full in cash on the Maturity Date (or satisfied through a credit bid if the DIP Lender is the successful bidder).</p> <p><b>Default Rate.</b> At all times while an Event of Default under the DIP Facility exists, at the election of the DIP Lender, principal, interest and other amounts under the DIP Facility shall bear interest at a rate per annum equal to 5.00% in excess of the interest rate set forth above.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <p><b>Fees</b></p> <p>Fed. R. Bankr. P. 4001(c)(1)(B)</p> <p>Local Rule 4001-2(a)(i)(B)</p> <p>Term Sheet, at 2.</p>            | <p><b>Lending Fee.</b> A lending fee equal to 1.00% of DIP Loans, which shall accrue in kind and be paid in full in cash on the Maturity Date (or satisfied through a credit bid if the DIP Lender is the successful bidder).</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <p><b>Events of Default</b></p>                                                                                                 | <p>Unless waived in writing by the DIP Lender, the following events shall constitute termination events: (a) the failure of the Debtor to perform, in any material</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

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| <p>Fed. R. Bankr. P. 4001(c)(1)(B)(v), (x)</p> <p>Local Rule 4001-2(a)(i)(M)</p> <p>Interim Order, ¶ 14.</p> <p>Term Sheet, at 25-31.</p>                                                    | <p>respect, any of the terms, provisions, conditions, covenants, or obligations under the Interim Order; (b) entry of any order modifying, reversing, revoking, staying, rescinding, vacating, or amending the Interim Order; (c) the failure of the Debtor to comply with the Case Milestones; or (d) the occurrence of an “Event of Default” pursuant to the DIP Term Sheet.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <p><b>Security and Priority Status</b></p> <p>Fed. R. Bankr. P. 4001(c)(1)(B)(i)</p> <p>Local Rule 4001-2(a)(i)(G), (N), (P), (U)</p> <p>Interim Order, ¶ 6.</p> <p>Term Sheet, at 8-10.</p> | <p>As security for the DIP Obligations, the DIP Borrower shall grant to the DIP Lender a security interest in and continuing lien on all of such DIP Borrower’s right, title and interest in, to and under all the DIP Borrower’s assets, including, but not limited to the following, in each case, whether now owned or existing or hereafter acquired, created or arising and wherever located (all of which being hereafter collectively referred to as the “<u>DIP Collateral</u>”): shall include all assets and property of the DIP Borrower and its estate, real or personal, tangible or intangible, now owned or hereafter acquired, whether arising before or after the Petition Date, including, without limitation, all contracts, contract rights, licenses (including IP Licenses), general intangibles, instruments, equipment, accounts, documents, goods, inventory, fixtures, documents, cash, cash equivalents, chattel paper, letters of credit and letter of credit rights, investment property, money, insurance policies and proceeds thereof, receivables, deposits, refunds, receivables records, deposit accounts, collateral support, supporting obligations and instruments, all interests in leaseholds and real properties, all intellectual property, all patents, copyrights, trademarks (but excluding trademark applications filed in the United States Patent and Trademark Office on the basis of the applicant’s intent-to-use such trademark unless and until evidence of use of the trademark has been filed with, and accepted by, the United States Patent and Trademark Office pursuant to Section 1(c) or Section 1(d) of the Lanham Act (15 U.S.C. §1051, et seq.)), trade names and other intellectual property (whether such intellectual property is registered in the United States or in any foreign jurisdiction), records and data, know-how and other proprietary information and materials, all equity interests (to be limited to the extent of any adverse tax consequences, as reasonably determined by the DIP Lender and the DIP Borrower, and limitations imposed by applicable law), all books and records relating to the foregoing, all other personal and real property of the DIP Borrower (but excluding any property subject to a purchase money lien, capital lease or similar arrangement permitted under the DIP Documents to the extent the creation of a security interest therein is prohibited thereby or creates a right of termination in favor of any other party thereto or otherwise requires third party consent thereunder), claims and causes of action (whether asserted or unasserted), including commercial tort claims (other than Derivative Actions), the Derivative Actions (subject to entry of the Final Order), actions under sections 544, 545, 547, 548 and 550 of the Bankruptcy Code (the “<u>Avoidance Actions</u>”) and any proceeds from any such Avoidance Actions (subject to entry of the Final Order), and all</p> |

proceeds, products, accessions, rents and profits of or in respect of any of the foregoing (in each case as the foregoing are defined in the Uniform Commercial Code as in effect from time to time in the State of New York (and, if defined in more than one Article of such Uniform Commercial Code, shall have the meaning given in Article 9 thereof)).

The Financing Orders shall grant and approve, among other things, the obligations owed to the DIP Lender under or in connection with the DIP Loans secured by senior priority and continuing security interests on the DIP Collateral and superpriority administrative expense claims in the priority described below:

- a. Pursuant to section 364(c)(1) of the Bankruptcy Code, a super-priority administrative expense claim status with priority over all administrative expenses of the kind that are specified in Bankruptcy Code §§ 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1114 or any other provisions of the Bankruptcy Code.
- b. Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable and fully and automatically perfected first priority senior security interest in and lien upon all DIP Collateral that as of the Petition Date is unencumbered and not subject to valid, perfected, and non-avoidable liens; *provided that* such security interest in and lien on DIP Collateral shall be subject to the Carve Out;
- c. Pursuant to section 364(c)(3) of the Bankruptcy Code, a perfected junior lien, subject to the Carve Out, on all DIP Collateral that is subject to valid, perfected, and non-avoidable liens in existence at the time of the commencement of the Chapter 11 Case or subject to valid and non-avoidable liens in existence at the time of such commencement that are perfected subsequent to such commencement as permitted by section 546(b) of the Bankruptcy Code; and
- d. Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable and fully and automatically perfected first priority priming security interest in and lien upon all DIP Collateral, which security interest and lien shall be subject to the Carve Out and any valid, perfected, and non-avoidable Permitted Prior Lien (collectively, the liens described in clauses (a), (b), (c), and (d) of this section, the “DIP Liens”).

The DIP Liens shall not be made *pari passu* with, or subordinated to, any other liens or security interests (whether currently existing or hereafter created), subject, in each case, only to the Carve Out, and any valid, perfected, and unavoidable Permitted Prior Liens.

The Prepetition Lender consents to the Priming DIP Liens.

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| <p><b>Validity of Prepetition Liens</b></p> <p>Fed. R. Bankr. 4001(c)(1)(B)(iii)</p> <p>Local Rule 4001-2(a)(i)(Q)</p> <p>Interim Order, ¶ E.</p> | <p>The Debtor admits, stipulates and agrees that:</p> <ol style="list-style-type: none"> <li>Pursuant to (i) Article IV of the Prepetition Note (entitled “Security”) and the UCC-1 financing statement filed February 3, 2025 by and between the Debtor and the Prepetition Lender (collectively, the “<u>Prepetition First Lien Security Documents</u>”), the Prepetition Borrower granted valid, continuing, binding, enforceable and perfected first priority liens on substantially all assets of the Prepetition Borrower (the “<u>Prepetition Collateral</u>”) to and/or for the benefit of the Prepetition Lender (the “<u>Prepetition Liens</u>”), subject only to certain permitted prior liens (as set forth in the Prepetition Note Documents).</li> <li>The Prepetition Note Documents are valid and binding agreements and obligations of the Prepetition Borrower, and the Prepetition Liens constitute valid, binding, enforceable, and perfected first priority security interests and Liens (as that term is defined in the Prepetition Note), which are not subject to avoidance, recharacterization, recovery, reduction, disallowance, impairment, or subordination pursuant to the Bankruptcy Code or any other applicable non-bankruptcy law, except as provided in the Interim Order.</li> <li>The Prepetition Lender has properly perfected its security interests and Prepetition Liens in and on the Prepetition Collateral by taking possession of, or obtaining control over, certain assets, and/or by filing UCC-1 financing statements, mortgages, or other required documents against the Prepetition Borrower and such Prepetition Collateral in the proper state or county offices for the perfection of such security interests and Prepetition Liens.</li> </ol> |
| <p><b>Cash Collateral</b></p> <p>Fed. R. Bankr. P. 4001(b)(1)(B)</p> <p>Interim Order, ¶¶ I, L, O, 7.</p> <p>Term Sheet, at 5.</p>                | <p>The Prepetition Lender shall consent to the use of its Cash Collateral, all in accordance with the terms and conditions set forth in this DIP Term Sheet, the Financing Orders, and the DIP Budget, and subject to any Permitted Variances; provided, that the DIP Borrower shall operate its cash management system in a manner that is the same as or substantially similar to its prepetition cash management system.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <p><b>Adequate Protection</b></p> <p>Fed. R. Bankr. P. 4001(c)(1)(B)(iv), (c)(1)(B)(ii)</p>                                                       | <p>The Interim Order and the Final Order shall provide, as adequate protection for the use of the collateral securing the Prepetition Note Obligations and the priming of the liens and security interests granted to the Prepetition Lender under the Prepetition Note Documents (the “<u>Prepetition Note Liens</u>”), the Prepetition Lender shall be entitled to receive a customary adequate protection package of replacement liens and superpriority claims for any diminution in value of the Prepetition Lender’s interest in the Prepetition Collateral, including:</p> <ol style="list-style-type: none"> <li>superpriority administrative expense claim status;</li> </ol>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

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| <p>Interim Order, ¶¶ 8-10.</p> <p>Term Sheet, at 10-11.</p>                                                                                                                                                     | <p>2. replacement liens on all Prepetition Collateral, junior only to the liens of the DIP Lender and the DIP Lender, but subject to any Prior Senior Liens; and</p> <p>3. commencing on the Petition Date, postpetition interest shall accrue in kind on a monthly basis (collectively, “<u>Adequate Protection</u>”).</p> <p>For the avoidance of doubt, the grant of Adequate Protection shall be of no force and effect in the event the Prepetition Note Obligations are indefeasibly satisfied in full by the Roll Up (as defined in the Interim Order) or the Prepetition Liens are invalidated for any reason, including without limitation by a Challenge.</p> <p>To the extent the Roll Up is subsequently invalidated for any reason, the Prepetition Note Obligations, and any Adequate Protection shall be revived retroactively as of the Petition Date and continue as if any Prepetition Liens and Prepetition Note Obligations were still in effect as of the Petition Date and the Prepetition Lender’s security interests, rights, powers and remedies under the Prepetition Note Documents shall continue in full force and effect, subject to a Challenge.</p> |
| <p><b>Waiver of 506(c), 552(b), and Marshalling</b></p> <p>Fed. R. Bankr. P. 4001(c)(1)(B)(x)</p> <p>Local Rule 4001-2(a)(i)(V), (W), (X).</p> <p>Interim Order, ¶¶ 6(b), 30, 32.</p> <p>Term Sheet, at 14.</p> | <p>The Final Order shall approve the waiver of all section 506(c) claims and similar rights under section 552(b) of the Bankruptcy Code.</p> <p>Upon entry of the Final Order, the DIP Lender and the Prepetition Lender shall not be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to the DIP Collateral or the Prepetition Collateral and all proceeds shall be received and applied in accordance with the DIP Documents and the Prepetition Note Documents.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <p><b>Carveout</b></p> <p>Fed. R. Bankr. P. 4001(c)(1)(B)</p> <p>Local Rule 4002-2(a)(i)(F)</p> <p>Interim Order, ¶ 11.</p> <p>Term Sheet, at 11-12.</p>                                                        | <p>“<u>Carve Out</u>” means the sum, without duplication, of the following: (I) (a) all fees of the DIP Borrower required to be paid to the Clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate; (b) all reasonable fees and expenses up to \$75,000 incurred by a trustee under section 726(b) of the Bankruptcy Code; and (c) unpaid allowed professional fees, costs and disbursements (“<u>Professional Fees</u>”) incurred by the DIP Borrower and any Committee appointed in the Case, in each case not to exceed the line item amounts set forth in the applicable lines of the DIP Budget for each such professional as of the delivery of the Carve Out Trigger Notice at any time before or on the first business day following delivery</p>                                                                                                                                                                                                                                                                                                                |

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|                                                                                                   | by the DIP Lender of a Carve Out Trigger Notice (as defined below), whether allowed by the Bankruptcy Court prior to or after delivery of a Carve Out Trigger Notice (as defined below), and (II) after the delivery of a Carve Out Trigger Notice, allowed Professional Fees in an aggregate amount not to exceed \$125,000, in each case, incurred after the first business day following delivery by the DIP Lender of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the “ <u>Post-Carve Out Trigger Notice Cap</u> ”). For purposes of the foregoing, “ <u>Carve Out Trigger Notice</u> ” shall mean a written notice delivered by email (or other electronic means) by the DIP Lender to the DIP Borrower, its lead restructuring counsel, the U.S. Trustee, and counsel to the Committee (collectively, the “ <u>Carve Out Notice Parties</u> ”) which notice may be delivered following the occurrence and during the continuation of an Event of Default and acceleration of the DIP Obligations under the DIP Facility, stating that the Post-Carve Out Trigger Notice Cap has been invoked. |
| <b>Indemnification</b><br><br>Fed. R. Bankr. P.<br>4001(c)(1)(B)(ix)<br><br>Term Sheet, at 32-33. | The DIP Lender and the Prepetition Lender (and their affiliates and respective officers, directors, employees, advisors and agents) (each such person, an “ <u>Indemnitee</u> ”) will have no liability for, and will be indemnified and held harmless against, any losses, claims, damages, liabilities or expenses incurred in respect of the financing contemplated hereby or the use or the proposed use of proceeds thereof, except to the extent they are found by a final, non-appealable judgment of a court of competent jurisdiction to arise from the gross negligence or willful misconduct of the relevant indemnified person. Such indemnity shall not be available (i) to the extent arising from a material breach of any obligation of such Indemnitee under the DIP Documents or (ii) to the extent arising out of any loss, claim, damage, liability or expense that does not involve an act or omission of the DIP Borrower and that is brought by an Indemnitee against another Indemnitee (other than claims against an Indemnitee in its capacity or in fulfilling its role as DIP Lender or any similar role under the DIP Documents).                                                                     |
| <b>Right to File Plan</b><br><br>Fed. R. Bankr. P.<br>4001(c)(1)(B)(v)<br><br>Term Sheet, at 28.  | An Event of Default under the DIP Documents occurs if a plan is filed or confirmed which (x) does not provide for termination of the unused commitments under the DIP Facility and the indefeasible payment in full in cash on the effective date of such plan or order of the DIP Obligations and any Prepetition Note Obligations that have not been indefeasibly discharged with Roll Up DIP; or (y) is not satisfactory to the DIP Lender in its sole and absolute discretion, and (ii) does not provide, to the extent permitted by applicable law, for release and exculpatory provisions relating to the DIP Lender and the Prepetition Lender (in their capacities as such) that are satisfactory to the DIP Lender in its sole and absolute discretion, or the DIP Borrower or any of its subsidiaries shall file, propose, support, or fail to contest in good faith the filing or confirmation of such a plan or the entry of such an order.                                                                                                                                                                                                                                                                            |
| <b>Modification of the Automatic Stay</b>                                                         | Notwithstanding the provisions of Section 362 of the Bankruptcy Code, but subject to the applicable provisions of the Financing Orders governing a DIP                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

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| <p>Fed. R. Bankr. P. 4001(c)(1)(B)(iv)</p> <p>Interim Order, ¶ 20.</p>                                                                            | <p>Termination Event (as defined in the Financing Orders), if any Event of Default occurs and is continuing, the DIP Lender may immediately take any or all of the following actions:</p> <ul style="list-style-type: none"> <li>a. terminate the commitment of the DIP Lender to make DIP Loans and its consent to use of proceeds of DIP Facility and Cash Collateral;</li> <li>b. declare that the unpaid amount of the DIP Obligations, all interest accrued and unpaid thereon, and all other amounts owing or payable under the DIP Documents, this DIP Term Sheet and the Financing Orders to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the DIP Borrower;</li> <li>c. foreclose upon the DIP Collateral; or</li> <li>d. take any other action or exercise any other right or remedy as permitted by the DIP Documents or applicable law.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <p><b>Secured Party's Expenses and Attorneys' Fees</b></p> <p>Local Rule 4001-2(a)(i)(K)</p> <p>Interim Order, ¶ 33.</p>                          | <p>Lender Professionals shall not be required to comply with the U.S. Trustee fee guidelines or submit invoices to this Court. Copies of the Lender Professionals' invoices shall be submitted to (i) Debtor's counsel and (ii) the U.S. Trustee. The DIP Borrower shall timely pay in accordance with the terms and conditions of the Interim Order (a) the undisputed fees, costs, and expenses reflected on any invoice to which a fee objection has been timely filed (or which is subsequently allowed by agreement or an order of the Court), and (b) all fees, costs, and expenses on an invoice to which no fee objection has been timely filed by the DIP Borrower.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <p><b>Challenge Period / Investigation of Prepetition Liens and Claims</b></p> <p>Local Rule 4001-2(a)(i)(L), (Q)</p> <p>Interim Order, ¶ 26.</p> | <p>The Debtor's admissions and releases contained in paragraphs D, E, F, G, and H of the Interim Order (i) shall be binding upon the Debtor for all purposes and (ii) shall be binding upon all other parties in interest, including any Committee and any chapter 7 trustee, for all purposes unless a Committee or party in interest (subject in all respects to any agreement or applicable law which may limit or affect such party's right or ability to do so) has properly commenced an adversary proceeding or contested matter by no later than the date that is sixty (60) days after entry of the Interim Order (the "<u>Challenge Deadline</u>") (subject to entry of a Final Order granting such relief), (x) challenging the amount, validity, perfection, enforceability, priority or extent of the Prepetition Note Obligations or the Prepetition Liens, or (y) otherwise asserting or prosecuting any action for preference, fraudulent transfers or conveyances, other avoidance power claims or any other claims, counterclaims or causes of action, objections, contests and defenses against the Prepetition Lender on behalf of the Debtor's estate (collectively, "Challenges"). If no such Challenge is properly filed by the Challenge Deadline or the plaintiff's claims are dismissed or denied by final and unappealable order in any such proceeding or matter, then: (a) the Debtor's admissions and releases contained in paragraphs D, E, F, G, and H of the Interim Order shall be binding on all parties in interest, including any Committee; (b) the</p> |

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|                                                                                                                              | <p>obligations of the Debtor under the Prepetition Note Documents shall constitute allowed claims for all purposes in the Case or any Successor Case; (c) the Prepetition Lender's security interests in and liens upon the Prepetition Collateral and the DIP Collateral shall be deemed to have been, as of the Petition Date, legal, valid, binding, perfected, first priority security interests and liens, subject only to Permitted Prior Liens, and not subject to recharacterization, subordination or otherwise avoidable; and (d) the Prepetition Note Obligations and the Prepetition Liens on the Prepetition Collateral and the Collateral shall not be subject to any other or further challenge by the Committee or any other party in interest seeking to exercise the rights of the Debtor's estate, including, without limitation, any successor thereto.</p> <p>If any such adversary proceeding or contested matter is properly filed as of such dates, the Debtor's admissions and releases contained in paragraphs D, E, F, G, and H of the Interim Order shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) except to the extent that such admissions and releases were expressly challenged in such adversary proceeding or contested matter, provided that no more than \$25,000 in the aggregate of the proceeds of the DIP Collateral, Prepetition Collateral, and the Carve Out (which amount, for the avoidance of doubt, shall be credited against the aggregate amount allocated to Committee professionals under the DIP Budget) may be used by the Committee, if any, solely to investigate (but not prosecute or Challenge) the Debtor's admissions and releases contained in paragraphs D, E, F, G, and H of the Interim Order.</p> |
| <p><b>Releases</b></p> <p>Fed. R. Bankr. P. 4001(c)(1)(B)(viii)</p> <p>Interim Order, ¶ 27.</p> <p>Term Sheet, at 31-32.</p> | <p>The Financing Order shall provide for the following release, in which the Debtor will acknowledge the following:</p> <p>Subject to any Challenge rights under the Financing Orders, effective upon entry of the Interim Order and as of such date, and subject to the terms thereof and the right of any party in interest to commence a Challenge pursuant to the Financing Orders, the Debtor has no defense, counterclaim, offset, recoupment, claim or demand of any kind or nature whatsoever that can be asserted to reduce or eliminate all of any part of the Debtor's liability to repay the DIP Lender or the Prepetition Lender or to seek affirmative relief or damages of any kind or nature from the DIP Lender or the Prepetition Lender. Upon entry of the Interim Order, subject to the right of any party in interest to commence a Challenge pursuant to the Financing Orders, the Debtor fully, finally and forever release and discharge the DIP Lender, the Prepetition Lender and each of their respective officers, directors, servants, agents, attorneys, assigns, heirs, parents, subsidiaries, and each Person acting for or on behalf of any of them, each solely in their capacity as such (collectively, the "Released DIP Parties") of and from any and all actions, causes of action, demands, suits, claims, liabilities, liens, lawsuits, adverse consequences, amounts paid in settlement, costs, damages, debts, deficiencies, diminution in value, disbursements, expenses, losses and other obligations of any kind or nature whatsoever, in each case, existing at the time of entry of the Final Order, whether</p>                                                                                                                                                            |

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|  | in law, equity or otherwise (including, without limitation, those arising under sections 541 through 550 of the Bankruptcy Code and interest or other carrying costs, penalties, legal, accounting and other professional fees and expenses, and incidental, consequential and punitive damages payable to third parties), directly or indirectly arising out of, connected with or relating to the Prepetition Note Documents, the DIP Documents and the Financing Orders; provided that the foregoing shall not release any claims against a Released DIP Party that a court of competent jurisdiction determines, pursuant to a final, non-appealable order, results primarily from the gross negligence or willful misconduct of such Released DIP Party. For the avoidance of doubt, no release granted in the Interim Order shall release the DIP Lender or the Prepetition Lender from any Derivative Actions. |
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## **BACKGROUND**

### **I. General Background**

21. On February 10, 2025 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in this Court. The Debtor continues to manage its assets as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or official committee has been appointed in this case.

22. Additional detail regarding the Debtor, its business, the events leading to the commencement of this case, and the facts and circumstances supporting the relief requested herein is set forth in the First Day Declaration, Lansio Declaration, and Mersch Declaration, each filed concurrently herewith and incorporated herein by reference.

### **II. The Debtor’s Prepetition Secured Financing**

23. Prepetition, the Debtor borrowed money on a secured basis from BoC under a Loan Agreement. First Day Decl. ¶ 11. After the Cash Sweep, it obtained the Prepetition Note from PM08-B, the Prepetition Lender. *Id.* ¶¶ 14, 18. Leading up to the Petition Date, the Prepetition Lender made a loan to the Debtor in accordance with the Prepetition Note Documents (as defined in the DIP Term Sheet). As of the Petition Date, the Debtor owed the Prepetition

Lender \$1,475,178 in outstanding principal plus \$165,000 in fees and expenses under the Prepetition Loan (the “Prepetition Note Obligations”).

### **III. The Debtor’s Need for Debtor-in-Possession Financing and Use of Cash Collateral**

24. The Debtor requires access to the DIP Facility and authority to use Cash Collateral to ensure it has sufficient liquidity to operate its business and administer its estate during the Chapter 11 Case. Access to the DIP Facility will provide the Debtor with immediate access to liquidity and to the Cash Collateral, which will (a) provide the Debtor with critical working capital for its business; (b) fund other general corporate purposes; (c) fund the payments authorized by the Court pursuant to the “first-day motions” filed contemporaneously herewith; (d) satisfy administrative costs and expenses incurred in the Chapter 11 Case, and, notably, (e) permit the Debtor the runway necessary to consummate a value-maximizing sale transaction under section 363 of the Bankruptcy Code.

25. As stated above, the Debtor has insufficient cash to fund its operations during the Chapter 11 Case. Absent authority to enter into and access the DIP Facility, even for a limited period of time, the Debtor will be unable to continue operating its business, pursue a value-maximizing sale process, or administer the Chapter 11 Case. Thus, denial of the authority sought by this Motion would result in a deterioration of value and immediate and irreparable harm to the Debtor’s estate.

26. Immediate access to the DIP Facility is essential so the Debtor can assure its employees, vendors, and other interested parties that it has sufficient capital to continue operating “business as usual” during the pendency of the Chapter 11 Case. Even with access to Cash Collateral, the Debtor does not believe it would be prudent, or even possible, to administer the Chapter 11 Case solely on a “cash collateral” basis.

27. The DIP Facility, together with the relief in the Interim Order and the Final Order, will permit the Debtor to consensually use the Prepetition Lender's Cash Collateral, which is a critical element of the Debtor's decision to enter into the DIP Facility. As explained above, absent the consent of the Prepetition Lender's there would have likely been a dispute on the first day of this Chapter 11 Case regarding the use of Cash Collateral. These issues would likely have been litigated on the first day of this Chapter 11 Case and, had the Debtor not prevailed, could have caused a significant and value-destructive disruption to the Debtor's ability to operate in chapter 11 and administer this Chapter 11 Case. Instead, the DIP Facility resolves these issues by providing for consensual use of Cash Collateral, which, in turn, allows the Debtor to preserve the going-concern value of the estate for the benefit of all stakeholders.

28. The Debtor has worked closely with its advisors to evaluate its cash requirements for its business. As part of such evaluation, the Debtor and its advisors reviewed and analyzed the Debtor's near-term weekly and long-term cash flow forecasts and prepared the Budget. Mersch Decl. ¶¶ 7, 9. These forecasts take into account anticipated disbursements during the projected periods and consider a number of factors, including, but not limited to, the effect of the chapter 11 filing on the operations of the business, fees and interest associated with postpetition financing, professional fees, and vendor obligations, as well as the operational performance of the Debtor's business. *Id.* ¶ 11. The Debtor believes that the DIP Budget provides an accurate reflection of the Debtor's funding requirements over the identified period and is reasonable and appropriate under the circumstances. *Id.* ¶ 12.

#### **IV. Alternative Sources of Financing are Not Available on Better Terms**

29. The Debtor believes that the DIP Facility represents the best option currently available to the Debtor under the circumstances for financing, based on a financing process that revealed no viable alternatives. Lansio Decl. ¶¶ 15-16.

30. Triple P RTS, LLC, the Debtor's proposed restructuring advisor, and Triple P Securities, LLC (together with Triple P RTS, LLC, "Portage Point") conducted a marketing process to determine the availability of third-party financing sources that were willing to provide financing to the Debtor in its current financial situation. *Id.* ¶¶ 15-16. Portage Point contacted nine institutions that routinely provide debtor in possession financing to solicit offers to provide the Debtor with DIP Financing to support this Chapter 11 Case. *Id.* ¶ 15. The parties contacted by Portage Point indicated they were unwilling to extend financing to the Debtor for several reasons including (i) the contemplated purchase price of the Stalking Horse Bid is equal to the amount of the Prepetition Note plus the proposed DIP Facility thereby providing no cushion from a loan to value perspective and leaving no upside for economics relative to the risk being taken, (ii) the size of the DIP Facility and proposed limited duration of the Chapter 11 Case made it challenging for a third-party to achieve sufficient economic returns, and (iii) a number of potential investors were unwilling to lend to a pre-revenue company without significant fixed assets. *Id.* Ultimately, no party other than the DIP Lender was willing to provide postpetition financing. *Id.* ¶¶ 16 & 20.

31. However, after extensive, arm's-length negotiations with the Prepetition Lender/DIP Lender, the Debtor was able to secure the proposed approximately \$9.8 million new money DIP Facility. The DIP Facility is critical to the Debtor's ability to pay the administrative costs of the Chapter 11 Case and should provide the Debtor with sufficient liquidity to operate its business and effect a going-concern sale transaction. Mersch Decl. ¶10.

32. Based on the financing process described above, there are no alternative sources of financing reasonably available to the Debtor and no alternative sources of financing currently available under the circumstances on both better and executable terms than those being

provided by the DIP Facility. Lansio Decl. ¶¶ 16 & 20. Accordingly, the DIP Facility is reasonable and appropriate under the circumstances and is the Debtor's best option currently available under the circumstances. *Id.* ¶ 22.

33. For all of the reasons set forth herein, the DIP Facility is in the best interests of the Debtor's estate, and the Debtor respectfully requests that the Court approve the DIP Facility on the terms and conditions described herein.

### **BASIS FOR RELIEF REQUESTED**

#### **I. The Debtor Should be Authorized to Obtain Secured, Superpriority DIP Financing**

##### **A. Entry into the DIP Facility is an Exercise of the Debtor's Sound Business Judgment**

34. The Court should authorize the Debtor, as a sound exercise of its business judgment, to enter into the DIP Facility. Section 364 of the Bankruptcy Code authorizes the Debtor to obtain secured or superpriority postpetition financing. As long as an agreement to obtain secured credit does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code, courts grant debtors considerable deference to debtors' sound business judgment in obtaining such credit. *See, e.g., In re Trans World Airlines, Inc.*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving a postpetition loan and receivables facility because such facility "reflect[ed] sound and prudent business judgment"); *In re L.A. Dodgers LLC*, 457 B.R. 308, 313 (Bankr. D. Del. 2011) ("[C]ourts will almost always defer to the business judgment of a debtor in the selection of the lender."); *In re Barbara K. Enters., Inc.*, Case No. 08-11474, 2008 WL 2439649, at \*14 (Bankr. S.D.N.Y. June 16, 2008) (explaining that courts defer to a debtor's business judgment "so long as a request for financing does not 'leverage the bankruptcy process' and unfairly cede control of the reorganization to one party in interest."); *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("[C]ases consistently reflect that the court's discretion under section 364

[of the Bankruptcy Code] is to be utilized on grounds that permit [a debtor's] reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest."); *In re Farmland Indus., Inc.*, 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003) (noting that approval of postpetition financing requires, inter alia, an exercise of "sound and reasonable business judgment."

35. To determine whether the business judgment standard is met, the Court need only "examine whether a reasonable business person would make a similar decision under similar circumstances." *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006); *see also In re Curlew Valley Assocs.*, 14 B.R. 506, 513-14 (Bankr. D. Utah 1981) (noting that courts should not second guess a debtor's business judgment when the decision involves a "business judgment made in good faith upon a reasonable basis, and within the scope of [the debtor's] authority under the [Bankruptcy] Code"). Bankruptcy courts will not generally second-guess a debtor's business decisions when those decisions involve "a business judgment made in good faith, upon a reasonable basis, and within the scope of [its] authority under the [Bankruptcy] Code." *In re Curlew Valley Assocs.*, 14 B.R. 506, 513 (Bankr. D. Utah 1981) (footnote omitted). To determine whether the business judgment test is met, "the court 'is required to examine whether a reasonable business person would make a similar decision under similar circumstances.'" *In re Dura Auto. Sys. Inc.*, Case No. 06-11202 (KJC), 2007 Bankr. LEXIS 2764, at \*272 (Bankr. D. Del. Aug. 15, 2007) (citation omitted). The Court should evaluate the soundness of a debtor's business judgment, "in context, and considering the relative circumstances of the parties." *Farmland Indus.*, 294 B.R. at 886 ("Viewed in isolation, several of the terms of the [postpetition financing] might appear to be extreme or even unreasonable. Certainly, many of them favor the DIP Lenders.

But, taken in context, and considering the relative circumstances of the parties, the Court does not believe that the terms are unreasonable.”); *see also Unsecured Creditors’ Comm. Mobil Oil Corp. v. First Nat’l Bank & Trust Co. (In re Elingsen McLean Oil Co., Inc.)*, 65 B.R. 358, 365 n.7 (W.D. Mich. 1986) (recognizing that a debtor may have to enter into “hard bargains” to acquire funds for its reorganization).

36. Here, as described in the First Day Declaration, Lansio Declaration, and Mersch Declaration, the Debtor’s determination to enter into the DIP Facility was a business decision guided by the Debtor’s financial and restructuring needs. Specifically, the Debtor and its advisors determined that the Debtor will require additional liquidity to continue operating “business as usual” while it pursues a value-maximizing transaction. The additional certainty of having an achievable and near-term exit path from chapter 11 on the Petition Date strongly weighed in favor of the Debtors’ decision to enter into the DIP Facility. To maximize value for the Debtor’s estate, maintaining positive ordinary course relations with its employees and vendors is critical.

37. The Debtor’s advisors went to market in an attempt to find any other lender who was willing to provide financing on more favorable terms. After finding none, the Debtor, ultimately selected the DIP Lender’s proposal as the best option.

38. Accordingly, the Debtor submits that entry into the DIP Facility is in the best interests of the Debtors’ creditors, is necessary to preserve the value of the estate assets, and is an exercise of the Debtor’s sound and reasonable business judgment.

**B. The Debtor Should be Authorized to Obtain Postpetition Financing on a Secured and Superpriority Basis**

39. The Debtor satisfies the requirements for relief under section 364 of the Bankruptcy Code, which authorizes a debtor to obtain secured or superpriority financing under certain circumstances. Specifically, section 364(c) of the Bankruptcy Code provides that:

If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt:

(1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;

(2) secured by a lien on property of the estate that is not otherwise subject to a lien; or

(3) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. § 364(c).

40. To satisfy the requirement of section 364(c) of the Bankruptcy Code, a debtor need only demonstrate “by a good faith effort that credit was not acceptable” to the debtor on an unsecured or administrative expense basis. *Bray v. Shenandoah Fed. Savs. & Loan Ass’n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986) (“The statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable.”); *see also Pearl-Phil GMT (Far East) Ltd. v. Caldor Corp.*, 266 B.R. 575, 584 (S.D.N.Y. 2001) (superpriority administrative expenses authorized where debtor could not obtain credit as an administrative expense). When few lenders are likely to be able and willing to extend the necessary credit to a debtor, “it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing.” *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff’d sub nom., Anchor Savs. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n. 4

(N.D. Ga. 1989); *see also Ames Dep't Stores*, 115 B.R. at 40 (approving financing facility and holding that the debtor made reasonable efforts to satisfy the standards of section 364(c) where it approached four lending institutions, was rejected by two, and selected the most favorable of the two offers it received).

41. The Debtor easily satisfies the standard. Despite significant efforts to obtain DIP financing proposals from third parties outside the capital structure, the Debtor was unable to obtain any competing financing proposals on any terms. In this process, Portage Point contacted a number of financial institutions, including the Prepetition Lender, in an effort to procure DIP financing. After reviewing its options, the Debtor determined the DIP Lender's proposal was the best option currently available under the circumstances to the Debtor and that it could not obtain postpetition financing without granting the liens and claims in the priorities set forth in the DIP Documents and described herein.

42. Absent the DIP Facility, which will provide sufficient liquidity to administer this Chapter 11 Case, the value of the Debtor's estate would be significantly impaired to the detriment of all stakeholders. Given the Debtor's dire circumstances, the Debtor believes that the terms of the DIP Facility, including the Roll Up and other economic provisions of the DIP Facility, as set forth in the DIP Term Sheet, are reasonable under the circumstances. For these reasons, the Debtor has met the standard for obtaining postpetition financing under section 364 of the Bankruptcy Code.

**C. The DIP Facility Provides for Consensual Priming**

43. Courts may authorize a debtor to obtain postpetition credit secured by a lien that is senior or equal in priority to existing liens on the encumbered property, without the consent of existing lien holders if the debtor cannot otherwise obtain such credit and the interests of existing

lien holders are adequately protected. *See* 11 U.S.C. § 364(d)(1). Specifically, section 364(d)(1) of the Bankruptcy Code provides:

(1) The court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if:

(A) the trustee is unable to obtain such credit otherwise; and

(B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

(2) In any hearing under this subsection, the trustee has the burden of proof on the issue of adequate protection.

11 U.S.C. § 364(d)(1).

44. When determining whether to authorize a debtor to obtain credit secured by senior liens as authorized by section 364(d) of the Bankruptcy Code, courts focus on whether the transaction will enhance the value of the Debtor's assets. Courts consider a number of factors, including:

- whether the party subject to a priming lien has consented to such treatment;
- whether alternative financing is available on any other basis (i.e., whether any better offers, bids, or timely proposals are before the court);
- whether the proposed financing is necessary to preserve estate assets and is necessary, essential and appropriate for continued operation of the debtors' business;
- whether the terms of the proposed financing are reasonable and adequate given the circumstances of both the debtors and proposed lender(s); and
- whether the proposed financing agreement was negotiated in good faith and at arms'-length and entry therein is an exercise of sound and reasonable business judgment and in the best interest of the debtor's estate and its creditors.

*See, e.g., Ames Dep't Stores*, 115 B.R. at 37–39; *Bland v. Farmworker Creditors*, 308 B.R. 109, 113-14 (S.D. Ga. 2003); *Farmland Indus.*, 294 B.R. at 862–79; *In re Lyondell Chem. Co.*, Case

No. 09-10023 (Bankr. S.D.N.Y. March 5, 2009); *Barbara K. Enters.*, 2008 WL 2439649 at \*10. Here, the Prepetition Lender whose liens will be primed consented or is deemed to have consented to the priming of its liens on the terms described herein and set forth in the proposed Interim Order. Further, to the extent not a DIP Obligation pursuant to the Roll-Up, the Prepetition Lender is receiving adequate protection in the form of the Administrative Adequate Protection Liens and Administrative Adequate Protection Claims. Therefore, the relief requested pursuant to section 364(d)(1) of the Bankruptcy Code is appropriate.

**D. The Liens Granted Under the DIP Facility Further Reflect a Sound Exercise of the Debtor's Business Judgement**

45. The Debtor and its advisors contacted numerous financing sources and ultimately determined that the DIP Lender offered the best currently available financing under the circumstances. The Debtor believes, after rigorous arm's-length negotiations with the DIP Lender, that the DIP Documents reflect the most favorable terms on which the Debtor is currently able to obtain postpetition financing and that it could not obtain financing without granting the liens in the priority described herein. Accordingly, because the Debtor's judgment does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code, the Court should grant the Debtor considerable deference in acting in accordance with its business judgment and approve the liens required by the DIP Facility. *See, e.g., In re Ames Dep't Stores, Inc.*, 115 B.R. at 40 (courts have discretion under Bankruptcy Code section 364 to permit debtors to exercise reasonable business judgment so long as (i) the terms of the financing agreement do not "leverage the bankruptcy process and powers" and (ii) the financing agreement's purpose is primarily to benefit the estate, and not a party in interest).

**E. The Roll Up Is Necessary and Appropriate**

46. As set forth herein, the Roll Up contemplates refinancing the Prepetition Note Obligations outstanding as of the Petition Date. Specifically, the Roll-Up, rolls up, on a dollar-for-dollar basis, approximately \$1,475,178 plus \$165,000 in fees and expenses of the Prepetition Note Obligations held by the Prepetition Lender upon entry of the Interim Order.

47. As discussed in the Lansio Declaration, the DIP Lender made it evident in their negotiations with the Debtor that the inclusion of this roll-up was a required part of any DIP Facility. Lansio Decl. ¶ 17. Given the thorough negotiations with the DIP Lender, as well as the Debtor's assessment, along with Portage Point, that it was unlikely to find better currently available alternatives given the circumstances, agreeing to the Roll Up was a reasonable exercise of the Debtor's business judgment. *Id.* ¶¶ 17, 19. The Interim Order preserves the rights of other parties in interest, including the Committee, to investigate and challenge the validity, enforceability, perfection, and priority of the Prepetition Note Obligations and the liens and security interests granted in connection therewith.

48. Courts in this jurisdiction have approved similar features in debtor-in-possession financing packages, including on an interim basis. *See, e.g., In re PGX Holdings, Inc.*, Case No. 23-10718 (CTG) (Bankr. D. Del. Jul. 31, 2023) (authorizing an approximately \$63 million DIP Facility, including an approximately \$43 million roll-up); *In re SiO2 Medical Prods., Inc.*, Case No. 23-10366 (JTD) (Bankr. D. Del. Apr. 26, 2023) (authorizing an approximately \$120 million DIP facility, including a \$60 million roll-up of the prepetition term loan); *In re OSG Grp. Holdings, Inc.*, Case No. 22-10718 (JTD) (Bankr. D. Del. Aug. 9, 2022) (authorizing an approximately \$25 million DIP and a \$10.7 million roll-up); *In re Phoenix Servs. Topco LLC*, Case No. 22-10906 (MFW) (Bankr. D. Del. Sept. 29, 2022) (authorizing \$25 million in new money on an interim basis with an additional \$25 million funding into escrow on an interim basis available

for draw and a roll-up of approximately \$75 million pursuant to interim order); *In re TPC Grp. Inc.*, Case No. 22-10493 (CTG) (Bankr. D. Del. June 3, 2022) (authorizing \$32 million in new money and a roll-up of \$59 million pursuant to interim order); *In re Nine Point Energy Holdings, Inc.*, Case No. 21-10570 (MFW) (Bankr. D. Del. March 17, 2021) (authorizing \$13 million in new money and a roll-up of \$39 million pursuant to interim order); *In re Libbey Glass Inc.*, Case No. 20-11439 (LSS) (Bankr. D. Del. June 3, 2020) (authorizing \$30 million in new money and a roll-up of \$30 million pursuant to interim order); *In re Orexigen Therapeutics, Inc.*, Case No. 18-10518 (KG) (Bankr. D. Del. March 13, 2018) (authorizing \$7.5 million new money and a roll-up of \$7.5 pursuant to interim order); *In re Remington Outdoor Co., Inc.*, Case No. 18-10684 (BLS) (Bankr. D. Del. Mar. 28, 2018) (authorizing approximately \$338 million DIP and a roll-up of approximately \$150 million pursuant to interim order); *In re Bon-Ton Stores, Inc.*, Case No. 18-10248 (MFW) (Bankr. D. Del. Feb. 6, 2018) (authorizing full roll-up of all \$489 million outstanding prepetition revolving obligations pursuant to interim order); *In re Real Indus. Inc.*, Case No. 17-12464 (KJC) (Bankr. D. Del. Nov. 20, 2017) (authorizing approximately \$365 million DIP that included a creeping roll-up pursuant to interim order and a full roll-up pursuant to final order of approximately \$266 million prepetition debt).

49. Accordingly, the Court should approve the Roll Up of the Prepetition Note Obligations into DIP Obligations.

## **II. The Debtor Should Be Authorized to Use Postpetition Collateral, Including Cash Collateral**

50. Section 363 of the Bankruptcy Code governs the Debtor's use of Cash Collateral. Under section 363(c)(2), a debtor may not use cash collateral unless "(A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing,

authorizes the use, sale or lease in accordance with the provisions of this section.” 11 U.S.C. § 363(c)(2).

51. Here, the Debtor seeks authority to use Cash Collateral pursuant to the DIP Budget and has sought approval of various forms of adequate protection in favor of the Prepetition Lender, including adequate protection liens and superpriority claims to the extent of any diminution and reimbursement of reasonable professional fees incurred by the Prepetition Lender. Importantly, the Prepetition Lender/the DIP Lender consent to the use of Cash Collateral on the terms set forth in the Proposed Orders.

52. The Prepetition Lender’s Cash Collateral will be used to sustain the Debtor’s business operations, run an expedited sale process, and administer this Chapter 11 Case, which will allow the Debtor to maximize value of the estate. If the Debtor is unable to use Cash Collateral, it will be unable to fund payroll obligations, procure good and services from vendors, run the necessary sale process, or administer this Chapter 11 Case, thereby dissipating value to the Debtor’s estate and its stakeholders. Mersch Decl. ¶¶ 9, 13-14.

53. Accordingly, based upon the foregoing, the Debtor respectfully requests that the Court authorize the Debtor’s proposed use of Cash Collateral to which the Prepetition Lender has consented and with respect to which the Prepetition Lender is adequately protected.

### **III. The DIP Lender Should be Deemed a Good Faith Lender**

54. Section 364(e) of the Bankruptcy Code protects a good faith lender’s right to collect on loans extended to a debtor, and its right in any lien securing those loans, even if the authority of the debtor to obtain such loans or grant such liens is later reversed or modified on appeal. Section 364(e) provides that:

The reversal or modification on appeal of an authorization under this section [364 of the Bankruptcy Code] to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect

the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

11 U.S.C. § 364(e).

55. Here, the DIP Documents embody the best terms on which the Debtor could currently obtain DIP financing under the circumstances. *See* Lansio Decl. ¶ 19. All negotiations regarding the provision of the DIP Facility were conducted in good faith and on an arm's-length basis. *Id.* ¶ 16. The terms and conditions of the DIP Facility are reasonable. *Id.* ¶ 17. Further, no consideration is being provided to any party to the DIP Facility other than as disclosed herein. Accordingly, the Court should find that the DIP Lender is a "good faith" lender within the meaning of section 364(e) of the Bankruptcy Code and is entitled to all of the protections afforded by that section.

#### **IV. The Scope of the Carve Out is Necessary and Appropriate**

56. The DIP Liens are subject to the Carve Out (as described above). Without the Carve Out, the Debtor and other parties-in-interest may be deprived of certain rights and powers because the services for which professionals may be paid in this Chapter 11 Case would be restricted. *See In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (observing that courts insist on carve-outs for professionals representing parties-in-interest because "[a]bsent such protection, the collective rights and expectations of all parties-in-interest are sorely prejudiced"). The Carve Out does not directly or indirectly deprive the Debtor's estate or other parties-in-interest of possible rights and powers. Additionally, the Carve Out ensures that assets will be available for the payment of fees of the Clerk of the Bankruptcy Court or the Office of the United States Trustee for the District of Delaware and professional fees of the Debtor and an

unsecured creditors committee, if one is appointed. Accordingly, the Carve Out is necessary and appropriate, and should be approved.

#### **V. Modification of the Automatic Stay**

57. By this Motion, the Debtor is requesting modification of the automatic stay (to the extent applicable) as necessary to, *inter alia*, (i) implement the terms of the Interim Order; (ii) permit the Debtor to grant the security interests and liens described above and to perform such acts as may be requested to assure the perfection and priority of such security interests and liens, and (ii) permit the DIP Lender to exercise certain remedies upon the occurrence of an event of default under the DIP Documents—subject to the procedures set forth in the Interim Order. The Debtor believes that these provisions are required for the Debtor to obtain the DIP Facility and use Cash Collateral as provided in the Interim Order.

58. Stay modification provisions of this kind are ordinary and standard terms of postpetition use of collateral by debtors-in-possession, and, in the Debtor's business judgment, are reasonable and necessary under the present circumstances. *See, e.g., In re SiO2 Medical Prods., Inc.*, No. 23-10366 (JTD) (Bankr. D. Del. Apr. 26, 2023) (modifying automatic stay as necessary to effectuate the terms of the order and following occurrence of an event of default); *In re Carestream Health, Inc.*, No. 22-10778 (JKS) (Bankr. D. Del. Aug. 24, 2022); *In re Enjoy Tech., Inc.*, Case No. 22-10580 (JKS) (Bankr. D. Del. July 26, 2022) (terminating automatic stay after occurrence of event of default and applicable notice); *In re Stimwave Techs. Inc.*, Case No. 22-10541 (KBO) (Bankr. D. Del. July 14, 2022) (same); *In re MD Helicopters Inc.*, Case No. 22-10263 (KBO) (Bankr. D. Del. Apr. 26, 2022) (same); *In re Salem Harbor Power Dev. LP (f/k/a*

*Footprint Power Salem Harbor Dev. LP*), Case No. 22-10239 (MFW) (Bankr. D. Del. Apr. 22, 2022) (same).<sup>4</sup>

59. Accordingly, the Debtor respectfully requests that the Court authorize the modification of the automatic stay in accordance with the terms set forth in the Proposed Orders.

**VI. The Case Milestones under the DIP Term Sheets are Reasonable.**

60. The DIP Facility contemplates, as a product of negotiation with and as required by the DIP Lender as a condition to providing the DIP Facility, certain milestones included as Exhibit B to the DIP Term Sheet (the “Case Milestones”) the Debtor must meet throughout this chapter 11 case, the failure of which would constitute an Event of Default under the DIP Term Sheet. These milestones were heavily negotiated and required by the DIP Lender as a condition to providing the DIP Facility.

61. The DIP Facility, including the milestones, serves as an important component of this chapter 11 case because it will provide the Debtor with the stability and certainty they need to operate in the ordinary course of business while consummating the proposed sale, subject to identifying higher or better offers. The continued and viable operation of the Debtor’s business would not be possible absent access to the DIP Facility. The DIP Facility, and the Debtor’s ability to achieve the milestones contemplated therein, will prevent interruptions to the Debtor’s operations, preserve the Debtor’s ability to maintain ordinary course relationships with, among other parties in interest, employees, customers, and vendors, satisfy working capital needs in the ordinary course, and enable the Debtor to facilitate the proposed Sale to maximize the value of their estates.

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<sup>4</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request to the Debtor’s proposed counsel.

## **VII. Interim Approval of the DIP Facility**

62. Bankruptcy Rule 4001(b) and (c) provide that a final hearing on a motion to use cash collateral pursuant to Bankruptcy Code section 363 or to obtain credit under Bankruptcy Code section 364 be commenced no earlier than 14 days after the service of such motion. Upon request, however, a court is empowered to conduct a preliminary expedited hearing on the motion and to authorize the use of cash collateral and the obtaining of credit to the extent necessary to avoid immediate and irreparable harm to a debtor's estate.

63. As described in the First Day Declaration, Lansio Declaration, and Mersch Declaration, denial of immediate use of Cash Collateral and access to the DIP Facility will cause immediate and irreparable harm to the value of the Debtor to the detriment of its creditors and other stakeholders. *See* First Day Decl. ¶¶ 18, 49, Lansio Decl. ¶ 21, Mersch Decl. ¶ 15.

64. Accordingly, the Debtor respectfully requests that the Court conduct a preliminary hearing on the Motion and authorize the Debtor from the entry of the Interim Order until the Final Hearing to use Cash Collateral and obtain credit under the terms of the DIP Term Sheet.

## **VIII. Request for a Final Hearing**

65. Pursuant to Bankruptcy Rules 4001(b)(2), the Debtor requests that the Court set a date for the Final Hearing that is no later than twenty-eight (28) days after the entry of the Interim Order and fix the date and time prior to the Final Hearing for parties to file objections to the relief requested by this Motion. The Debtor also requests authority to serve a copy of the signed Interim Order, which fixes the time and date for the filing of objections, if any, to entry of the Final Order, by first class mail upon the notice parties listed below, and further requests that the Court deem service thereof sufficient notice of the hearing on the Final Order under Bankruptcy Rule 4001(c)(2).

**THE REQUIREMENTS OF BANKRUPTCY RULE 6003 ARE SATISFIED**

66. Bankruptcy Rule 6003 empowers the Court to issue an order, within 21 days after the Petition Date, granting a motion to “use . . . property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition” if such requested relief is “needed to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003(a)(2). The Third Circuit has interpreted the language “immediate and irreparable harm” in the context of preliminary injunctions. In that context, the court has instructed that irreparable harm is a continuing harm which cannot be adequately redressed by final relief on the merits and for which money damages cannot provide adequate compensation. *See e.g., Norfolk S. Ry. Co. v. City of Pittsburgh*, 235 Fed. App’x 907, 910 (3d Cir. 2007) (citing *Glasco Hills*, 558 F.2d 179, 181 (3d Cir. 1977)). Furthermore, the harm must be shown to be actual and imminent, not speculative or unsubstantiated. *See, e.g., Acierno v. New Castle Cnty.*, 40 F.3d 645, 653-55 (3d Cir. 1994). For the reasons discussed above, immediate and irreparable harm would result if the relief requested herein were not granted. Accordingly, the Debtor submits that it has satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

**WAIVER OF BANKRUPTCY RULES 6004(a) AND 6004(h)**

67. To the extent Bankruptcy Rule 6004(a) applies, the Debtor respectfully requests a waiver of such notice requirement in order to implement the foregoing requested relief.

68. The Debtor also requests that the Court waive any stay imposed by Bankruptcy Rule 6004(h), 7062, 9014 or otherwise for all of the reasons described above. Again, the relief that the Debtor seeks in this Motion is necessary for the Debtor to operate its businesses without interruption and to preserve value for its estate. Accordingly, the Debtor respectfully requests that the Court waive any stay imposed by the Bankruptcy Rules.

**NOTICE**

69. Notice of this Motion will be provided consistent with Local Rule 9013-1(m) to: (i) the Office of the United States Trustee; (ii) the holders of the twenty (20) largest unsecured claims against the Debtor; (iii) counsel to the Prepetition Lender and the DIP Lender; (iv) the Internal Revenue Service; (v) the United States Attorney's Office for the District of Delaware; (vi) the Securities and Exchange Commission; (vii) the Delaware Secretary of State; (viii) the Delaware State Treasury; (ix) Banc of California; (x) counsel to the plaintiff in the Delaware Action; (xi) all taxing authorities to whom the Debtor has paid or owes taxes or related charges; and (xii) any party that has requested notice pursuant to Bankruptcy Rule 2002. Notice will be provided by the Debtor to all parties who have asserted or could assert a lien on the DIP Collateral. Given the nature of the relief sought, the foregoing notice in the Debtor's good faith belief, is the best available under the circumstances and complies with Local Rule 9013-1(m). The Debtor submits that no further notice is necessary or required under the circumstances.

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**CONCLUSION**

WHEREFORE, the Debtor respectfully requests that the Court enter the Proposed Orders granting the relief requested in this Motion, and such other and further relief as the Court may deem just and appropriate.

Dated: February 10, 2025  
Wilmington, Delaware

**MORRIS, NICHOLS, ARSHT & TUNNELL LLP**

/s/ Jonathan M. Weyand

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*Proposed Counsel to the Debtor and Debtor in Possession*

**EXHIBIT A**

**Proposed Interim Order**

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

In re:

OMEGA THERAPEUTICS, INC.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 25-10211 (BLS)

**Re: D.I. [●]**

**INTERIM ORDER (I) AUTHORIZING THE DEBTOR  
TO (A) OBTAIN POSTPETITION FINANCING AND (B) UTILIZE  
CASH COLLATERAL, (II) GRANTING ADEQUATE PROTECTION TO THE  
PREPETITION LENDER, (III) MODIFYING THE AUTOMATIC STAY, (IV)  
SCHEDULING A FINAL HEARING, AND (V) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”) of the above-referenced debtor, as debtor and debtor in possession (the “Debtor”) in the above-captioned case (the “Case”), pursuant to sections 105, 361, 362, 363, 364, 503 and 507 of title 11 of the United States Code, 11 U.S.C. §§101-1532 (the “Bankruptcy Code”), Rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 2002-1, 4001-2 and 9013-1(m) of the Local Rules for the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), seeking, among other things,

- (a) authorization for the Debtor, pursuant to sections 105, 361, 362, 363, 364, 503 and 507 of the Bankruptcy Code, to (i) use cash collateral, as such term is defined in section 363(a) of the Bankruptcy Code (“Cash Collateral”), and all other Prepetition Collateral (as defined herein), solely in accordance with the terms of this interim order (this “Interim Order”), (ii) use the proceeds of the DIP Facility (as defined herein), solely in accordance with the terms of the DIP Documents, (iii) Roll-Up (as defined herein) the Prepetition Notes Obligations (as defined herein) into DIP Obligations (as defined herein), (iv) to provide adequate protection to the Prepetition Lender (to the extent set forth herein), and (iv) grant related relief;
- (b) authorization for the Debtor (the “DIP Borrower,”) to obtain postpetition financing on a senior secured superpriority basis (the “DIP Facility”) from Pioneering

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<sup>1</sup> The Debtor’s federal tax identification number is: 81-3247585. The mailing address for the Debtor is 140 First Street, Suite 501, Cambridge, MA 02141.

Medicines 08-B, Inc. (the “DIP Lender”), comprised of (i) a new money delayed-draw term loan facility (the “New Money DIP Loans”) in an aggregate principal amount of \$9,820,908 of which (x) \$3,931,953 shall be available to the DIP Borrower within three (3) business days of the entry of this Interim Order, (y) an additional \$2,810,669 shall be available to the DIP Borrower for borrowing solely in accordance with the Budget within three (3) business days of the entry of a final order granting the relief requested in the Motion on a final basis (the “Final Order”) (subject to the terms and conditions set forth in the DIP Documents and the DIP Term Sheet, including the Conditions Precedent), and (z) the remaining \$3,078,286 shall be available to the DIP Borrower within three (3) business days of the entry of an order approving an Acceptable 363 Sale (as defined in the DIP Term Sheet) (subject to the terms and conditions set forth in the DIP Documents and the DIP Term Sheet, including the Conditions Precedent); and (ii) a roll-up (the “Roll-Up”) and together with the New Money DIP Loans, the “DIP Loans”), upon entry of this Interim Order on the chapter 11 docket, by the DIP Lender of the Prepetition Note Obligations equal to the sum of outstanding principal (plus accrued and unpaid interest under the Prepetition Note and any unreimbursed costs, fees, expenses and indemnities in accordance with the Prepetition Note Documents) in the amount of \$1,475,178 plus \$165,000 in fees and expenses, in each case, pursuant to the terms and conditions set forth in this Interim Order, the DIP Budget (as defined herein), and that certain Superpriority DIP Facility Term Sheet executed by the DIP Borrower and the DIP Lender and annexed hereto as **Exhibit 2** (as may be amended, restated, supplemented, waived, or otherwise modified from time to time in accordance with the terms hereof and thereof, the “DIP Term Sheet” and, together with this Interim Order, the Final Order, the DIP Budget, and any other schedules, exhibits, agreements, instruments, pledge agreements, guarantees, security agreements, intellectual property security agreements, control agreements, escrow agreements, instruments, notes, and documents executed in accordance and connection with any of the foregoing; each as amended, restated, supplemented, waived, or otherwise modified from time to time in accordance with the terms hereof and thereof, the “DIP Documents”);

- (c) authorizing the DIP Borrower to incur the principal, interest, fees, costs, expenses, obligations (whether contingent or otherwise), and all other amounts (including, without limitation, all “DIP Obligations” (as defined in the DIP Term Sheet), as and when due and payable under and in accordance with each of the DIP Documents (collectively, the “DIP Obligations”); and
- (d) authorizing the Debtor to enter into the DIP Term Sheet and any other schedules, exhibits, agreements, instruments, pledge agreements, guarantees, security agreements, intellectual property security agreements, control agreements, escrow agreements, instruments, notes, and documents executed in connection with any of the foregoing.

and an interim hearing (the “Interim Hearing”) having been held by the Court on [\_\_\_\_\_],

2025 at [\_\_\_] [\_\_].m.; and a final hearing (the “Final Hearing”) having been scheduled by the Court for [\_\_\_], 2025 at [\_\_\_] [\_\_].m. pursuant to Bankruptcy Rule 4001 and Local Rule 4001-2, and notice of the Motion and the relief sought therein having been given by the Debtor as set forth in this Interim Order; and the Court having considered the evidence adduced, and the statements of counsel at the Interim Hearing; and it appearing to the Court that granting the relief sought in the Motion on the terms and conditions herein contained is necessary and essential to enable the Debtor to preserve the value of the Debtor’s business and assets and that such relief is fair and reasonable and that entry of this Interim Order is in the best interest of the Debtor and its estate and creditors; and due deliberation and good cause having been shown to grant the relief sought in the Motion,

**IT IS HEREBY FOUND AND DETERMINED THAT:**

A. **Petition Date.** On February 10, 2025 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware. The Debtor has continued with the management and operation of its business and properties as a debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Case. To date, the office of the U.S. Trustee (as hereinafter defined) has not appointed an official committee of unsecured creditors in the Case or any other committee (if any, the “Committee”).

B. **Jurisdiction and Venue.** Consideration of the Motion constitutes a “core proceeding” as defined in 28 U.S.C. § 157(b)(2). This Court has jurisdiction over the Case, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. § 1334. Venue for the Case and the proceedings on the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

C. **Prepetition Secured Promissory Note.** Prior to the Petition Date, the Prepetition Lender (as defined below) made certain loans and advances pursuant to and in accordance with the terms and conditions of that certain Secured Promissory Note, dated as of February 3, 2025 (as heretofore amended, restated, or otherwise modified from time to time, the “Prepetition Note,” and together the Prepetition Note, this Interim Order, the Final Order, and any other related agreements, schedules, exhibits, security agreements, pledge agreements or other documents entered into in connection therewith, the “Prepetition Note Documents”), among the Debtor, as the borrower, and Pioneering Medicines 080-B, Inc. (the “Prepetition Lender”).

D. **Debtor’s Admissions With Respect to the Prepetition Note Obligations.** Subject only to the rights of parties in interest specifically set forth in paragraph 26 of this Interim Order (and subject to the limitations thereon contained in such paragraph), the Debtor admits, stipulates and agrees that:

- i. As of the Petition Date, the Debtor, was justly and lawfully indebted and liable, without defense, counterclaim, or offset of any kind, to the Prepetition Lender in the aggregate principal amount of approximately \$1,475,178.00 plus any accrued interest accruing from and after February 3, 2025, fees, other costs, expenses, indemnities, and charges owing in respect of, such amounts, and any and all obligations and liabilities, contingent or otherwise, outstanding in accordance with the Prepetition Note Documents, and other amounts that may be due and payable thereunder (collectively, the “Prepetition Note Obligations”).
- ii. The Prepetition Note Obligations constitutes the legal, valid, and binding obligations of the Debtor, enforceable in accordance with its terms (other than in respect of the stay of enforcement arising under section 362 of the Bankruptcy Code), without objection, offset, defense, or counterclaim of any kind or nature to the Prepetition Note Obligations.
- iii. The Debtor does not have, nor shall it assert, any claim, counterclaim, setoff, or defense of any kind, nature, or description that would in any way affect the validity, enforceability, and non-avoidability of any of the Prepetition Note Obligations.
- iv. The Prepetition Note Obligations and any amounts previously paid to any Prepetition Lender pursuant to the terms of the Prepetition Note, on account thereof, or with respect thereto are not subject to avoidance,

reduction, disallowance, impairment, recharacterization, or subordination pursuant to the Bankruptcy Code or any other applicable non-bankruptcy law, except as provided in the Prepetition Note or this Interim Order.

**E. Debtor's Admissions With Respect to Collateral and Liens.** Subject only to the rights of parties in interest specifically set forth in paragraph 26 of this Interim Order (and subject to the limitations thereon contained in such paragraph), the Debtor admits, stipulates and agrees that:

- i. Pursuant to (i) Article IV of the Prepetition Note (entitled "Security") and the UCC-1 financing statement filed February 3, 2025 by and between the Debtor and the Prepetition Lender (collectively, the "Prepetition First Lien Security Documents"), the Debtor granted valid, continuing, binding, enforceable and perfected first priority liens on substantially all assets of the Debtor (the "Prepetition Collateral") to and/or for the benefit of the Prepetition Lender (the "Prepetition Liens"), subject only to certain permitted prior liens (as set forth in the Prepetition Note Documents).
- ii. The Prepetition Note Documents are valid and binding agreements and obligations of the Debtor, and the Prepetition Liens constitute valid, binding, enforceable, and perfected first priority security interests and Liens (as that term is defined in the Prepetition Note), which are not subject to avoidance, recharacterization, recovery, reduction, disallowance, impairment, or subordination pursuant to the Bankruptcy Code or any other applicable non-bankruptcy law, except as provided in this Interim Order.
- iii. The Prepetition Lender has properly perfected its security interests and Prepetition Liens in and on the Prepetition Collateral by taking possession of, or obtaining control over, certain assets, and/or by filing UCC-1 financing statements, mortgages, or other required documents against the Debtor and such Prepetition Collateral in the proper state or county offices for the perfection of such security interests and Prepetition Liens.

**F. Debtor's Admissions With Respect to Cash Collateral.** Subject only to the rights of parties in interest specifically set forth in paragraph 26 of this Interim Order (and subject to the limitations thereon contained in such paragraph), the Debtor admits, stipulates and agrees that all of the Debtor's cash, including all cash proceeds of the Prepetition Collateral, the Debtor's

banking, checking or other deposit accounts with financial institutions as of the Petition Date or deposited into the Debtor's banking, checking or other deposit accounts with financial institutions after the Petition Date that is property of the Debtor constitutes Cash Collateral of the Prepetition Lender within the meaning of section 363(a) of the Bankruptcy Code. The Prepetition Lender is entitled, pursuant to sections 105, 361, 362 and 363(e) of the Bankruptcy Code, to adequate protection of its interests in the Prepetition Collateral, including the Cash Collateral, solely to the extent of any Collateral Diminution (as defined herein).

G. **Releases; Investigation.** The Debtor hereby forever waives and releases any and all Claims (as defined in section 101(5) of the Bankruptcy Code), counterclaims, causes of action, defenses or setoff rights against the Prepetition Lender (solely in its capacity as such) arising prior to the date of the entry of this Interim Order, whether arising at law or in equity, including any recharacterization, subordination, avoidance or other claim arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code or under any other similar provisions of applicable state or federal law. Subject to paragraph 26 of this Interim Order, (and subject to the limitations contained in such paragraph), the foregoing release shall be binding on the Debtor's estate, the Committee, if any, all parties-in-interest, and any successor-in-interest to any Debtor or the Debtor's estate, including, but not limited to any chapter 7 or chapter 11 trustee or examiner.

H. **Corporate Authority.** Subject to entry of this Interim Order, the DIP Borrower has all requisite power and authority to execute and deliver the DIP Documents to which it is a party and to perform its obligations thereunder.

I. **Need for Postpetition Financing and Use of Cash Collateral.** The Debtor has requested entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2) and Local Rule 4001-2 and has an immediate need to enter into the DIP Facility and obtain use of the Prepetition

Collateral, including the Cash Collateral (in the amount and in the manner set forth in the DIP Budget and this Interim Order) in order to, among other things, preserve and maintain the value of its assets and business and maximize the return to all creditors. An immediate and critical need exists for the Debtor to use the Cash Collateral, in accordance with a DIP Budget and this Interim Order, for working capital purposes, to pay costs and fees under the DIP Facility and this Interim Order, for other general corporate purposes, and the satisfaction of costs and expenses of administering the Case. The ability of the Debtor to obtain liquidity through the use of the proceeds of the DIP Facility and the Cash Collateral is vital to the Debtor and its efforts to maximize the value of its assets. Absent entry of this Interim Order, the Debtor's estate and reorganization efforts will be immediately and irreparably harmed. The terms of the proposed DIP Facility pursuant to the DIP Documents and this Interim Order are fair and reasonable, reflect the Debtor's exercise of its prudent business judgment, and are supported by reasonably equivalent value and fair consideration.

J. **No Credit Available on More Favorable Terms.** The Debtor has been unable to obtain financing and other financial accommodations from sources other than the DIP Lender on terms more favorable than those provided under the DIP Facility and the DIP Documents. The Debtor has been unable to obtain adequate unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code. The Debtor also has been unable to obtain adequate credit for money borrowed (a) having priority over administrative expenses of the kind specified in sections 503(b), 507(a), and 507(b) of the Bankruptcy Code or (b) secured only by a lien on property of the Debtor and its estate that is not otherwise subject to a lien. Postpetition financing is not otherwise available without granting the DIP Lender, (1) the DIP Liens on all DIP Collateral, as and to the extent set forth herein, (2) the DIP Superpriority Claims

(as defined below), and (3) the other protections set forth in this Interim Order. After considering all alternatives, the Debtor has properly concluded, in the exercise of its sound business judgment, that the DIP Facility represents the best financing available to it at this time, and is in the best interests of all of its stakeholders.

K. **Roll-Up.** The Roll-Up shall be authorized as compensation for, in consideration for, and solely on account of, the agreement of the Prepetition Lender to fund amounts and provide other consideration to the Debtor under the DIP Facility and Prepetition Note Obligations, which provided the Debtor with the necessary liquidity to prepare for and file this Case and run a value-maximizing sale process. The Prepetition Lender would not otherwise consent to the use of their Cash Collateral and the DIP Lender would not be willing to provide the DIP Facility or extend credit to the Debtor thereunder, without the inclusion of the Roll-Up. The Roll-Up of the Prepetition Note Obligations into DIP Obligations will enable the Debtor to obtain urgently needed financing to administer the Case to fund its operations and maximize value for all parties in interest.

L. **Use of Proceeds of the DIP Facility and Cash Collateral.** As a condition to entry into the DIP Documents, the extension of credit and other financial accommodations made under the DIP Facility and the consent to use Cash Collateral (including, without limitation, the proceeds of the DIP Facility), the Debtor, the DIP Lender, and the Prepetition Lender have agreed that Cash Collateral, the proceeds of the DIP Facility, and all other cash or funds of the Debtor, shall be used solely in accordance with the terms and conditions of this Interim Order and the DIP Documents, and only for the expenditures set forth in and solely in accordance with the DIP Budget (subject to Permitted Variances pursuant to paragraph 7 of this Interim Order), and for no other purpose.

M. **Business Judgment and Good Faith Pursuant to Section 364(e).** Based on the Motion, the First Day Declaration, and the record presented to the Court at the Interim Hearing, (i) the extension of credit and other financial accommodations made under the DIP Facility and the DIP Documents, (ii) the terms of the DIP Facility, (iii) the fees and other amounts paid and to be paid thereunder, (iv) the terms of adequate protection granted to the Prepetition Lender, (v) the terms on which the Debtor may continue to use Prepetition Collateral (including Cash Collateral), and (vi) the Cash Collateral arrangements described therein and herein, in each case, pursuant to this Interim Order and the DIP Documents: (a) are fair, reasonable, and the best available to the Debtor under the circumstances; (b) reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties; (c) are supported by reasonably equivalent value and fair consideration; and (d) represent the best financing available under the circumstances. The DIP Facility and the use of Prepetition Collateral (including Cash Collateral) were negotiated in good faith and at arm's length among the Debtor, the DIP Lender, and the Prepetition Lender. The use of Prepetition Collateral (including Cash Collateral) and the credit to be extended under the DIP Facility shall be deemed to have been so allowed, advanced, made, used, and/or extended in good faith, and for valid business purposes and uses, within the meaning of section 364(e) of the Bankruptcy Code, and the DIP Lender and the Prepetition Lender are therefore entitled to the protections and benefits of section 364(e) of the Bankruptcy Code and this Interim Order.

N. **Notice.** Notice of the requested relief sought at the Interim Hearing was provided by the Debtor consistent with Local Rule 9013-1(m) to: (i) the Office of the United States Trustee; (ii) the holders of the twenty (20) largest unsecured claims against the Debtor; (iii) counsel to the Prepetition Lender and the DIP Lender; (iv) the Internal Revenue Service; (v) the United States

Attorney's Office for the District of Delaware; (vi) the Securities and Exchange Commission; (vii) the Delaware Secretary of State; (viii) the Delaware State Treasury; (ix) Bank of California; (x) counsel to the plaintiff in the Delaware Action; (xi) all taxing authorities to whom the Debtor has paid or owes taxes or related charges; and (xii) any party that has requested notice pursuant to Bankruptcy Rule 2002. Notice was provided by the Debtor to all parties who have asserted or could assert a lien on the DIP Collateral. Given the nature of the relief sought, the foregoing notice of the Interim Hearing was, in the Debtor's good faith belief, the best available under the circumstances and complies with Local Rule 9013-1(m). No further notice of, or hearing on, the relief sought at the Interim Hearing and the relief granted herein is necessary or required.

I. **Consent by Prepetition Lender.** The Prepetition Lender consents to the Debtor's use of Cash Collateral and the entry into the DIP Facility and the DIP Documents, solely in accordance with and subject to the terms and conditions provided for in this Interim Order and the DIP Term Sheet.

**NOW, THEREFORE, UPON THE RECORD OF THE PROCEEDINGS HERETOFORE HELD BEFORE THIS COURT WITH RESPECT TO THE MOTION, THE EVIDENCE ADDUCED AT THE INTERIM HEARING, AND THE STATEMENTS OF COUNSEL THEREAT, IT IS HEREBY ORDERED THAT:**

1. **Motion Granted.** The Motion is granted as set forth herein. Any objections to the Motion with respect to the entry of this Interim Order that have not been withdrawn, waived or settled and all reservations of rights included therein, are hereby denied and overruled with prejudice.

2. **Final Hearing.** A final hearing on the relief requested in the Motion shall be held on [\_\_\_], 2025, at [\_\_\_] [\_\_].m. (prevailing Eastern Time). Any party in interest objecting to the relief sought at the Final Hearing shall file written objections no later than [\_\_\_\_], 2025 at 5:00 p.m. (prevailing Eastern Time).

3. **Authorization of DIP Facility.**

(a) Subject to the terms and conditions of this Interim Order, the DIP Borrower is hereby authorized to execute, enter into, guarantee (as applicable), and perform all obligations under the DIP Facility and the DIP Documents to which it is party. The DIP Documents and this Interim Order govern the financial and credit accommodations to be provided to the DIP Borrower by the DIP Lender in connection with the DIP Facility.

(b) The DIP Documents are hereby approved and binding upon and enforceable against the Debtor and the Debtor's estate.

(c) From the entry of this Interim Order through the entry of the Final Order, the DIP Borrower is authorized to incur and unconditionally guarantee, all of its DIP Obligations on account of such incurrence under the DIP Facility, up to an aggregate principal amount of \$3,931,953 in New Money DIP Loans on an interim basis, together with applicable interest, protective advances, expenses, fees, and other charges payable in connection with the DIP Facility (the "Interim Financing"), as applicable, in each case, subject to the terms and conditions set forth in this Interim Order and the DIP Documents.

(d) Without limiting the foregoing, and without the need for further approval of this Court, the DIP Borrower is authorized to perform all acts to make, execute, and deliver all instruments and documents (including, without limitation, the execution or recordation of pledge and security agreements, mortgages or deeds of trust, and financing statements), and to pay all fees or expenses that may be required, necessary, or desirable for the DIP Borrower to implement the terms of, performance of its obligations under, or effectuate the purposes of and transactions contemplated by this Interim Order, the DIP Facility, and the DIP Documents (as applicable) in accordance herewith and therewith, including, without limitation:

(1) the execution and delivery of, and performance under, the DIP Documents;

(2) the execution and delivery of, and performance under, one or more amendments, waivers, consents, or other modifications to and under the DIP Documents, in each case, as the DIP Borrower and the DIP Lender (in accordance with and subject to the terms of the applicable DIP Documents) may agree, it being understood that no further approval of the Court shall be required for non-material authorizations, amendments, waivers, consents, or other modifications to and under the DIP Documents (and any fees and other expenses (including any attorneys', accountants', appraisers', and financial advisors' fees), amounts, charges, costs, indemnities, and other obligations paid in accordance and connection therewith);

(3) the non-refundable and irrevocable payment of any and all fees, costs, and expenses payable pursuant to the DIP Documents, including, without limitation, (a) the Lending Fee (as defined in the DIP Term Sheet), any closing fees, upfront fee, exit fee, prepayment fee, servicing fees, audit fees, appraisal fees, servicing fees, liquidator fees, agency fees, prepayment premiums, or similar amounts (which fees, in each case, shall be, and shall be deemed to have been, approved upon entry of this Interim Order, and which fees shall not be subject to any challenge, contest, attack, rejection, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance, or other claim, cause of action, or other challenge of any nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise) and any amounts due (or that may become due) in respect of the indemnification obligations, in each case referred to in the DIP Documents, and (b) the reasonable and documented invoiced out-of-pocket fees, costs, and expenses as may be due from time to time of the DIP Lender, including, without limitation, the reasonable and documented fees and expenses of the following professionals (whether or not such fees arose before or after the Petition Date, and whether or not the transactions contemplated hereby are consummated): Goodwin Procter LLP and Potter Anderson & Corroon LLP, as counsel to the DIP Lender, in each case, without the need to file retention or fee applications, and without the need to provide notice to any party or obtain further Court approval;

(4) subject to the Carve Out (as defined below), the granting and perfection of the DIP Liens (as set forth herein), and the granting of the DIP Superpriority Claims, in each case, as set forth herein and in the DIP Documents; and

(5) the performance of all other acts necessary, required, or desirable to implement the DIP Facility and to facilitate the transactions contemplated by the DIP Documents and this Interim Order in accordance therewith and herewith.

(e) The DIP Lender shall not have any obligation or responsibility to monitor the DIP Borrower's use of the DIP Facility, and the DIP Lender may rely upon the DIP Borrower's representations that the amount of the DIP Facility requested at any time and the use thereof are in

accordance with the requirements of this Interim Order, the DIP Documents, and Bankruptcy Rule 4001(c)(2).

4. **DIP Obligations.** Upon entry of this Interim Order and execution and delivery of the DIP Documents, the DIP Documents shall constitute valid, binding, enforceable, and non-avoidable obligations of the DIP Borrower, and shall be fully enforceable against the DIP Borrower, its estate, and any successors thereto, including, without limitation, any estate representative or trustee appointed in the Case, or in any other proceedings superseding or relating to any of the foregoing and/or upon the dismissal of the Case (collectively, the “Successor Case”), and its creditors and other parties in interest, in each case, in accordance with the terms thereof and this Interim Order. Upon execution and delivery of the DIP Documents, the DIP Obligations will include all loans and any other indebtedness or obligations, contingent or absolute, now existing or hereafter arising, which may from time to time be or become owing by the DIP Borrower to the DIP Lender, under, or secured by, and in accordance with, the DIP Documents or this Interim Order, including all principal, interest, costs, fees, expenses, and other amounts under the DIP Documents (including this Interim Order). Subject to the Carve Out and paragraph 15 of this Interim Order, the DIP Obligations shall be due and payable in full in cash, without notice or demand, and the use of Cash Collateral shall automatically cease: (a) during the continuation of a DIP Termination Event (as defined herein) or the occurrence and continuance of any event or condition set forth in paragraph 15 of this Interim Order; or (b) immediately upon the closing of a sale to any party or entity other than the DIP Lender (or another entity designated as purchaser by the DIP Lender). No obligation, payment, transfer, or grant of security under the DIP Documents or this Interim Order to the DIP Lender shall be stayed, restrained, voidable, or recoverable under the Bankruptcy Code or under any applicable law (including, without

limitation, under sections 362, 502(d), 544, 548, or 549 of the Bankruptcy Code, any applicable Uniform Voidable Transfer Act, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or other similar state statute or common law), or subject to any defense, reduction, recoupment, recharacterization, subordination, disallowance, impairment, cross-claim, claim, counterclaim, offset, or any other challenge under the Bankruptcy Code or any applicable law unless in accordance with paragraph 15 of this Interim Order. Any of the Debtor's excess cash remaining from the proceeds of the Prepetition Note or DIP Loans after satisfaction of the payments authorized to be funded by the DIP Budget, shall be subject in all respect to the DIP Liens, the Administrative Adequate Protection Liens, and the Prepetition Liens to repay the DIP Obligations until the DIP Lender is indefeasibly paid in full in cash.

5. **No Obligation to Extend Credit.** The DIP Lender shall have no obligation to make any loan or advance under the applicable DIP Documents unless all of the conditions precedent to the making of such extension of credit by the DIP Lender under the DIP Documents and this Interim Order have been satisfied in full or waived in accordance with the terms of the DIP Documents.

6. **DIP Liens.**

(a) As security for the DIP Obligations, effective immediately upon the date of this Interim Order, as set forth more fully in this Interim Order, the DIP Lender is hereby granted (without the necessity of the execution by the DIP Borrower or the filing or recordation of mortgages, security agreements, lockbox or control agreements, financing statements, or any other instruments or otherwise by the DIP Lender) valid, binding, enforceable, non-avoidable, and automatically and properly perfected liens and security interests (collectively, the "DIP Liens"), in the property and interests identified in clauses (i-iii) below (collectively, the "DIP Collateral"),

as collateral security for the prompt and complete performance and payment when due (whether at the stated maturity, by acceleration or otherwise) of all DIP Obligations:

(i) *Priming DIP Liens.* Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, perfected, first priority, senior priming lien upon all assets and property of the DIP Borrower and its estate of any kind or nature whatsoever, real or personal, tangible or intangible, now owned or hereafter acquired, whether arising before or after the Petition Date, including, without limitation, all Prepetition Collateral, all “DIP Collateral” as defined in the DIP Term Sheet, all contracts, contract rights, licenses (including IP Licenses), general intangibles, instruments, equipment, accounts, documents, goods, inventory, fixtures, documents, cash, cash equivalents, chattel paper, letters of credit and letter of credit rights, investment property, money, insurance policies and proceeds thereof, receivables, deposits, refunds, receivables records, deposit accounts, collateral support, supporting obligations and instruments, all interests in leaseholds and real properties, all intellectual property, all patents, copyrights, trademarks (but excluding trademark applications filed in the United States Patent and Trademark Office on the basis of the applicant’s intent-to-use such trademark unless and until evidence of use of the trademark has been filed with, and accepted by, the United States Patent and Trademark Office pursuant to Section 1(c) or Section 1(d) of the Lanham Act (15 U.S.C. §1051, et seq.)), trade names and other intellectual property (whether such intellectual property is registered in the United States or in any foreign jurisdiction), records and data, know-how and other proprietary information and materials, all equity interests (to be limited to the extent of any adverse tax consequences, as reasonably determined by the DIP Lender and the DIP Borrower, and limitations imposed by applicable law), all books and records relating to the foregoing, all other personal and real property of the DIP Borrower (but excluding any property subject to a purchase money lien, capital lease or similar arrangement permitted under the DIP Documents to the extent the creation of a security interest therein is prohibited thereby or creates a right of termination in favor of any other party thereto or otherwise requires third party consent thereunder), claims and causes of action (whether asserted or unasserted), including commercial tort claims (other than Derivative Actions)<sup>2</sup>, the Derivative Actions (subject to entry of the Final Order), actions under sections 544, 545, 547, 548 and 550 of the Bankruptcy Code (the “Avoidance Actions”) and any proceeds from any such Avoidance Actions (subject to entry of the Final Order), and all proceeds, products, accessions, rents and profits of or in respect of any of the foregoing (in each case as the foregoing are defined in the Uniform Commercial Code as in effect from time to time in the State of New York (and, if defined in more than one Article of such Uniform Commercial Code, shall have the meaning given in Article 9 thereof)), subject and subordinate only to (a) the Administrative Adequate Protection

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<sup>2</sup> “Derivative Action” means the Delaware Action and all actions, causes of actions, or claims of the DIP Borrower arising under any legal theory against any current or former officers and directors or shareholders of the DIP Borrower, in each case, in existence on or arising after the Petition Date.

“Delaware Action” means the proceeding commenced by Joel Newman, derivatively on behalf of nominal defendant Omega Therapeutics, Inc. before the Court of Chancery of the State of Delaware, Case No. 2024-0636-PAF.

Liens (as defined below, solely to the extent such liens are expressly permitted to be senior to the respective DIP Liens under the DIP Documents), (b) the Permitted Prior Liens, and (c) the Carve Out;

(ii) *Liens on Unencumbered Property.* Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, enforceable, fully-perfected first-priority security interest in and lien upon all of the DIP Borrower's right, title, and interest in, to, and under any DIP Collateral that as of the Petition Date is unencumbered or not otherwise subject to valid, perfected, and non-avoidable liens, subject and subordinate only to (a) the Administrative Adequate Protection Liens (solely to the extent such liens are expressly permitted to be senior to the respective DIP Liens under the DIP Documents) and (b) the Carve Out; (all of the foregoing property, collectively, the "Unencumbered Property"); and

(iii) Pursuant to section 364(c)(3) of the Bankruptcy Code, a perfected junior lien, on all DIP Collateral that is subject to valid, perfected, and non-avoidable liens in existence as of the Petition Date or subject to valid and no-avoidable liens in existence as of the Petition Date that are perfected subsequent to such commencement as permitted by section 546(b) of the Bankruptcy Code.

(b) Except as set forth in paragraph 6(a) of this Interim Order, the DIP Liens (i) shall not be made subject to or *pari passu* with (A) any lien or security interest heretofore or hereinafter granted in the Case or any Successor Case, and shall be valid and enforceable against the DIP Borrower, its estate, any trustee, or any other estate representative appointed or elected in the Case or any Successor Case and/or upon the dismissal of the Case or any Successor Case, (B) any lien that is avoided and preserved for the benefit of the DIP Borrower and its estate under section 551 of the Bankruptcy Code or otherwise, or (C) any intercompany or affiliate lien, and (ii) shall not be subject to sections 506(c) (subject to and pending entry of the Final Order), 510, 549, 550, or 551 of the Bankruptcy Code.

(c) Any provision of any lease, loan document, easement, use agreement, proffer, covenant, license, contract, organizational document, or other instrument or agreement that requires the consent, or the payment of any fees or obligations to, any governmental entity or non-governmental entity in order for the DIP Borrower to pledge, grant, mortgage, sell, assign, or otherwise transfer any fee or leasehold interest in any property or the proceeds thereof, is and shall

hereby be deemed to be inconsistent with the provisions of the Bankruptcy Code, and shall have no force or effect with respect to the DIP Liens or Administrative Adequate Protection Liens on such leasehold interests or other applicable DIP Collateral or the proceeds of any assignment and/or sale thereof by the DIP Borrower, in favor of the DIP Lender or the Prepetition Lender in accordance with the terms of the DIP Documents and this Interim Order.

(d) **DIP Superpriority Claims.** Effective immediately upon entry of this Interim Order, the DIP Lender is hereby granted, pursuant to section 364(c)(1) and 364(e) of the Bankruptcy Code, an allowed superpriority administrative expense claim in the DIP Borrower's Case and any Successor Case thereof on account of the DIP Obligations, with priority over any and all administrative expenses of the kind that are specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 364(c)(1), 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 1113, 1114, or any other provisions of the Bankruptcy Code and any other claims against the DIP Borrower (the "DIP Superpriority Claims"). The DIP Superpriority Claims shall, for purposes of section 1129(a)(9)(A) of the Bankruptcy Code, be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code. The DIP Superpriority Claims shall have recourse against the DIP Borrower.

(e) **DIP Roll-Up Amounts.** Upon entry of the Interim Order, subject to the right of any party in interest to commence a Challenge pursuant to paragraph 26 hereof, the Prepetition Note Obligations in an aggregate amount of the Roll-Up shall be automatically deemed funded pursuant to the DIP Term Sheet on a cashless basis and shall constitute DIP Obligations, without any further action by the Debtor or any other party, and shall satisfy and discharge an equal amount of Prepetition Note Obligations as if a payment in such amount had been made under the Prepetition Note Documents on such date, as applicable. The outstanding aggregate amount

of the Prepetition Note Obligations shall be automatically and irrevocably deemed reduced by the Roll-Up. To the extent the Roll-Up is subsequently invalidated for any reason, the Prepetition Note Obligations, and any adequate protection pursuant to paragraphs 8 through 10 herein, shall be revived retroactively as of the Petition Date and continue as if any Prepetition Liens and Prepetition Note Obligations were still in effect as of the Petition Date and the Prepetition Lender's security interests, rights, powers and remedies under the Prepetition Note Documents shall continue in full force and effect, subject only to the rights of parties in interest specifically set forth in paragraph 26 of this Interim Order.

**7. Authorization to Use Proceeds of the DIP Facility and Cash Collateral;**

**DIP Budget Testing.**

(a) Subject to the terms and conditions of this Interim Order, the Court hereby authorizes the DIP Borrower's use of Cash Collateral and the proceeds of the DIP Facility for the period beginning as of the first day of the first full week following the week of the Petition Date and ending the last day of that first week (the "First Testing Period"), solely and exclusively in a manner consistent with the DIP Term Sheet, this Interim Order and the DIP Budget.

(b) As used in this Interim Order: "DIP Budget" means the budget that attached as **Exhibit 1** (as may be modified from time to time with the prior written consent of DIP Lender in its sole discretion).

(c) Beginning on the first Friday following the conclusion of the First Testing Period (the "First Variance Testing Date") and continuing thereafter on each week following the anniversary of the First Variance Testing Date (each such date, a "Variance Testing Date"), in each case on or before 5:00 p.m. prevailing Eastern Time on such Variance Testing Date, the DIP Borrower will provide to the DIP Lender a variance report tested for the preceding week period then ended as of the immediately preceding Friday (each such period, a "Testing Period" and each such report, a "Variance Report"), satisfactory to the DIP Lender in its sole and absolute discretion, detailing the following each on a single, line item basis: (i) a comparison of the actual and budgeted line item disbursements and line item receipts of the DIP Borrower during the applicable Testing Period; (ii) any variance (whether positive or negative, expressed as a percentage) between the aggregate disbursements made during such Testing Period by the DIP Borrower against the aggregate disbursements for the Testing Period as set forth in the DIP Budget applicable to such Testing Period that will include an explanation of any variance greater than 5.0%; and (iii) any variance (whether positive or negative, expressed as a percentage) between the aggregate receipts received during such Testing Period by the DIP Borrower against

the aggregate receipts for the Testing Period as set forth in the DIP Budget applicable to such Testing Period that will include an explanation of any variance greater than 5.0%, in each case of the foregoing clauses, with a detailed explanation of any such variance in form, substance and detail satisfactory to the DIP Lender in its reasonable discretion.

(d) As of any applicable Variance Testing Date, for the Testing Period ending on the Friday preceding such Variance Testing Date, the DIP Borrower shall not allow the Operating Disbursements (as set forth in the DIP Budget) to vary from the DIP Budget on a cumulative basis during the relevant Testing Period by more than 10.0% (adverse to the Debtor) (the “Permitted Operating Disbursements Variance”) *provided* that as of any applicable Variance Testing Date, the Budgeted Professional Expenses (as defined below) of each such professional shall not vary from the DIP Budget on a single-line item basis by more than 5.0% (the “Permitted Professional Fees Variance” and, together with the Operating Disbursements Variance, the “Permitted Variances”), *provided, further* that for purposes of testing the Permitted Professional Fees Variance, any Budgeted Professional Expenses unused during any Testing Period shall be rolled into the following Testing Period. Additional variances, if any, from the DIP Budget, and any proposed changes to the DIP Budget, shall be subject to the written consent of the DIP Lender in its sole and absolute discretion. The DIP Borrower shall be deemed in compliance with the DIP Budget unless, as of any Variance Testing Date, (i) the Operating Disbursements vary from the DIP Budget by more than the Permitted Operating Disbursements Variance during the Testing Period; and (ii) the Budgeted Professional Expenses vary from the DIP Budget on a line-item basis by more than the applicable Permitted Professional Fees Variance during the Testing Period (after taking into account the rolling of unused fees to the extent permitted hereunder). The DIP Borrower’s failure to comply with the DIP Budget subject to the Permitted Variances will constitute an Event of Default as defined in the DIP Documents.

8. **Adequate Protection for the Prepetition Lender.** In addition to all the existing security interests and liens granted to or for the benefit of the Prepetition Lender in and with respect to their respective Prepetition Collateral, including the Cash Collateral, as adequate protection for, and to secure payment of an amount equal to, the Collateral Diminution (as defined herein), and as an inducement to the Prepetition Lender to permit the Debtor’s use of the Cash Collateral as provided for in this Interim Order, the Debtor hereby grants the following adequate protection:

(a) **Administrative Adequate Protection Liens.** Pursuant to sections 361(2) and 363(c)(2) of the Bankruptcy Code, and subject in all cases to the Carve Out, effective as of the Petition Date and in each case perfected without the necessity of the execution by the Debtor (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, or by possession or control, the

Prepetition Lender is hereby granted to secure payment of the Administrative Adequate Protection Claims (defined below), a valid, binding, continuing, enforceable, fully-perfected first priority senior (except as otherwise provided in this paragraph 8(a) below with respect to the Permitted Prior Liens) security interest in and lien on (all such liens and security interests, the “Administrative Adequate Protection Liens”) the Prepetition Collateral and DIP Collateral, and all other of the Debtor’s now owned and hereafter-acquired real and personal property, assets and rights of any kind or nature, wherever located, subject only to valid, perfected, unavoidable, and enforceable (i) prepetition liens (if any) which are senior to the Prepetition Lender’s liens or security interests as of the Petition Date, (ii) prepetition claims for set off and recoupment (if any) which are senior to the Prepetition Lender’s liens or security interests as of the Petition Date, and (iii) liens in existence immediately prior to the Petition Date that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code and that are senior to the Prepetition Lender’s liens or security interests as of the Petition Date and that are permitted under the Prepetition Note (the liens and claims in clauses (i), (ii), and (iii) above respectively, the “Permitted Prior Liens”), in which case the Administrative Adequate Protection Liens shall be immediately junior in priority to such Permitted Prior Liens.

(b) **Administrative Adequate Protection Claims.** Effective as of the Petition Date, an allowed administrative expense claim for the Prepetition Lender is hereby granted, for the benefit of the Prepetition Lender, in the amount of any Collateral Diminution arising pursuant to section 507(b) of the Bankruptcy Code against the Debtor with priority over all other administrative claims in the Case (subject only to the Carve Out), including all claims of the kind specified under sections 503(b) of the Bankruptcy Code (the “Administrative Adequate Protection Claims”), which claims shall have recourse to and be payable from all prepetition and postpetition property of the Debtor, excluding the Carve Out, and including, without limitation, subject to entry of a Final Order, the proceeds or property recovered in respect of any Avoidance Actions. For avoidance of doubt, the Administrative Adequate Protection Claims shall include amounts due to the Prepetition Lender for all out-of-pocket expenses (including fees and expenses of Goodwin Procter LLP and Potter Anderson & Corroon LLP, as counsel to the DIP Lender) and other legal expenses and settlement costs. Subject to paragraph 6(e), the grant of the Administrative Adequate Protection Liens and Administrative Adequate Protection Claims shall be of no force and effect in the event the Prepetition Note Obligations are indefeasibly satisfied in full by the Roll-Up or the Prepetition Liens are invalidated for any reason, including without limitation, by a Challenge as set forth in paragraph 26 of this Interim Order.

9. **Collateral Diminution.** For purposes of this Interim Order, “Collateral Diminution” shall mean an amount equal to the diminution from and after the Petition Date of the value as of the Petition Date of the Prepetition Lender’s interests in the Prepetition Collateral upon which the Prepetition Lender has a valid, perfected, enforceable and non-avoidable liens or security interests, resulting from the use, sale, or lease of the Prepetition Collateral, including Cash Collateral (whether in accordance with the terms and conditions of this Interim Order or

otherwise), or the imposition of the automatic stay. Cash payments made to the Prepetition Lender pursuant to the Interim Order shall reduce the Collateral Diminution on a dollar-for-dollar basis. For the avoidance of doubt, the rights of all parties in interest, including any Committee, concerning whether Collateral Diminution has occurred and the extent and/or amount of such Collateral Diminution, are hereby expressly reserved.

**10. Priority of Administrative Adequate Protection Liens and Administrative Adequate Protection Claims.** Except for (i) the Carve Out and (ii) as otherwise provided in paragraph 8 of this Interim Order, the Administrative Adequate Protection Liens and Administrative Adequate Protection Claims, if any, granted to the Prepetition Lender pursuant to paragraph 8 of this Interim Order shall not be subject or junior to any lien or security interest that is avoided and preserved for the benefit of the Debtor's estate under section 551 of the Bankruptcy Code and shall not be subordinated to or made *pari passu* with any lien, security interest or administrative claim under section 364 of the Bankruptcy Code or otherwise.

**11. Carve Out.**

(a) As used in this Interim Order the "Carve Out" means the sum, without duplication, of the following: (I) (a) all fees of the DIP Borrower required to be paid to the Clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate; (b) all reasonable fees and expenses up to \$75,000 incurred by a trustee under section 726(b) of the Bankruptcy Code; and (c) unpaid allowed professional fees, costs and disbursements ("Professional Fees") incurred by the DIP Borrower and any Committee appointed in the Case, in each case not to exceed the line item amounts set forth in the applicable lines of the DIP Budget for each such professional as of the delivery of the Carve Out Trigger Notice at any time before or on the first business day following

delivery by the DIP Lender of a Carve Out Trigger Notice (as defined below), whether allowed by the Bankruptcy Court prior to or after delivery of a Carve Out Trigger Notice (as defined below), and (II) after the delivery of a Carve Out Trigger Notice, allowed Professional Fees in an aggregate amount not to exceed \$125,000, in each case, incurred after the first business day following delivery by the DIP Lender of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the “Post-Carve Out Trigger Notice Cap”). For purposes of the foregoing, “Carve Out Trigger Notice” shall mean a written notice delivered by email (or other electronic means) by the DIP Lender to the DIP Borrower, its lead restructuring counsel, the U.S. Trustee, and counsel to the Committee (collectively, the “Carve Out Notice Parties”) which notice may be delivered following the occurrence and during the continuation of an Event of Default and acceleration of the DIP Obligations under the DIP Facility, stating that the Post-Carve Out Trigger Notice Cap has been invoked

(b) So long as a Carve Out Trigger Notice has not been delivered, the Debtor is authorized to open a new bank account at an Approved Depository (as defined in the DIP Term Sheet and in accordance with the Debtor’s motion to continue its cash management system), designate an existing bank account at an Approved Depository, or designate a third party’s bank account at an Approved Depository that shall function as a segregated account held in trust for and exclusively available for the payment of Professional Fees (the “Professional Fees Escrow Account”) in the amount equal to, but not to exceed, the allowed Professional Fees set forth in the DIP Budget line items for professionals retained by the Debtor and a Committee, if any (the “Budgeted Professional Expenses”). The Debtor is authorized and directed to fund the Professional Fees Escrow Account on a weekly basis in an amount up to, but not to exceed, the

Budgeted Professional Expenses for that week. Such funds shall be held in the Professional Fee Escrow Account for the benefit of the Professionals to be applied to the allowed Professional Fees of the Professionals that are approved for payment pursuant to one or more orders of the Bankruptcy Court. Any allowed Professional Fees payable shall be paid first out of the Professional Fees Escrow Account. Funds transferred to the Professional Fees Escrow Account shall not be subject to any liens or claims granted to the Prepetition Lender or the DIP Lender herein or any liens or claims granted as adequate protection, shall not constitute DIP Collateral, and shall not constitute Cash Collateral; provided, that, notwithstanding anything to the contrary herein or in the DIP Documents, the DIP Collateral shall include the Debtor's reversionary interest in funds held in the Professional Fee Escrow Account and such reversionary interest shall be treated as DIP Collateral and Prepetition Collateral and subject to the DIP Liens, the DIP Superpriority Claims, any adequate protection liens or adequate protection claims.

12. **Postpetition Lien Perfection.** Without the necessity of the filing of financing statements, security agreements, federal or state notices, pledge agreements, recordings, mortgages or other documents or taking possession or control of any DIP Collateral, this Interim Order shall be sufficient evidence of the Prepetition Lender's and the DIP Lender's perfected security interests and liens granted in the DIP Collateral pursuant to this Interim Order. All such documents shall be deemed to have been recorded and filed as of the Petition Date.

13. **Inspection Rights.** In addition to, and without limiting, whatever rights to access the Prepetition Lender has under the Prepetition Note and the DIP Lender has under the DIP Term Sheet, upon reasonable prior written notice (including via acknowledged electronic mail) during normal business hours, the Debtor shall permit representatives, agents and employees of the Prepetition Lender and/or the DIP Lender to: (i) participate (along with the

restructuring director for the Debtor and the financial advisor to the Debtor) in one conference call per week with the DIP Lender at a date and time mutually agreed to by the parties, (ii) have reasonable access to and inspect and copy the Debtor's books and records, including all records and files of the Debtor pertaining to the Prepetition Collateral and the DIP Collateral, (iii) have reasonable access to and inspect the Debtor's properties, and (iv) discuss the Debtor's affairs, finances, and condition with the Debtor's officers and financial advisors, *provided that* the DIP Lender will provide at least three (3) hours' notice to the Debtor's counsel prior to any lender calls and DIP Lender's counsel shall not participate in such lender calls if Debtor's counsel cannot participate.

14. **DIP Termination Events.** Subject to paragraphs 11 and 15 of this Interim Order, unless waived in writing by the DIP Lender, the following events shall constitute termination events: (a) the failure of the Debtor to perform, in any material respect, any of the terms, provisions, conditions, covenants, or obligations under this Interim Order; (b) entry of any order modifying, reversing, revoking, staying, rescinding, vacating, or amending this Interim Order; (c) the failure of the Debtor to comply with the Case Milestones (as defined in the DIP Term Sheet); or (d) the occurrence of an "Event of Default" pursuant to the DIP Term Sheet, (such events in a-d of this Paragraph 14, each a "DIP Termination Event," and the date of such termination, the "DIP Termination Date"). On the DIP Termination Date, (a) the maturity of the DIP Facility shall be accelerated to the DIP Termination Date, and (b) the DIP Borrower's right to use Cash Collateral and proceeds of the DIP Facility shall automatically terminate.

15. **Remedies After a Termination Date.** The Debtor shall promptly provide notice to counsel to the DIP Lender and Prepetition Lender and counsel to the Committee, if any, upon the occurrence of a DIP Termination Event. Upon the occurrence and during the

continuation of a DIP Termination Event (regardless of whether the Debtor has given the notice described in the previous sentence) and following the giving of not less than five (5) days' advance written notice by counsel for the DIP Lender, which may be by email (such period the "Notice Period") and such notice, the "Enforcement Notice"), to counsel to the Debtor, the U.S. Trustee, and counsel to the Committee, if any, subject to the obligations with respect to the Carve Out, (i) the DIP Lender may exercise any rights and remedies against the DIP Collateral available to it under this Interim Order, the DIP Term Sheet and applicable non-bankruptcy law; (ii) to the extent not discharged with the Roll-Up, the Prepetition Lender may exercise any rights and remedies to satisfy the Prepetition Note Obligations and the Administrative Adequate Protection Liens and the Administrative Adequate Protection Claims, subject to the DIP Obligations, the DIP Superpriority Claims, the Permitted Liens and the Carve Out, and consistent with the Prepetition Note Documents; and (iii) the commitment of the DIP Lender to make the DIP Loans will be terminated to the extent any such commitment remains under the DIP Term Sheet. The automatic stay pursuant to Bankruptcy Code section 362 shall be automatically modified with respect to the DIP Lender and the Prepetition Lender at the end of the Notice Period, without further notice or order of the Court, unless, (a) the DIP Lender and the Prepetition Lender elect otherwise in a written notice to the Debtor, or (b) the Court has determined that a DIP Termination Event has not occurred or the Court orders otherwise. Any foreclosure by DIP Lender on DIP Collateral, including in respect of the Derivative Actions, shall be made in accordance with applicable law, including but not limited to the Uniform Commercial Code.

16. **Emergency Hearing.** Upon the delivery of an Enforcement Notice, each of the DIP Lender, the Prepetition Lender, the Debtor, and any Committee, as applicable, consent to a hearing on an expedited basis (the "Emergency Default Hearing") regarding the DIP

Termination Event(s), after which the Court may grant any relief it deems appropriate. Nothing herein shall alter the rights or burden of proof with respect to any request by the Debtor or other party in interest to re-impose or continue the automatic stay under section 362(a) of the Bankruptcy Code, use Cash Collateral, or to obtain any other injunctive relief. In addition, after the DIP Lender delivers an Enforcement Notice, but prior to the expiration of the Notice Period, except as may be otherwise ordered by the Court, the DIP Borrower shall not use any Cash Collateral or proceeds of the DIP Facility to pay any expenses except those which are (a) solely to pay necessary expenses set forth in the Budget to avoid immediate and irreparable harm to the estate, (b) the amount necessary to contest in good faith whether a DIP Termination Event has occurred not to exceed: (i) the amount set forth in the DIP Budget; or (ii) if a Carve Out Trigger Notice has been issued (x) Budgeted Professional Expenses that have accrued through the date of the Carve Out Trigger Notice but have not yet been paid into the Professional Fee Escrow Account, and (z) the Post-Carve Out Trigger Notice Cap. Notwithstanding anything in this paragraph to the contrary, after notice and hearing, the Court may order such relief as it determines is appropriate following a DIP Termination Event. Any delay or failure of the Prepetition Lender or the DIP Lender to exercise rights under the Prepetition Note Documents, the DIP Documents, or this Interim Order shall not constitute a waiver of their respective rights hereunder, thereunder or otherwise. Notwithstanding anything to the contrary in this Interim Order, the entry of this Interim Order and the grant of adequate protection to the Prepetition Lender pursuant to the terms hereof shall be without prejudice to the rights of the Debtor to, following the occurrence of the DIP Termination Date, seek authority (at any time) to use Cash Collateral and the Prepetition Collateral without the consent of the Prepetition Lender or the DIP Lender, as applicable, and the Prepetition Lender and the DIP Lender reserve all of their

respective rights with respect to contesting any such motion or request by the Debtor or any other person; provided that the Debtor may not utilize Cash Collateral or proceeds of the DIP Facility to seek such authority.

17. **Payments Free and Clear.** Any and all payments or proceeds remitted to the Prepetition Lender or to the DIP Lender pursuant to the provisions of this Interim Order or any subsequent order of this Court shall be irrevocable (subject to paragraph 26 of this Interim Order), received free and clear of any claim, charge, assessment or other liability, including without limitation, subject to entry of the Final Order, any such claim or charge arising out of or based on, directly or indirectly, sections 506(c) (whether asserted or assessed by, through, or on behalf of the Debtor) or 552(b) of the Bankruptcy Code.

18. **Limitation on Charging Expenses Against Collateral.** Subject to entry of the Final Order, all rights to surcharge the interests of the Prepetition Lender in any Prepetition Collateral or DIP Collateral under section 506(c) of the Bankruptcy Code or any other applicable principle of equity or law shall be and are hereby finally and irrevocably waived, and such waiver shall be binding upon the Debtor and all parties in interest in the Case.

19. **Reservation of Rights of the Prepetition Lender.** This Interim Order and the transactions contemplated hereby shall be without prejudice to (i) the rights of the Prepetition Lender to seek additional or different adequate protection, move to vacate the automatic stay, move for the appointment of a trustee or examiner, move to dismiss or convert the Case, or to take any other action in the Case and to appear and be heard in any matter raised in the Case, or any party in interest from contesting any of the foregoing, and (ii) any and all rights, remedies, claims and causes of action which the Prepetition Lender may have against any non-Debtor party liable for the Prepetition Note Obligations. For all adequate protection purposes throughout the

Case, the Prepetition Lender shall be deemed to have requested relief from the automatic stay and adequate protection for any Collateral Diminution from and after the Petition Date. For the avoidance of doubt, such request will survive termination of this Interim Order.

20. **Modification of Automatic Stay.** The Debtor is authorized and directed to perform all acts and to make, execute and deliver any and all instruments as may be reasonably necessary to implement the terms and conditions of this Interim Order and the transactions contemplated hereby, including (a) the granting of the DIP Liens and the DIP Superpriority Claims, and to perform such acts as the DIP Lender may reasonable request to assure the perfection and priority of the DIP Liens and the DIP Superpriority Claims, and (b) the DIP Borrower incurring all liability and obligations, including all the DIP Obligations, to the DIP Lender as contemplated under this Interim Order and the DIP Documents, and to enter into and perform under the DIP Documents and any and all other instruments, certificates, agreements, and documents that may be reasonably required, necessary, or prudent for the performance by the DIP Borrower under the DIP Documents and any transactions contemplated therein or in this Interim Order, in each case in accordance herewith or therewith. The stay of section 362 of the Bankruptcy Code is hereby modified to permit the parties to accomplish the transactions contemplated by this Interim Order.

21. **Survival of Interim Order.** The provisions of this Interim Order shall be binding upon any trustee appointed during the Case or any Successor Case, and any actions taken pursuant hereto shall survive entry of any order which may be entered converting the Case to a chapter 7 case or any other Successor Case, dismissing the Case under section 1112 of the Bankruptcy Code or otherwise, or confirming or consummating any plan(s) of reorganization. The terms and provisions of this Interim Order, as well as the priorities in payments, liens, and

security interests granted pursuant to this Interim Order shall continue notwithstanding any conversion of the Case to a chapter 7 case or any other Successor Case under the Bankruptcy Code, dismissal of the Case or confirmation or consummation of any plan(s) of reorganization. Subject to the limitations described in paragraph 26 of this Interim Order, the Administrative Adequate Protection Claims shall not be subject to counterclaim, setoff, subordination, recharacterization, defense or avoidance in the Case or any Successor Case (other than a defense that the payment has actually been made). The terms of this Interim Order shall be valid and binding upon the Debtor, all creditors of the Debtor and all other parties in interest from and after the entry of this Interim Order by this Court.

22. **No Liability to Third Parties.** With respect to the use of Cash Collateral, the entry into the DIP Facility or the providing of the DIP Loans, or any approval or disapproval of expenditures set forth in the DIP Budget including, without limitation, any Permitted Variance allowed pursuant to paragraph 7 of this Interim Order, the DIP Lender shall not: (i) be deemed to be in “control” of the operations of the Debtor; (ii) owe any fiduciary duty to the Debtor, its respective creditors, shareholders or estate; or (iii) be deemed to be acting as a “Responsible Person” or “Owner” or “Operator” with respect to the operation or management of the Debtor (as such terms or similar terms are used in the United States Comprehensive Environmental Response, Compensation and Liability Act of 1980 or any similar federal or state statute).

23. **Insurance.** Upon entry of this Interim Order, and to the fullest extent provided by applicable law, the DIP Lender, shall be, and shall be deemed to be, without any further action or notice, named as additional insured and loss payee on each insurance policy maintained by the Debtor that in any way relates to the DIP Collateral.

24. **Payments Held in Trust.** Prior to the indefeasible payment in full in cash

of all DIP Obligations and termination of the commitment in accordance with the DIP Documents, any party who holds a lien or security interest in DIP Collateral that is junior and/or subordinate to the DIP Liens or a claim that is subordinate to the DIP Superpriority Claims receives or is paid the proceeds of any DIP Collateral other than as expressly permitted in the DIP Documents and this Interim Order, such party shall be deemed to have received, and shall hold, such proceeds or payments in trust for the DIP Lender and shall immediately turn over such amounts to the DIP Lender to repay the DIP Obligations in accordance with the DIP Documents and this Interim Order until the DIP Obligations are indefeasibly paid in full in cash.

**25. Good Faith under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this Interim Order.** The DIP Lender and the Prepetition Lender have acted in good faith in connection with the DIP Facility, the DIP Documents, the Interim Financing, and this Interim Order, and their reliance on this Interim Order is in good faith. Based on the findings set forth in this Interim Order and the record made during the Interim Hearing, and in accordance with section 364(e) of the Bankruptcy Code, the DIP Lender is entitled to the protections provided in section 364(e) of the Bankruptcy Code, this Interim Order, and the DIP Documents. If any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated, or stayed, such reversal, modification, vacatur, or stay shall not affect the validity, priority, or enforceability of the DIP Obligations, the DIP Liens, the DIP Superpriority Claims, the Administrative Adequate Protection Liens, the Administrative Adequate Protection Claims, the Prepetition Liens, or the Prepetition Note Obligations. Notwithstanding any such reversal, modification, vacatur, or stay of this Interim Order, any DIP Obligations, DIP Liens, DIP Superpriority Claims, Administrative Adequate Protection Liens, Administrative Adequate Protection Claims, Prepetition Liens, or Prepetition Note Obligations incurred by the DIP

Borrower to the DIP Lender or the Prepetition Lender, as the case may be, prior to the actual receipt of written notice by the DIP Lender of the effective date of such reversal, modification, vacatur stay shall be governed in all respects by the original provisions of this Interim Order.

**26. Reservation of Certain Third-Party Rights and Bar of Challenge and Claims.** The Debtor's admissions and releases contained in paragraphs D, E, F, G, and H of this Interim Order (i) shall be binding upon the Debtor for all purposes and (ii) shall be binding upon all other parties in interest, including any Committee and any chapter 7 trustee, for all purposes unless a Committee or party in interest (subject in all respects to any agreement or applicable law which may limit or affect such party's right or ability to do so) has properly commenced an adversary proceeding or contested matter by no later than the date that is sixty (60) days after entry of this Interim Order (the "Challenge Deadline") (subject to entry of a Final Order granting such relief), (x) challenging the amount, validity, perfection, enforceability, priority or extent of the Prepetition Note Obligations or the Prepetition Liens, or (y) otherwise asserting or prosecuting any action for preference, fraudulent transfers or conveyances, other avoidance power claims or any other claims, counterclaims or causes of action, objections, contests and defenses against the Prepetition Lender on behalf of the Debtor's estate (collectively, "Challenges"). If no such Challenge is properly filed by the Challenge Deadline or the plaintiff's claims are dismissed or denied by final and unappealable order in any such proceeding or matter, then: (a) the Debtor's admissions and releases contained in paragraphs D, E, F, G, and H of this Interim Order shall be binding on all parties in interest, including any Committee; (b) the obligations of the Debtor under the Prepetition Note Documents shall constitute allowed claims for all purposes in the Case or any Successor Case; (c) the Prepetition Lender's security interests in and liens upon the Prepetition Collateral and the DIP Collateral shall be deemed to have been, as of the Petition

Date, legal, valid, binding, perfected, first priority security interests and liens, subject only to Permitted Prior Liens, and not subject to recharacterization, subordination or otherwise avoidable; and (d) the Prepetition Note Obligations and the Prepetition Liens on the Prepetition Collateral and the Collateral shall not be subject to any other or further challenge by the Committee or any other party in interest seeking to exercise the rights of the Debtor's estate, including, without limitation, any successor thereto. If any such adversary proceeding or contested matter is properly filed as of such dates, the Debtor's admissions and releases contained in paragraphs D, E, F, G, and H of this Interim Order shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) except to the extent that such admissions and releases were expressly challenged in such adversary proceeding or contested matter, provided that no more than \$25,000 in the aggregate of the proceeds of the DIP Collateral, Prepetition Collateral, and the Carve Out (which amount, for the avoidance of doubt, shall be credited against the aggregate amount allocated to Committee professionals under the DIP Budget) may be used by the Committee, if any, solely to investigate (but not prosecute or Challenge) the Debtor's admissions and releases contained in paragraphs D, E, F, G, and H of this Interim Order.

27. **Release.** The Debtor hereby acknowledges that, subject to paragraph 26 hereof and effective upon entry of the Interim Order and as of such date, and subject to the terms thereof and the right of any party in interest to commence a Challenge pursuant to paragraph 26 hereof the Debtor has no defense, counterclaim, offset, recoupment, claim or demand of any kind or nature whatsoever that can be asserted to reduce or eliminate all of any part of the Debtor's liability to repay the DIP Lender or the Prepetition Lender or to seek affirmative relief or damages of any kind or nature from the DIP Lender or the Prepetition Lender. Upon entry of the Interim Order, subject to the right of any party in interest to commence a Challenge pursuant to paragraph

26 hereof, the Debtor hereby fully, finally and forever release and discharge the DIP Lender, the Prepetition Lender and each of their respective officers, directors, servants, agents, attorneys, assigns, heirs, parents, subsidiaries, and each Person acting for or on behalf of any of them, each solely in their capacity as such (collectively, the “Released DIP Parties”) of and from any and all actions, causes of action, demands, suits, claims, liabilities, liens, lawsuits, adverse consequences, amounts paid in settlement, costs, damages, debts, deficiencies, diminution in value, disbursements, expenses, losses and other obligations of any kind or nature whatsoever, in each case, existing at the time of entry of the Final Order, whether in law, equity or otherwise (including, without limitation, those arising under sections 541 through 550 of the Bankruptcy Code and interest or other carrying costs, penalties, legal, accounting and other professional fees and expenses, and incidental, consequential and punitive damages payable to third parties), directly or indirectly arising out of, connected with or relating to the Prepetition Note Documents, the DIP Documents and the Financing Orders; *provided* that the foregoing shall not release any claims against a Released DIP Party that a court of competent jurisdiction determines, pursuant to a final, non-appealable order, results primarily from the gross negligence or willful misconduct of such Released DIP Party. For the avoidance of doubt, no release granted in this Interim Order shall release the DIP Lender or the Prepetition Lender from any Derivative Actions.

28. **Enforceability; Waiver of Any Applicable Stay.** This Interim Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon entry hereof. Notwithstanding Bankruptcy Rules 6004(h), 6006(d), 7062 or 9014 of the Bankruptcy Rules or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness

of this Interim Order.

29. **Proofs of Claim.** Neither the Prepetition Lender nor the DIP Lender will be required to file proofs of claim in the Case or any Successor Case, and the Debtor's stipulations in paragraph D and **Error! Reference source not found.** herein and this Interim Order shall be deemed to constitute a timely filed proof of claim against the Debtor. Notwithstanding the foregoing, each of the Prepetition Lender and the DIP Lender are hereby authorized and entitled, in their sole discretion, but not required, to file (and amend and/or supplement, as it sees fit) a proof of claim for any claims of the Prepetition Lender or DIP Lender, as applicable, arising from the Prepetition Note Documents or DIP Documents.

30. **Section 552(b) of the Bankruptcy Code.** Subject to entry of the Final Order, the Prepetition Lender and the DIP Lender shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to the Prepetition Lender and DIP Lender with respect to proceeds, products, offspring or profits of any of the Prepetition Collateral, the Collateral or the DIP Collateral.

31. **Credit Bid.** Subject to entry of the Final Order, the DIP Lender shall have the right pursuant to section 363(k) to credit bid up to and including the full amount of the DIP Obligations plus, the full amount of any Prepetition Note Obligations that have not been discharged with the Roll-Up for the DIP Collateral (a "Credit Bid"). Any such credit bid may provide for the assignment of the right to purchase the acquired assets to a sub-agent or a newly formed acquisition vehicle.

32. **No Marshaling.** Upon entry of the Final Order, the DIP Lender and the Prepetition Lender shall not be subject to the equitable doctrine of "marshaling" or any similar

doctrine with respect to the DIP Collateral or the Prepetition Collateral, as applicable, and all proceeds shall be received and applied in accordance with the DIP Documents and the Prepetition Note Documents, as applicable.

33. **Notice Procedures for Professional Fees.** Professionals for the Prepetition Lender and the DIP Lender (collectively, the “Lender Professionals”) shall not be required to comply with the U.S. Trustee fee guidelines or submit invoices to this Court. Copies of the Lender Professionals’ invoices shall be submitted to (i) Debtor’s counsel and (ii) the U.S. Trustee. The DIP Borrower shall timely pay in accordance with the terms and conditions of this Interim Order (a) the undisputed fees, costs, and expenses reflected on any invoice to which a fee objection has been timely filed (or which is subsequently allowed by agreement or an order of the Court), and (b) all fees, costs, and expenses on an invoice to which no fee objection has been timely filed by the DIP Borrower.

34. **No Waiver by Failure to Seek Relief.** The failure of the DIP Lender or the Prepetition Lender to seek relief or otherwise exercise their rights and remedies under this Interim Order, the DIP Term Sheet, the DIP Documents, the Prepetition Note Documents or applicable law, as the case may be, shall not constitute a waiver of any of the rights hereunder, thereunder or otherwise of the DIP Lender or Prepetition Lender.

35. **Headings.** The headings in this Interim Order are for purposes of reference only and shall not limit or otherwise affect the meaning of this Interim Order.

36. **Retention of Jurisdiction.** The Court has and shall retain jurisdiction to enforce this Interim Order (including if the Chapter 11 Case is closed and then reopened).

**EXHIBIT 1**

DIP Budget

| Petition Date- February 9th               |              |              |              |              |              |              |              |              |               | Sale Complete |               |               |               | Confirmation Date |               |              |                | Pre-Sale Post-Petition Total |  |  | Post-Sale Post-Petition Total |  |  | Total |
|-------------------------------------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|---------------|---------------|---------------|---------------|---------------|-------------------|---------------|--------------|----------------|------------------------------|--|--|-------------------------------|--|--|-------|
| Week / Month Ending                       | 2/14/2025    | 2/21/2025    | 2/28/2025    | 3/7/2025     | 3/14/2025    | 3/21/2025    | 3/28/2025    | 4/4/2025     | 4/11/2025     | Apr-25        | May-25        | Jun-25        | Jul-25        |                   |               |              |                |                              |  |  |                               |  |  |       |
| Net Cash Receipts                         | \$ -         | \$ -         | \$ -         | \$ 772,626   | \$ -         | \$ -         | \$ -         | \$ 967,700   | \$ -          | \$ -          | \$ -          | \$ -          | \$ -          | \$ 1,740,326      | \$ -          | \$ -         | \$ 1,740,326   |                              |  |  |                               |  |  |       |
| Methodology Disbursements                 |              |              |              |              |              |              |              |              |               |               |               |               |               |                   |               |              |                |                              |  |  |                               |  |  |       |
| Rent                                      | \$ -         | \$ -         | \$ -         | \$ 1,363,760 | \$ -         | \$ -         | \$ -         | \$ 1,363,760 | \$ -          | \$ -          | \$ -          | \$ -          | \$ -          | \$ 2,727,520      | \$ -          | \$ -         | \$ 2,727,520   |                              |  |  |                               |  |  |       |
| Insurance                                 | -            | -            | -            | 4,197        | -            | -            | -            | 4,197        | -             | -             | -             | -             | -             | 8,394             | -             | -            | 8,394          |                              |  |  |                               |  |  |       |
| Equipment / Equipment Lease               | -            | 53,140       | 1,360        | -            | -            | 53,140       | 1,360        | -            | -             | -             | -             | -             | -             | 109,000           | -             | -            | 109,000        |                              |  |  |                               |  |  |       |
| Employee Wages & Benefits                 | 287,718      | 7,500        | 281,800      | 73,320       | 287,718      | 5,000        | 6,800        | 348,320      | 12,718        | 330,000       | -             | -             | -             | 1,310,895         | 330,000       | -            | 1,640,895      |                              |  |  |                               |  |  |       |
| Ordinary Course / 327(e) Professionals    | -            | -            | 10,000       | -            | 10,000       | -            | -            | -            | 10,000        | -             | 10,000        | -             | -             | 30,000            | 10,000        | -            | 40,000         |                              |  |  |                               |  |  |       |
| Lab Services & Supplies                   | 9,512        | 657          | 362          | 16,183       | 362          | 533          | 362          | 1,358        | 16,012        | 894           | 16,544        | -             | -             | 45,339            | 17,439        | -            | 62,778         |                              |  |  |                               |  |  |       |
| Total Methodology Disbursements           | \$ 297,230   | \$ 61,297    | \$ 293,522   | \$ 1,457,460 | \$ 298,080   | \$ 58,673    | \$ 8,522     | \$ 1,717,635 | \$ 38,730     | \$ 330,894    | \$ 26,544     | \$ -          | \$ -          | \$ 4,231,147      | \$ 357,439    | \$ -         | \$ 4,588,586   |                              |  |  |                               |  |  |       |
| Non-Methodology Disbursements             |              |              |              |              |              |              |              |              |               |               |               |               |               |                   |               |              |                |                              |  |  |                               |  |  |       |
| R&D Supplies & Equipment                  | \$ 35,836    | \$ 112,000   | \$ 23,141    | \$ 22,641    | \$ 33,673    | \$ 81,534    | \$ -         | \$ 47,579    | \$ 5,710      | \$ -          | \$ -          | \$ -          | \$ -          | \$ 362,113        | \$ -          | \$ -         | \$ 362,113     |                              |  |  |                               |  |  |       |
| Technology & Communication                | 177,447      | -            | -            | 51,485       | 3,600        | 17,954       | -            | 1,012        | 46,274        | 3,600         | -             | -             | -             | 297,772           | 3,600         | -            | 301,372        |                              |  |  |                               |  |  |       |
| General & Administrative                  | 7,253        | 4,025        | 8,100        | 6,600        | 600          | 7,500        | 600          | 600          | 6,600         | 8,100         | 7,200         | -             | -             | 41,878            | 15,300        | -            | 57,178         |                              |  |  |                               |  |  |       |
| Utilities                                 | 1,900        | -            | -            | 1,900        | -            | -            | -            | -            | 1,900         | -             | -             | -             | -             | 5,700             | -             | -            | 5,700          |                              |  |  |                               |  |  |       |
| Taxes                                     | -            | -            | -            | 3,000        | -            | -            | 50,000       | -            | -             | 21,325        | -             | -             | -             | 53,000            | 21,325        | -            | 74,325         |                              |  |  |                               |  |  |       |
| Total Non-Methodology Disbursements       | \$ 222,435   | \$ 116,025   | \$ 31,241    | \$ 85,626    | \$ 37,873    | \$ 106,988   | \$ 50,600    | \$ 49,191    | \$ 60,484     | \$ 33,025     | \$ 7,200      | \$ -          | \$ -          | \$ 760,463        | \$ 40,225     | \$ -         | \$ 800,687     |                              |  |  |                               |  |  |       |
| Total Operating Disbursements             | \$ 519,665   | \$ 177,322   | \$ 324,763   | \$ 1,543,086 | \$ 335,952   | \$ 165,660   | \$ 59,122    | \$ 1,766,826 | \$ 99,214     | \$ 363,919    | \$ 33,744     | \$ -          | \$ -          | \$ 4,991,610      | \$ 397,664    | \$ -         | \$ 5,389,274   |                              |  |  |                               |  |  |       |
| Operating Cash Flow                       | \$ (519,665) | \$ (177,322) | \$ (324,763) | \$ (770,460) | \$ (335,952) | \$ (165,660) | \$ (59,122)  | \$ (799,126) | \$ (99,214)   | \$ (363,919)  | \$ (33,744)   | \$ -          | \$ -          | \$ (3,251,285)    | \$ (397,664)  | \$ -         | \$ (3,648,948) |                              |  |  |                               |  |  |       |
| Cumulative Operating Cash Flow            | (1,830,812)  | (2,008,134)  | (2,332,897)  | (3,103,357)  | (3,439,310)  | (3,604,970)  | (3,664,092)  | (4,463,218)  | (4,562,432)   | (4,926,351)   | (4,960,095)   | (4,960,095)   | (4,960,095)   | (3,251,285)       | (397,664)     | (3,648,948)  |                |                              |  |  |                               |  |  |       |
| Restructuring Costs Summary               |              |              |              |              |              |              |              |              |               |               |               |               |               |                   |               |              |                |                              |  |  |                               |  |  |       |
| Debtor Counsel & Advisors                 | \$ 661,111   | \$ 311,111   | \$ 286,111   | \$ 361,111   | \$ 286,111   | \$ 286,111   | \$ 261,111   | \$ 336,111   | \$ 1,111,111  | \$ 92,308     | \$ 230,769    | \$ 184,615    | \$ 92,308     | \$ 3,900,000      | \$ 600,000    | \$ -         | \$ 4,500,000   |                              |  |  |                               |  |  |       |
| Lender Counsel                            | 494,091      | 59,091       | 59,091       | 59,091       | 59,091       | 59,091       | 59,091       | 59,091       | 59,091        | -             | -             | -             | -             | 966,818           | -             | -            | 966,818        |                              |  |  |                               |  |  |       |
| UCC Advisors                              | -            | -            | -            | -            | -            | -            | -            | -            | -             | 140,000       | 112,000       | 110,000       | 44,000        | -                 | 406,000       | -            | 406,000        |                              |  |  |                               |  |  |       |
| Other Restructuring Costs                 | -            | -            | -            | 45,000       | -            | -            | -            | 45,000       | -             | 51,776        | 30,000        | 30,000        | 543,430       | 90,000            | 655,206       | -            | 745,206        |                              |  |  |                               |  |  |       |
| Total Disbursements                       | \$ 1,674,867 | \$ 547,524   | \$ 669,965   | \$ 2,008,288 | \$ 681,154   | \$ 510,862   | \$ 379,324   | \$ 2,207,028 | \$ 1,269,416  | \$ 648,003    | \$ 406,514    | \$ 324,615    | \$ 679,738    | \$ 9,948,428      | \$ 2,058,870  | \$ -         | \$ 12,007,298  |                              |  |  |                               |  |  |       |
| Beginning Cash (Book)                     | \$ 446,065   | \$ 2,703,151 | \$ 2,155,627 | \$ 1,485,662 | \$ 250,000   | \$ 2,379,514 | \$ 1,868,652 | \$ 1,489,328 | \$ 250,000    | \$ 2,058,870  | \$ 1,410,867  | \$ 1,004,353  | \$ 679,738    | \$ 446,065        | \$ 2,058,870  | \$ -         | \$ 446,065     |                              |  |  |                               |  |  |       |
| Net Cash Flow                             | (1,674,867)  | (547,524)    | (669,965)    | (1,235,662)  | (681,154)    | (510,862)    | (379,324)    | (1,239,328)  | (1,269,416)   | (648,003)     | (406,514)     | (324,615)     | (679,738)     | (8,208,103)       | (2,058,870)   | (10,266,973) |                |                              |  |  |                               |  |  |       |
| Minimum Cash Requirement                  | 250,000      | 250,000      | 250,000      | 250,000      | 250,000      | 250,000      | 250,000      | 250,000      | 250,000       | 50,000        | 50,000        | 50,000        | -             | 250,000           | -             | -            |                |                              |  |  |                               |  |  |       |
| DIP Draw (Repayment)                      | 3,931,953    | -            | -            | -            | 2,810,669    | -            | -            | -            | 3,078,286     | -             | -             | -             | -             | 9,820,908         | -             | -            | 9,820,908      |                              |  |  |                               |  |  |       |
| Ending Cash (Book)                        | \$ 2,703,151 | \$ 2,155,627 | \$ 1,485,662 | \$ 250,000   | \$ 2,379,514 | \$ 1,868,652 | \$ 1,489,328 | \$ 250,000   | \$ 2,058,870  | \$ 1,410,867  | \$ 1,004,353  | \$ 679,738    | \$ 0          | \$ 2,058,870      | \$ 0          | \$ -         |                |                              |  |  |                               |  |  |       |
| DIP + Bridge Financing Rollforward        |              |              |              |              |              |              |              |              |               |               |               |               |               |                   |               |              |                |                              |  |  |                               |  |  |       |
| Beginning DIP + Bridge Balance            | \$ 1,475,178 | \$ 5,572,132 | \$ 5,572,132 | \$ 5,572,132 | \$ 5,572,132 | \$ 8,382,800 | \$ 8,382,800 | \$ 8,382,800 | \$ 8,382,800  | \$ 11,461,086 | \$ 11,461,086 | \$ 11,461,086 | \$ 11,461,086 | \$ 1,475,178      | \$ 11,461,086 | \$ -         | \$ 1,475,178   |                              |  |  |                               |  |  |       |
| DIP Lender Counsel (Pre-Petition amounts) | 165,000      | -            | -            | -            | -            | -            | -            | -            | -             | -             | -             | -             | -             | 165,000           | -             | -            | 165,000        |                              |  |  |                               |  |  |       |
| DIP Draw (Repayment)                      | 3,931,953    | -            | -            | -            | 2,810,669    | -            | -            | -            | 3,078,286     | -             | -             | -             | -             | 9,820,908         | -             | -            | 9,820,908      |                              |  |  |                               |  |  |       |
| Lending Fee                               | -            | -            | -            | -            | -            | -            | -            | -            | -             | -             | -             | -             | -             | -                 | -             | -            | -              |                              |  |  |                               |  |  |       |
| DIP PIK Interest                          | -            | -            | -            | -            | -            | -            | -            | -            | -             | -             | -             | -             | -             | -                 | -             | -            | -              |                              |  |  |                               |  |  |       |
| Ending DIP + Bridge Balance               | \$ 5,572,132 | \$ 5,572,132 | \$ 5,572,132 | \$ 5,572,132 | \$ 8,382,800 | \$ 8,382,800 | \$ 8,382,800 | \$ 8,382,800 | \$ 11,461,086 | \$ 11,461,086 | \$ 11,461,086 | \$ 11,461,086 | \$ 11,461,086 | \$ 11,461,086     | \$ 11,461,086 | \$ -         | \$ 11,461,086  |                              |  |  |                               |  |  |       |

**EXHIBIT 2**

DIP Term Sheet

**OMEGA THERAPEUTICS, INC.**

**SUPERPRIORITY DIP FACILITY**

**TERM SHEET**

February 10, 2025

THIS TERM SHEET (THE “DIP TERM SHEET”) SETS FORTH THE TERMS AND CONDITIONS UPON WHICH DIP LENDER SHALL, SUBJECT TO ENTRY OF THE FINANCING ORDERS (DEFINED BELOW), PROVIDE THE DIP LOANS (DEFINED BELOW) UNDER THE DIP FACILITY (DEFINED BELOW) TO THE DEBTOR (DEFINED BELOW). REFERENCE IS HEREBY MADE TO THAT CERTAIN RESTRUCTURING SUPPORT AGREEMENT, BY AND BETWEEN OMEGA THERAPEUTICS, INC. AND PIONEERING MEDICINES 08-B, INC., DATED AS OF FEBRUARY 3, 2025 (THE “RSA”), THE TERMS AND CONDITIONS OF WHICH ARE INCORPORATED HEREIN BY REFERENCE, AS MODIFIED BY THIS DIP TERM SHEET AND THE FINANCING ORDERS.

THIS DIP TERM SHEET SHALL BE A BINDING AGREEMENT WITH RESPECT TO THE DIP LOANS AND THE DIP FACILITY SUBJECT TO THE FINANCING ORDERS AND, TOGETHER WITH THE FINANCING ORDERS AND ANY OTHER RELATED AGREEMENTS, SCHEDULES, EXHIBITS, SECURITY AGREEMENTS, PLEDGE AGREEMENTS OR OTHER DOCUMENTS ENTERED INTO IN CONNECTION HERewith AND THEREWITH, SETS FORTH ALL OF THE TERMS, CONDITIONS, REPRESENTATIONS AND OTHER PROVISIONS WITH RESPECT TO THE DIP FACILITY.

|                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|----------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>DIP Borrower</b>                                | Omega Therapeutics, Inc. (“ <u>Omega</u> ” or the “ <u>DIP Borrower</u> ”), a Delaware corporation and a contemplated debtor in possession in the case (the “ <u>Chapter 11 Case</u> ”) (the “ <u>Debtor</u> ”) under chapter 11 of title 11 of the United States Code (as amended, the “ <u>Bankruptcy Code</u> ”) and filed with the United States Bankruptcy Court for the District of Delaware (the “ <u>Bankruptcy Court</u> ”). (As used herein, the term “ <u>Petition Date</u> ” shall mean the date upon which the Chapter 11 Case is commenced in the Bankruptcy Court.) |
| <b>DIP Lender</b>                                  | Pioneering Medicines 08-B, Inc.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Prepetition Note/Prepetition Note Documents</b> | That certain “Secured Promissory Note” between the Debtor and Pioneering Medicines 080-B, Inc. (the “ <u>Prepetition Lender</u> ”) dated as of February 3, 2025 (as amended, modified, supplemented or waived from time to time on or prior to the date hereof, the “ <u>Prepetition Note</u> ”), secured by a first priority liens on substantially all assets of Omega (the “ <u>Prepetition Collateral</u> ”), as evidenced by the Prepetition                                                                                                                                  |

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|                                     | Note, the Financing Orders and any other related agreements, schedules, exhibits, security agreements, pledge agreements or other documents entered into in connection herewith and therewith are collectively referred to herein as (the “ <u>Prepetition Note Documents</u> ”).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>Prepetition Note Obligations</b> | As used herein, the term “ <u>Prepetition Note Obligations</u> ” means, as of the Petition Date, the indebtedness of the Debtor to the Prepetition Lender under the Prepetition Note Documents, which amount as of February 9, 2025 is the sum of: (i) principal in the amount of \$1,475,178.00, <u>plus</u> (ii) accrued and unpaid interest as of February 3, 2025, <u>plus</u> (iii) unreimbursed costs, fees, expenses, and indemnities in accordance with the Prepetition Note Documents.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>DIP Facility</b>                 | Debtor-in-possession senior secured superpriority delayed draw term loan facility (the “ <u>DIP Facility</u> ”), comprised of up to \$9,820,908 of “new money” loan commitments (the “ <u>New Money DIP Loan Commitments</u> ” and the loans made thereunder, the “ <u>New Money DIP Loans</u> ”), <u>plus</u> loans representing a “roll up” of the Prepetition Note Obligations equal to the sum of (i) outstanding principal in the amount of \$1,475,178 plus \$165,000 in fees and expenses (such roll-up, subject to the Challenge Period (as defined below)), <u>plus</u> (ii) (a) accrued and unpaid interest under the Prepetition Note Documents as of the Petition Date, and (b) accrued and unpaid interest at the rate specified in the Prepetition Note from the Petition Date through and including the date that such obligations are rolled up as Roll Up DIP Loans, <u>plus</u> (iii) any and all unreimbursed costs, fees, expenses, and indemnities of the Prepetition Lender (the “ <u>Roll Up DIP Loans</u> ” and together with the New Money DIP Loans, the “ <u>DIP Loans</u> ”). Pursuant to the terms hereof, DIP Lender hereby agrees to make the DIP Loans contemplated hereunder. |
| <b>Interest Rate</b>                | Interest shall accrue on the DIP Loans at the rate of 10% per annum, and shall be payable monthly, on the first (1 <sup>st</sup> ) business day of each month, in arrears, in accordance with the DIP Budget (defined below). Interest shall accrue in kind and shall be paid in full in cash on the Maturity Date (or satisfied through a credit bid if the DIP Lender is the Successful Bidder) (as defined below).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Lending Fee</b>                  | A lending fee equal to 1.00% of DIP Loans, which shall accrue in kind and be paid in full in cash on the Maturity Date (or satisfied through a credit bid if the DIP Lender is the Successful Bidder).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Default Rate</b>                 | At all times while an Event of Default under the DIP Facility exists, at the election of the DIP Lender, principal, interest and other amounts under the DIP Facility shall bear interest at a rate per annum equal to 5.00% in excess of the interest rate set forth in “Interest Rate” above (the “ <u>Default Interest</u> ”). Default Interest shall accrue in kind and be                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |

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|                               | paid in full in cash on the Maturity Date (or satisfied through a credit bid if the DIP Lender is the Successful Bidder).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Expenses of DIP Lender</b> | The reasonable and documented professional fees and out-of-pocket expenses incurred by the DIP Lender (limited, in the case of counsel, to one primary counsel plus Potter Anderson & Corroon LLP as Delaware counsel), including expenses incurred in connection with defending the validity and enforceability of the Prepetition Note Obligations, the DIP Obligations, the Prepetition Note Documents, the DIP Documents (as defined below), or any of the liens or adequate protection securing the same, shall be promptly paid by the DIP Borrower in cash on no less than a monthly basis (documentation in summary form to be sufficient), solely to the extent funds for payment therefor are set forth in the DIP Budget, and any DIP Lender counsel fees exceeding the line item therefor in the DIP Budget shall accrue in kind and be payable at maturity, and any variance testing shall not apply to DIP Lender counsel fees.                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Maturity Date</b>          | <p>The maturity date of the DIP Facility (the “<u>Maturity Date</u>”) shall be the earliest to occur of the following, upon which the DIP Lender’s commitment to provide the DIP Loans and the DIP Facility shall terminate, and the DIP Obligations and any Prepetition Note Obligations that have not been discharged with Roll Up DIP Loans shall be indefeasibly paid in full in cash:</p> <p>(a) 30 days after entry of the Petition Date (or such later date as the DIP Lender in its sole discretion may agree in writing with the Debtor) if the Final Order has not been entered on or prior to the expiration of such 30-day period;</p> <p>(b) 70 days after the Petition Date (or such later date as the DIP Lender in its sole discretion may agree in writing with the Debtor);</p> <p>(c) the consummation of a sale of all or substantially all of the assets of the Debtor;</p> <p>(d) acceleration of or termination of the DIP Loans pursuant to the DIP Documents (as defined below); and</p> <p>(e) the substantial consummation (as defined in Section 1101 of the Bankruptcy Code and which for purposes hereof shall be no later than the “effective date” thereof) of a plan filed in the Chapter 11 Case that is confirmed pursuant to an order entered by the Bankruptcy Court.</p> |
| <b>DIP Budget</b>             | Proceeds of the DIP Facility and any Cash Collateral shall be used solely by the DIP Borrower in accordance with the agreed budget (the “ <u>DIP Budget</u> ”) attached hereto at <b>Exhibit A</b> , subject only to the Permitted Variances (defined below).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |

Compliance with the DIP Budget will be measured weekly starting on the second week following the Petition Date, for the period beginning as of the first day of the first full week following the week of the Petition Date and ending the last day of the week prior to the week on which compliance is measured, and continuing each week (the “Testing Period”). Each date on which compliance with the DIP Budget is measured is referred to herein as the “Testing Date.” As of any applicable Testing Date, the DIP Borrower shall not allow the Operating Disbursements (as set forth in the DIP Budget) to vary from the DIP Budget on a cumulative basis during the relevant Testing Period by more than 10.0% (adverse to the Debtor) (the “Permitted Operating Disbursements Variance”) *provided* that as of any applicable Variance Testing Date, the actual fees and expenses of DIP Borrower’s advisors and any Committee’s advisors shall not vary from the Budgeted Professional Expenses set forth in the DIP Budget on a single-line item basis by more than 5.0% (the “Permitted Professional Fees Variance” and, together with the Permitted Operating Disbursements Variance, the “Permitted Variances”), *provided, further* that for purposes of testing the Permitted Professional Fees Variance, any Budgeted Professional Expenses unused during any Testing Period shall be rolled into the following Testing Period. For the avoidance of doubt, the fees and expenses of DIP Lender’s advisors shall not be tested.

Additional variances, if any, from the DIP Budget, and any proposed changes to the DIP Budget, shall be subject to the written consent of the DIP Lender in its sole and absolute discretion. The DIP Borrower shall be deemed in compliance with the DIP Budget unless, as of any Variance Testing Date, (i) the Operating Disbursements vary from the DIP Budget by more than the Permitted Operating Disbursements Variance during the Testing Period; and (ii) the Budgeted Professional Expenses vary from the DIP Budget on a line-item basis by more than the applicable Permitted Professional Fees Variance during the Testing Period (after taking into account the rolling of unused fees to the extent permitted hereunder). The DIP Borrower’s failure to comply with the DIP Budget subject to the Permitted Variances will constitute an Event of Default as defined in the DIP Documents.

During the Testing Period the DIP Borrower shall produce reports substantially in the form attached to this DIP Term Sheet as Exhibit C, detailing the following, each on a single, line item basis (a “Variance Report”): (i) a comparison of the actual and budgeted line item disbursements and receipts of the DIP Borrower during the applicable Testing Period; (ii) any variance (whether positive or

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|                                                     | negative, expressed as a percentage) between the disbursements made during such Testing Period by the DIP Borrower against the disbursements for the Testing Period as set forth in the DIP Budget applicable to such Testing Period; and (iii) any variance (whether positive or negative, expressed as a percentage) between the receipts received during such Testing Period by the DIP Borrower against the receipts for the Testing Period as set forth in the DIP Budget applicable to such Testing Period, in each case of the foregoing clauses, with a detailed explanation of any variance exceeding 5.0%.                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>DIP Obligations</b>                              | As used herein, the term “ <u>DIP Obligations</u> ” means (a) the due and punctual payment by the DIP Borrower of (i) the unpaid principal amount of and interest on (including interest accruing after the maturity of the DIP Loans and interest accruing after the commencement of the Chapter 11 Case) the DIP Loans, as and when due, whether at maturity, by acceleration or otherwise, and (ii) all other monetary obligations, including advances, debts, liabilities, obligations, fees, costs, expenses and indemnities, whether primary, secondary, direct, indirect, absolute or contingent, due or to become due, now existing or hereafter arising, fixed or otherwise, of the DIP Borrower to the DIP Lender under the DIP Documents and the Financing Orders, and (b) the due and punctual payment and performance of all covenants, duties, agreements, obligations and liabilities of the DIP Borrower to the DIP Lender under or pursuant to the DIP Documents and the Financing Orders. |
| <b>Cash Collateral</b>                              | The Prepetition Lender shall consent to the use of its “cash collateral” as defined in section 363(a) of the Bankruptcy Code (the “ <u>Cash Collateral</u> ”), all in accordance with the terms and conditions set forth in this DIP Term Sheet, the Financing Orders, and the DIP Budget, and subject to any Permitted Variances; <u>provided</u> , that the DIP Borrower shall operate its cash management system in a manner that is the same as or substantially similar to its prepetition cash management system.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Use of DIP Loan Proceeds and Cash Collateral</b> | Subject to entry of the Financing Orders, the DIP Borrower shall use the proceeds of the DIP Facility to pay the DIP Lender in accordance with the DIP Documents and solely in accordance with the DIP Budget as follows: <ul style="list-style-type: none"> <li>(i) to fund the operating expenses of the DIP Borrower,</li> <li>(ii) to fund the administration of the Chapter 11 Case, an Acceptable 363 Sale, and a chapter 11 plan and related matters, including the claims resolution process, and the wind-down of the Debtor’s estate;</li> <li>(iii) to fund the reasonable, documented, and allowed fees and expenses of the DIP Borrower’s professionals; and</li> </ul>                                                                                                                                                                                                                                                                                                                        |

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|                                                 | (iv) to pay other amounts as set forth in and subject to the DIP Budget.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Initial Approval by the Bankruptcy Court</b> | <p>The use of Cash Collateral, the DIP Facility, this DIP Term Sheet and all terms and conditions of the DIP Facility set forth herein (collectively, the “<u>Transactions</u>”) shall be subject to the entry in the Bankruptcy Court of an interim order, in form and substance acceptable to the DIP Lender in its sole and absolute discretion, approving the Transactions (the “<u>Interim Order</u>”).</p> <p>In the event that the Final Order (as defined below) is not entered in the Bankruptcy Court on or prior to the date that is thirty (30) days after the Petition Date (or such later date as the DIP Lender in its sole discretion may agree in writing with the DIP Borrower), upon expiration of the Notice Period (as defined below), the consent of the Prepetition Lender to the use of Cash Collateral shall automatically terminate.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Notice Period</b>                            | <p>The Debtor shall promptly provide notice to counsel to the DIP Lender and Prepetition Lender and counsel to the Committee, if any, upon the occurrence of a DIP Termination Event (as defined in the Financing Orders). Upon the occurrence and during the continuation of a DIP Termination Event (regardless of whether the Debtor has given the notice described in the previous sentence) and following the giving of not less than five (5) days’ advance written notice by counsel for the DIP Lender, which may be by email (such period the “<u>Notice Period</u>” and such notice, the “<u>Enforcement Notice</u>”), to counsel to the Debtors, the U.S. Trustee, and counsel to the Committee, if any, subject to the obligations with respect to the Carve Out, (i) the DIP Lender may exercise any rights and remedies against the DIP Collateral available to it under this Interim Order, this DIP Term Sheet and applicable non-bankruptcy law; (ii) to the extent not discharged with the Roll Up, the Prepetition Lender may exercise any rights and remedies to satisfy the Prepetition Note Obligations and the Administrative Adequate Protection Liens and the Administrative Adequate Protection Claims, subject to the DIP Obligations, the DIP Superpriority Claims, the Permitted Liens and the Carve Out, and consistent with the Prepetition Note Documents; and (iii) the commitment of the DIP Lender to make the DIP Loans will be terminated to the extent any such commitment remains under the DIP Term Sheet. The automatic stay pursuant to Bankruptcy Code section 362 shall be automatically modified with respect to the DIP Lender and the Prepetition Lender at the end of the Notice Period, without further notice or order of the Court, unless, (a) the DIP Lender and the Prepetition Lender elect otherwise in a written notice to the Debtor, or (b) the Court has determined that a DIP Termination Event has not occurred or the Court orders otherwise.</p> |

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|                                | Any foreclosure by DIP Lender on DIP Collateral, including in respect of the Derivative Actions, shall be made in accordance with applicable law, including but not limited to the Uniform Commercial Code.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>DIP Documents</b>           | <p>Definitive financing documentation with respect to the DIP Loans, (the “<u>DIP Documents</u>”), shall be executed and delivered by the parties thereto, and shall be approved upon the entry in the Bankruptcy Court of the Interim Order and include (i) this DIP Term Sheet and any ancillary exhibits and documents executed in connection therewith; (ii) the DIP Budget; (iii) the Financing Orders; and (iv) any and all amendments, exhibits, supplements or schedules to (i)-(iv), each of which shall be in form and substance acceptable to the DIP Lender in its sole discretion.</p> <p>Any motions, pleadings, and declarations filed in the Chapter 11 Case by the DIP Borrower related to the DIP Loans shall also be in form and substance acceptable to the DIP Lender in its sole discretion.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>DIP Funding and Roll Up</b> | <p>Subject to the terms and conditions set forth in the DIP Documents and this DIP Term Sheet, including satisfaction of each of the Conditions Precedent (defined below) to each such draw, DIP Lender will fund the following draws:</p> <ol style="list-style-type: none"> <li>1. Upon (x) the entry in the Bankruptcy Court of the Interim Order, in form and substance acceptable to the DIP Lender in its sole and absolute discretion, approving the DIP Loans and the DIP Documents, the continued use of Cash Collateral in accordance with this DIP Term Sheet and the other applicable DIP Documents, and providing Adequate Protection (as defined below) for the Prepetition Lender in accordance with this DIP Term Sheet, and (y) the Stalking Horse APA (as defined below) being in form and substance acceptable to the DIP Lender (i) \$3,931,953 of the New Money DIP Loan Commitments will be available for the liquidity needs of the Debtor to be used solely as set forth in the DIP Budget (subject to Permitted Variances) (the “<u>First New Money DIP Loan Commitments</u>”), and (ii) \$1,640,178 of the Roll Up DIP Loans will be used to fully discharge, on a dollar for dollar basis, the outstanding Prepetition Note Obligations.</li> <li>2. Upon the entry in the Bankruptcy Court of (x) a final order, in form and substance acceptable to the DIP Lender in its sole and absolute discretion, approving (among other things) the full New Money DIP Loan Commitments and the DIP Loans (the “<u>Final Order</u>” and collectively with the Interim Order, the “<u>Financing Orders</u>”) and (y) a final order, in form and</li> </ol> |

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|                         | <p>substance acceptable to the DIP Lender in its sole and absolute discretion, approving the bid procedures for an Acceptable 363 Sale and naming the DIP Lender (or its designee) as “stalking horse” bidder: (i) \$2,810,669 of the New Money DIP Loan Commitments will be available for the liquidity needs of the Debtor to be used solely as set forth in the DIP Budget (subject to Permitted Variances) (the “<u>Second New Money DIP Loan Commitments</u>”).</p> <p>3. Upon the closing of an Acceptable 363 Sale, the remaining \$3,078,286 of the New Money DIP Loan Commitments will be available for the liquidity needs of the Debtor to be used solely as set forth in the DIP Budget (subject to Permitted Variances) (the “<u>Final New Money DIP Loan Commitments</u>”).</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Financing Orders</b> | <p>The DIP Borrower shall seek entry of the Interim Order and Final Order, and the Interim Order and the Final Order shall be entered on the docket of the Chapter 11 Case, in accordance with the Case Milestones and each in a form and substance acceptable to the DIP Lender in its sole and absolute discretion, approving (among other things) the DIP Loans, the DIP Liens, the DIP Collateral, and the DIP Documents.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Security</b>         | <p>Subject to the following sentence, as security for the DIP Obligations, the DIP Borrower shall grant to the DIP Lender a security interest in and continuing lien on all of such DIP Borrower’s right, title and interest in, to and under all the DIP Borrower’s assets, including, but not limited to the following, in each case, whether now owned or existing or hereafter acquired, created or arising and wherever located (all of which being hereafter collectively referred to as the “<u>DIP Collateral</u>”): shall include all assets and property of the DIP Borrower and its estate, real or personal, tangible or intangible, now owned or hereafter acquired, whether arising before or after the Petition Date, including, without limitation, all contracts, contract rights, licenses (including IP Licenses), general intangibles, instruments, equipment, accounts, documents, goods, inventory, fixtures, documents, cash, cash equivalents, chattel paper, letters of credit and letter of credit rights, investment property, money, insurance policies and proceeds thereof, receivables, deposits, refunds, receivables records, deposit accounts, collateral support, supporting obligations and instruments, all interests in leaseholds and real properties, all intellectual property, all patents, copyrights, trademarks (but excluding trademark applications filed in the United States Patent and Trademark Office on the basis of the applicant’s intent-to-use such trademark unless and until evidence of use of the trademark has been filed with, and accepted by, the United States Patent and Trademark Office pursuant</p> |

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|                           | <p>to Section 1(c) or Section 1(d) of the Lanham Act (15 U.S.C. §1051, et seq.)), trade names and other intellectual property (whether such intellectual property is registered in the United States or in any foreign jurisdiction), records and data, know-how and other proprietary information and materials, all equity interests (to be limited to the extent of any adverse tax consequences, as reasonably determined by the DIP Lender and the DIP Borrower, and limitations imposed by applicable law), all books and records relating to the foregoing, all other personal and real property of the DIP Borrower (but excluding any property subject to a purchase money lien, capital lease or similar arrangement permitted under the DIP Documents to the extent the creation of a security interest therein is prohibited thereby or creates a right of termination in favor of any other party thereto or otherwise requires third party consent thereunder), claims and causes of action (whether asserted or unasserted), including commercial tort claims (other than Derivative Actions)<sup>1</sup>, and all proceeds, products, accessions, rents and profits of or in respect of any of the foregoing (in each case as the foregoing are defined in the Uniform Commercial Code as in effect from time to time in the State of New York (and, if defined in more than one Article of such Uniform Commercial Code, shall have the meaning given in Article 9 thereof)). Subject to the entry of the Final Order, the DIP Collateral shall include all of DIP Borrower's right, title and interest in and to the Derivative Actions, actions under sections 544, 545, 547, 548 and 550 of the Bankruptcy Code (the "<u>Avoidance Actions</u>") and any proceeds from the Derivative Action and any such Avoidance Actions. The DIP Liens (defined below) on the DIP Collateral shall be subject in all respects to the terms of the "Priority and Liens" section below.</p> |
| <b>Priority and Liens</b> | <p>The Financing Orders shall grant and approve, among other things, the obligations owed to the DIP Lender under or in connection with the DIP Loans secured by senior priority and continuing security interests on the DIP Collateral and superpriority administrative expense claims in the priority described below:</p> <p>a. Pursuant to section 364(c)(1) of the Bankruptcy Code, a superpriority administrative expense claim status with priority over all administrative expenses of the kind that are specified in Bankruptcy Code §§ 105, 326, 328, 330, 331, 503(b), 506(c),</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

1 "Derivative Action" means the Delaware Action and all actions, causes of actions or claims of the DIP Borrower arising under any legal theory against any current or former officers and directors or shareholders of the DIP Borrower, in each case, in existence on or arising after the Petition Date.

"Delaware Action" means the proceeding commenced by Joel Newman, derivatively on behalf of nominal defendant Omega Therapeutics, Inc. before the Court of Chancery of the State of Delaware, Case No. 2024-0636-PAF.

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|                            | <p>507(a), 507(b), 546(c), 726, 1114 or any other provisions of the Bankruptcy Code.</p> <p>b. Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable and fully and automatically perfected first priority senior security interest in and lien upon all DIP Collateral that as of the Petition Date is unencumbered and not subject to valid, perfected, and non-avoidable liens; <i>provided that</i> such security interest in and lien on DIP Collateral shall be subject to the Carve Out (as defined below);</p> <p>c. Pursuant to section 364(c)(3) of the Bankruptcy Code, a perfected junior lien, subject to the Carve Out, on all DIP Collateral that is subject to valid, perfected, and non-avoidable liens in existence at the time of the commencement of the Chapter 11 Case or subject to valid and non-avoidable liens in existence at the time of such commencement that are perfected subsequent to such commencement as permitted by section 546(b) of the Bankruptcy Code; and</p> <p>d. Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable and fully and automatically perfected first priority priming security interest in and lien upon all DIP Collateral, which security interest and lien shall be subject to the Carve Out (as defined below) and any valid, perfected, and non-avoidable Permitted Prior Lien<sup>2</sup> (collectively, the liens described in clauses (a), (b), (c), and (d) of this section, the “<u>DIP Liens</u>”).</p> <p>The DIP Liens shall not be made <i>pari passu</i> with, or subordinated to, any other liens or security interests (whether currently existing or hereafter created), subject, in each case, only to the Carve Out as provided for herein, and any valid, perfected, and unavoidable Permitted Prior Liens.</p> |
| <b>Adequate Protection</b> | The Interim Order and the Final Order shall provide, as adequate protection for the use of the collateral securing the Prepetition Note Obligations and the priming of the liens and security interests granted                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |

<sup>2</sup> Permitted Prior Liens shall mean the valid, perfected, non-avoidable, and enforceable (i) prepetition liens (if any) which are senior to the Prepetition Lender’s liens or security interests as of the Petition Date, (ii) prepetition claims for set off and recoupment (if any) which are senior to the Prepetition Lender’s liens or security interests as of the Petition Date, and (iii) liens in existence immediately prior to the Petition Date that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code and that are senior to the Prepetition Lender’s liens or security interests as of the Petition Date and that are permitted under the Prepetition Note.

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|                  | <p>to the Prepetition Lender under the Prepetition Note Documents (the “<u>Prepetition Note Liens</u>”), the Prepetition Lender shall be entitled to receive a customary adequate protection package of replacement liens and superpriority claims for any diminution in value of the Prepetition Lender’s interest in the Prepetition Collateral, including:</p> <ol style="list-style-type: none"> <li>1. superpriority administrative expense claim status;</li> <li>2. replacement liens on all Prepetition Collateral, junior only to the liens of the DIP Lender and the DIP Lender, but subject to any Prior Senior Liens; and</li> <li>3. commencing on the Petition Date, postpetition interest shall accrue in kind on a monthly basis (collectively, “<u>Adequate Protection</u>”).</li> </ol> <p>For the avoidance of doubt, the grant of Adequate Protection shall be of no force and effect in the event the Prepetition Note Obligations are indefeasibly satisfied in full by the Roll Up (as defined in the Interim Order) or the Prepetition Liens are invalidated for any reason, including without limitation by a Challenge.</p> <p>To the extent the Roll Up is subsequently invalidated for any reason, the Prepetition Note Obligations, and any Adequate Protection shall be revived retroactively as of the Petition Date and continue as if any Prepetition Liens and Prepetition Note Obligations were still in effect as of the Petition Date and the Prepetition Lender’s security interests, rights, powers and remedies under the Prepetition Note Documents shall continue in full force and effect, subject to a Challenge.</p> |
| <b>Carve Out</b> | <p>As used in the Financing Orders the “Carve Out” means the sum, without duplication, of the following (I) (a) all fees of the DIP Borrower required to be paid to the Clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate; (b) all reasonable fees and expenses up to \$75,000 incurred by a trustee under section 726(b) of the Bankruptcy Code; and (c) unpaid allowed professional fees, costs and disbursements (“<u>Professional Fees</u>”) incurred by the DIP Borrower and any statutory committee of unsecured creditors (the “<u>Committee</u>”) appointed in the chapter 11 case, in each case not to exceed the line item amounts set forth in applicable lines of the DIP Budget for each such professional as of the delivery of any carve-out trigger notice, and (II) after the delivery of a Carve Out Trigger Notice,<sup>3</sup> allowed Professional Fees in an</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |

3 “Carve Out Trigger Notice” shall mean a written notice delivered by email (or other electronic means) by the DIP Lender to the DIP Borrower, its lead restructuring counsel, the U.S. Trustee, and counsel to the Committee (collectively, the “Carve Out Notice Parties”) which notice may be delivered following the occurrence and during

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|                            | <p>aggregate amount not to exceed \$125,000 (the “<u>Post-Carve Out Trigger Notice Cap</u>”).</p> <p>Prior to the delivery of any Carve Out Trigger Notice (as defined below), the Debtor is authorized to open a new bank account at an Approved Depository, designate an existing bank account at an Approved Depository, or designate a third party’s bank account at an Approved Depository that shall function as a segregated account held in trust for and exclusively available for the payment of Professional Fees (the “<u>Professional Fees Escrow Account</u>”) in the amount equal to, but not to exceed, the allowed Professional Fees set forth in the DIP Budget line items for professionals retained by the Debtor and a Committee, if any (the “<u>Budgeted Professional Expenses</u>”). The Debtor is authorized and directed to fund the Professional Fees Escrow Account on a weekly basis in an amount up to, but not to exceed, the Budgeted Professional Expenses for that week. Such funds shall be held in the Professional Fees Escrow Account for the benefit of the Professionals to be applied to the allowed Professional Fees of the Professionals that are approved for payment pursuant to one or more orders of the Bankruptcy Court. Any allowed Professional Fees payable to the Professionals shall be paid first out of the Professional Fees Escrow Account. Funds transferred to the Professional Fees Escrow Account shall not be subject to any liens or claims granted to the Prepetition Lender or the DIP Lender or any liens or claims granted as adequate protection, shall not constitute DIP Collateral, and shall not constitute Cash Collateral; provided, that, notwithstanding anything to the contrary herein or in the DIP Documents, the DIP Collateral shall include the Debtor’s reversionary interest in funds held in the Professional Fee Escrow Account and such reversionary interest shall be treated as DIP Collateral and Prepetition Collateral and subject to the DIP Liens, the DIP superpriority claims, any adequate protection liens or adequate protection claims.</p> |
| <b>Acceptable 363 Sale</b> | <p>As used herein, the term “<u>Acceptable 363 Sale</u>” means a sale of all or substantially all of the Debtor’s assets pursuant to Section 363 of the Bankruptcy Code, that includes the following conditions:</p> <ol style="list-style-type: none"> <li>1. the DIP Lender shall have reviewed and approved in writing (i) a motion to be filed by the DIP Borrower with the Bankruptcy Court, requesting, among other things, authority to sell all or substantially all of the Debtor’s assets, approval of the sale and entry of the Sale Order in accordance with the Case Milestones, approval of bidding procedures and entry of the bidding procedures order in accordance with the Case Milestones, approval</li> </ol>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |

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the continuation of an Event of Default and acceleration of the DIP Obligations under the DIP Facility, stating that the Post Carve Out Trigger Notice Cap has been invoked.

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|                       | <p>of the “<u>Bid Protections</u>”<sup>4</sup> (as defined in the Stalking Horse APA), authority for the Debtor to enter into the Stalking Horse APA designating the DIP Lender (or an entity designated by the DIP Lender) as the stalking horse bidder, (the “<u>Sale Motion</u>”); and (ii) that certain Asset Purchase Agreement between Omega and the DIP Lender (or an entity designated by the DIP Lender) (the “<u>Stalking Horse APA</u>”).</p> <ol style="list-style-type: none"> <li>2. the Sale Motion shall be consistent with the terms hereof and of the RSA in all respects.</li> <li>3. the Sale Motion shall have been filed by no later than February 14, 2025 (the “<u>Sale Motion Deadline</u>”), or such other date agreed upon by DIP Lender.</li> <li>4. the Bankruptcy Court shall enter an order approving bidding procedures that approves the relief sought in the Sale Motion, including the Bid Protections therein and all other milestones therein related to the sale process in form and substance acceptable to the DIP Lender.</li> <li>5. all other Case Milestones relating to the sale shall have been complied with.</li> <li>6. the Bankruptcy Court shall enter an order approving the sale of substantially all of the Debtor’s assets no later than sixty (60) days after the Petition Date (the “<u>Sale Order</u>”) to the successful purchaser of the Debtor’s assets in accordance with the bidding procedures approved by the Bankruptcy Court (the “<u>Successful Bidder</u>”). If the DIP Lender is the Successful Bidder, the Sale Order shall be in be in form and substance acceptable to the DIP Lender. If the DIP Lender is not the Successful Bidder, the sale shall be conditioned upon, and the Sale Order shall expressly provide for the indefeasible payment in full in cash of DIP Obligations (other than contingent indemnity obligations for which no claim has been made or threatened), the Prepetition Note Obligations (if not extinguished via the Roll Up) and the Bid Protections, with such payment being made by no later than the deadline for the sale closing in the Case Milestones.</li> </ol> |
| <b>Credit Bidding</b> | The DIP Lender shall have the unqualified right (upon entry of the Final Order) to credit bid up to and including the full amount of the                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |

<sup>4</sup> Pursuant to the Stalking Horse APA the purchaser shall be provided with “Bid Protections” in the form of an expense reimbursement for reasonable documented costs, fees and expenses incurred in connection with the sale in an amount not to exceed \$300,000.00.

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|                                 | DIP Obligations <u>plus</u> the full amount of any Prepetition Note Obligations that have not been indefeasibly discharged with Roll Up DIP Loans for the DIP Collateral (the “ <u>Credit Bid</u> ”), pursuant to section 363(k) of the Bankruptcy Code, in any sale or transfer of DIP Collateral authorized by the Bankruptcy Court pursuant to section 363, 725, or 1123 of the Bankruptcy Code. Any such credit bid may provide for the assignment of the right to purchase the acquired assets to a sub-agent or a newly formed acquisition vehicle.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>No Marshaling</b>            | Upon entry of the Final Order, the DIP Lender and the Prepetition Lender shall not be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to the DIP Collateral or the Prepetition Collateral, as applicable, and all proceeds shall be received and applied in accordance with the DIP Documents and the Prepetition Note Documents, as applicable.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>506(c) and 552(b) waiver</b> | The Final Order shall approve the waiver of all section 506(c) claims and similar rights under section 552(b) of the Bankruptcy Code.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Conditions Precedent:</b>    | <p>In addition to the other conditions required herein, the obligations of the DIP Lender to make any DIP Loans shall be conditioned on the satisfaction or waiver of the following:</p> <ol style="list-style-type: none"> <li>1. with respect to the availability of the First New Money DIP Loan Commitments and the Roll Up: <ol style="list-style-type: none"> <li>a. The DIP Lender shall have received a fully executed and delivered borrowing certificate;</li> <li>b. the entry by the Bankruptcy Court of the Interim Order in form and substance acceptable to the DIP Lender in its sole and absolute discretion;</li> <li>c. any “first day” order implicating cash management or permitted Debtor payments shall be in form and substance acceptable to the DIP Lender in its sole and absolute discretion;</li> <li>d. the Stalking Horse APA and the Sale Motion shall be in form and substance acceptable to DIP Lender and shall include the proposed form of Sale Order;</li> <li>e. no default or Event of Default shall have occurred under the RSA or Prepetition Note Documents.</li> <li>f. the representations and warranties of the DIP Borrower under the DIP Documents shall be true and</li> </ol> </li> </ol> |

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|  | <p>correct in all respects (or in the case of representations and warranties with a “materiality” qualifier, true and correct in all material respects);</p> <p>g. no trustee or examiner having shall have been appointed with respect to the DIP Borrower or its properties; and</p> <p>h. there shall exist no unstayed action, suit, investigation, litigation or proceeding pending or (to the knowledge of the DIP Borrower) threatened in writing in any court or before any arbitrator or governmental instrumentality (other than the Chapter 11 Cases or the consequences that would normally result from the commencement and continuation of the Chapter 11 Cases) that could reasonably be expected to have a Material Adverse Effect.<sup>5</sup></p> <p>2. with respect to the availability of the Second New Money DIP Loan Commitments:</p> <p>a. The DIP Lender shall have received a fully executed and delivered borrowing certificate;</p> <p>b. the entry of (i) the Final Order in form and substance acceptable to the DIP Lender in its sole and absolute discretion and (ii) a final order, in form and substance acceptable to the DIP Lender in its sole and absolute discretion, approving the bid procedures for an Acceptable 363 Sale and naming the DIP Lender (or its designee) as stalking horse bidder;</p> <p>c. any “second day” order implicating cash management or permitted Debtor payments and/or the sale of the Debtor’s assets shall be in form and substance acceptable to the DIP Lender in its sole and absolute discretion;</p> |
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5 “Material Adverse Effect” shall have the following meaning for purposes of the DIP Term Sheet: “any event, condition, circumstance or contingency (other than as customarily occurs as a result of events leading up to and following the commencement of a proceeding under chapter 11 of the Bankruptcy Code by the Debtor) that, individually or in the aggregate, (a) has had or could reasonably be expected to have, a material adverse effect on the business, operations, properties, assets, performance or financial condition of the Debtor, taken as a whole, (b) has resulted in, or could reasonably be expected to result in, a material adverse effect on the validity or enforceability of, or the rights, remedies or benefits available to DIP Lender under the DIP Documents or (c) has had or could reasonably be expected to have, a material adverse effect on the ability of the Debtor to perform their obligations under any the DIP Documents.”

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|  | <ul style="list-style-type: none"> <li>d. no trustee or examiner having shall have been appointed with respect to the DIP Borrower or its properties;</li> <li>e. all reasonable and documented out-of-pocket costs, fees and expenses required to be paid to the DIP Lender or the Prepetition Lender pursuant to this DIP Term Sheet, the DIP Documents or the Financing Orders shall have been paid;</li> <li>f. there shall exist no unstayed action, suit, investigation, litigation or proceeding pending or (to the knowledge of the DIP Borrower) threatened in writing in any court or before any arbitrator or governmental instrumentality (other than the Chapter 11 Case or the consequences that would normally result from the commencement and continuation of the Chapter 11 Case) that could reasonably be expected to have a Material Adverse Effect;</li> <li>g. no default or Event of Default shall have occurred or be continuing under the DIP Documents, RSA or the Prepetition Note Documents; and</li> <li>h. the representations and warranties of the DIP Borrower under the DIP Documents shall be true and correct in all respects (or in the case of representations and warranties with a “materiality” qualifier, true and correct in all material respects).</li> </ul> <p>3. with respect to the availability of the Final New Money DIP Loan Commitments</p> <ul style="list-style-type: none"> <li>a. The DIP Lender shall have received a fully executed and delivered borrowing certificate.</li> <li>b. no trustee or examiner having shall have been appointed with respect to the DIP Borrower or its assets, operations, or properties;</li> <li>c. all reasonable and documented out-of-pocket costs, fees and expenses required to be paid to the DIP Lender or the Prepetition Lender pursuant to this DIP Term Sheet, the DIP Documents or the Financing Orders shall have been paid;</li> </ul> |
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|                                             | <p>d. there shall exist no unstayed action, suit, investigation, litigation or proceeding pending or (to the knowledge of the DIP Borrower) threatened in writing in any court or before any arbitrator or governmental instrumentality (other than the Chapter 11 Cases or the consequences that would normally result from the commencement and continuation of the Chapter 11 Cases) that could reasonably be expected to have a Material Adverse Effect;</p> <p>e. no default or Event of Default shall have occurred or be continuing under the DIP Documents, RSA or the Prepetition Note Documents; and</p> <p>f. the representations and warranties of the DIP Borrower under the DIP Documents shall be true and correct in all respects (or in the case of representations and warranties with a “materiality” qualifier, true and correct in all material respects).</p> <p>g. An Acceptable 363 Sale shall have closed and, if the DIP Lender is not the Successful Bidder, the DIP Obligations, Prepetition Note Obligations (if any), and the Bid Protections have been indefeasibly paid in full in cash.</p> <p>Notwithstanding anything set forth in this DIP Term Sheet or otherwise, and notwithstanding the provisions of Section 8(b) of the Prepetition Note, for any and all purposes under this DIP Term Sheet, the DIP Borrower shall not be deemed to have defaulted and no Event of Default shall be found under the Prepetition Note solely as a result of the Chapter 11 Case.</p> |
| <b>Prepayments / Commitment Reductions:</b> | <p>Voluntary prepayments of the DIP Loans and termination or reduction of the commitments in whole or in part shall be permitted at any time, in minimum principal amounts and upon reasonable notice to be mutually agreed upon between the DIP Borrower and the DIP Lender, without premium or penalty.</p> <p>Any prepayment shall be applied as follows, first, to fees, costs and expenses, second to the payment of accrued and unpaid interest, and third to the repayment of principal.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Borrowing Mechanics</b>                  | <p>Borrowing mechanics with respect to the DIP Loans shall be as follows:</p> <p>a. Once repaid, DIP Loans may not be reborrowed.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

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|                                        | <ul style="list-style-type: none"> <li>b. No more than \$3,931,953 of DIP Loans shall be available for borrowing prior to entry of the Final Order.</li> <li>c. A borrowing notice shall be sent to the DIP Lender in accordance with the notice provision set forth in Section 12 of the Prepetition Note: (A) specifying (1) the principal amount of the requested DIP Loan, and (2) the date of the requested DIP Loan (such date the “<u>Funding Date</u>”) which shall be no less than two (2) Business Days (or such earlier date agreed to by the DIP Lender in its sole discretion) following the date of such request and (B) certifying as to the satisfaction of the applicable conditions precedent to the funding of such DIP Loan set forth above under the heading “Conditions Precedent”).</li> <li>d. Each borrowing request shall be made in accordance with the DIP Budget</li> <li>e. On the Funding Date, the DIP Lender will fund the DIP Loans to the Approved Depositary .</li> </ul> <p>The amounts and dates of each DIP Loan shall be set forth on a schedule to this DIP Term Sheet, which shall be updated by the DIP Lender from time to time on the making of any DIP Loan, which updated schedule shall be provided to the DIP Borrower.</p> |
| <b>Representations and Warranties:</b> | <p>The DIP Borrower admits, represents, and warrants that:</p> <ul style="list-style-type: none"> <li>a. The DIP Borrower is duly organized, validly existing, in good standing and qualified to do business in the jurisdiction of its organization.</li> <li>b. As of the Petition Date, the approximate aggregate outstanding amount of the Prepetition Note Obligations is \$1,640,178, which amount is the sum of: (i) principal in the amount of \$1,475,178.00, <u>plus</u> (ii) accrued and unpaid interest in the amount of \$165,000, <u>plus</u> (iii) other unreimbursed costs, fees and expenses in accordance with the Prepetition Note Documents.</li> <li>c. The stipulations of the Debtor in each of the Financing Orders are true, accurate and correct in all material respects.</li> <li>d. Subject to the Financing Orders, the DIP Borrower has full power and authority to operate and conduct its business, to execute, deliver and perform this DIP Term Sheet and associated documents and to incur obligations under this DIP Term Sheet, the DIP Documents and the Financing Orders.</li> <li>e. Neither the DIP Obligations nor the Prepetition Note Obligations shall be subject to setoff or recoupment or any</li> </ul>                    |

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|                               | <p>such rights under Bankruptcy Code section 553 or otherwise with respect to any claim the Debtor may have against the DIP Lender arising on or before the Petition Date.</p> <p>f. All material contracts and agreements with material vendors (the “<u>Vendor Contracts</u>”), customers (the “<u>Customer Contracts</u>”), licensees (the “<u>IP Licenses</u>”) and landlords and lessors (the “<u>Leases</u>”, together with the Vendor Contracts, Customer Contracts, and IP Licenses, the “<u>Key Contracts</u>”) shall remain in full force and effect and no termination events (or events of default that would permit the applicable vendors, customers, or landlords and lessors to terminate such contracts) exist or have been asserted with respect to any such contracts, other than a default resulting from the commencement of the Chapter 11 Cases, or the insolvency or financial condition of the DIP Borrower. Notwithstanding anything set forth herein to the contrary, the DIP Borrower shall only be required to expend funds with respect to a Key Contract to the extent such amounts are contemplated by the DIP Budget.</p>                                                                                                                                                                                                                                                                             |
| <b>Affirmative Covenants:</b> | <p>The DIP Borrower shall:</p> <ol style="list-style-type: none"> <li>use the advances made under the DIP Facility and/or the Cash Collateral in accordance (subject to Permitted Variances) with the DIP Budget, and shall not use such funds to commence any action against the DIP Lender, the Prepetition Lender or their respective affiliates, employees, directors, officers or principals; provided, that the foregoing does not prevent a Committee from making a Challenge within the Challenge Period (defined below), solely to the extent consistent with, subject to, and in accordance with the terms hereof;</li> <li>subject to the DIP Budget, pay all material taxes, assessments, contributions and other governmental charges imposed upon the DIP Borrower or any of its properties or assets as they become due and payable, to the extent payment and/or enforcement thereof is not stayed as a result of the Chapter 11 Case;</li> <li>subject to the DIP Budget, maintain in good working order all material properties used in the business of the DIP Borrower (other than ordinary wear and tear, casualty and condemnation and to the extent not causing a Material Adverse Effect), as and to the extent in good working order as of the Petition Date;</li> <li>subject to the DIP Budget, maintain insurance with respect to the business and property of the DIP Borrower against loss of</li> </ol> |

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|  | <p>the kind and in the amounts substantially maintained by the DIP Borrower as of the Petition Date;</p> <ul style="list-style-type: none"> <li>e. perform all material obligations under the Key Contracts;</li> <li>f. comply with the requirements of all applicable laws unless failure to comply could not reasonably be expected to result in a Material Adverse Effect;</li> <li>g. effect an Acceptable 363 Sale;</li> <li>h. cause one or more responsible officers of DIP Borrower, the restructuring director for the DIP Borrower and the financial advisor to DIP Borrower to participate in one conference call per week with the DIP Lender at a date and time mutually agreed to by DIP Borrower and the DIP Lender and DIP Borrower hereby acknowledge and agree that the DIP Lender shall be entitled to communicate directly with the restructuring director for DIP Borrower and the financial advisor to DIP Borrower, <i>provided that</i> the DIP Lender will provide at least three (3) hours' notice to DIP Borrower's counsel prior to such lender calls and DIP Borrower's counsel shall be permitted to participate at its election on such lender calls and communications; <i>provided however</i>, that unless DIP Borrower's counsel participates in such lender calls and communications, the DIP Lender's counsel should not participate in such calls or communications;</li> <li>i. permit, upon two (2) business days' notice, representatives of the DIP Lender to visit and inspect any of their respective properties during normal business hours, in a manner so as not to interfere unreasonably with the normal operations of the DIP Borrower, to examine and make abstracts or copies from any of their respective books and records (including providing information and documents promptly upon request), to conduct a collateral audit and analysis of DIP Collateral and accounts, to tour the DIP Borrower's business premises and other properties, and to discuss, and provide advice with respect to, its respective affairs, finances, properties, business operations and accounts with its respective officers, employees and independent public accountants as often as may reasonably be desired (subject to frequency and cost reimbursement limitations to be mutually agreed and other than information subject to confidentiality obligations, attorney-client privilege or attorney work product);</li> </ul> |
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|  | <p>j. comply with the schedule of Case Milestones set forth in <u>Exhibit B</u> annexed hereto;</p> <p>k. promptly upon request execute and deliver such documents and do such other acts as the DIP Lender may reasonably request in connection with the DIP Facility, and in accordance with the DIP Documents (including but not limited to execution of any additional security documents that may be reasonably requested); and</p> <p>l. provide the DIP Lender with written notice promptly after it is aware that any of the following events shall occur:</p> <ol style="list-style-type: none"> <li>1. the DIP Borrower becomes aware of any claim, action, suit, proceeding, arbitration, complaint, charge or investigation threatened or pending, or is enjoined or in any way prevented by court or governmental order from conducting any part of its business as currently conducted or contemplated to be conducted;</li> <li>2. the occurrence of any default under or material breach of any agreement or obligation of the DIP Borrower (x) involving indebtedness in excess of \$10,000, or (y) that could reasonably be expected to have a Material Adverse Effect;</li> <li>3. the receipt of notice from any party to a Key Contract of its intent to terminate such contract or seek relief from the automatic stay; or</li> <li>4. the ceasing of operations of its business as such business is normally conducted as of the Petition Date or the termination of substantially all of the DIP Borrower's employees.</li> </ol> <p>m. apply all amounts received by DIP Borrower from all of DIP Borrower's sub-lease and similar arrangements to pay its lease obligations as and when such obligations become due and for no other purpose without the express written consent of the DIP Lender;</p> <p>n. ensure that all cash balances of DIP Borrower and its subsidiaries are maintained in deposit accounts with JPMorgan Chase Bank, N.A. or another depositary approved by the DIP Lender in writing (each, an "<u>Approved</u></p> |
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|                            | <p><u>Depository</u>”) and, in each case (other than the Professional Fee Escrow Account), subject to an account control agreement in favor of the DIP Lender that is in form and substance reasonably acceptable to the DIP Lender. Banc of California and its affiliates shall in no event be deemed to be an Approved Depository; and</p> <p>o. comply in all respects with any other covenants and obligations set forth herein or in any Financing Orders.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Negative Covenants:</b> | <p>The DIP Borrower shall not:</p> <ul style="list-style-type: none"> <li>a. incur any indebtedness (other than the borrowings under the DIP Facility and obligations permitted to be incurred consistent with the DIP Budget);</li> <li>b. incur any liens (other than liens securing indebtedness permitted by the DIP Documents);</li> <li>c. make any investments in any other person or make any loan to any other person;</li> <li>d. engage in any business other than the business engaged in by the DIP Borrower on the Petition Date and other business activities which are reasonably related or ancillary to the foregoing or otherwise permitted by the DIP Lender;</li> <li>e. sell any assets outside the ordinary course of business, unless such sale is an Acceptable 363 Sale or results in the indefeasible payment in full in cash of the DIP Obligations (other than contingent indemnity obligations for which no claim has been made or threatened), any Prepetition Note Obligations that have not been discharged with Roll Up DIP Loans, and the Bid Protections (if applicable) (other than dispositions of assets to-be-sold pursuant to a <i>de minimis</i> asset sale motion granted by the Bankruptcy Court (which motion shall be subject to the reasonable consent of the DIP Lender), dispositions contemplated by and consistent with the DIP Budget, scheduled dispositions, and other dispositions permitted by the DIP Lender);</li> <li>f. acquire any material assets or other person, merge, consolidate or dissolve (other than acquisitions of assets contemplated by and consistent with the DIP Budget or permitted by the DIP Lender);</li> </ul> |

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|  | <ul style="list-style-type: none"> <li>g. reject or terminate any Key Contract (other than with the prior written consent of the DIP Lender);</li> <li>h. terminate any employees (other than with the prior written consent of the DIP Lender);</li> <li>i. terminate or make any modification to any organizational documents of the DIP Borrower that would be adverse to the DIP Lender in any respect;</li> <li>j. engage in any transactions with insiders, except as set forth in the DIP Budget or otherwise as permitted by the DIP Lender; <u>provided</u> that the foregoing shall not restrict the DIP Borrower from fulfilling its obligations under the DIP Documents and the Financing Orders;</li> <li>k. use proceeds of the DIP Loans, Carve Out, DIP Collateral or Prepetition Collateral except solely in accordance with the DIP Budget and the terms hereof, including, but not limited to, investigate or challenge the validity, perfection, priority, extent, or enforceability of Prepetition Note Liens (a “<u>Challenge</u>”); <u>provided</u>, that (i) not more than \$25,000 of the proceeds of the DIP Loans, Carve Out, DIP Collateral or Prepetition Collateral may be set aside for use by any statutory committees appointed in the Chapter 11 Case for purposes of investigating such validity, perfection, priority, extent or enforceability of liens securing the Prepetition Note, and (ii) such statutory committee shall not be permitted to extend the Challenge beyond the sixty (60) days from the date of formation of any Committee (the “<u>Challenge Period</u>”);</li> <li>l. amend any of the Financing Orders, any Bankruptcy Court order relating to cash management, the DIP Budget, any other motion or filing that involves cash disbursements, or any motion or filing that involves the sale of the Debtor’s assets without the prior written consent of the DIP Lender in its sole and absolute discretion;</li> <li>m. agree to entry of any order precluding, limiting, or modifying the DIP Lender’s and Prepetition Lender’s rights to credit bid up to the full amount of the outstanding DIP Loans <u>plus</u> any Prepetition Note Obligations that have not been discharged with Roll Up DIP Loans for the Debtor’s assets;</li> </ul> |
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|  | <ul style="list-style-type: none"> <li>n. other than as contemplated by the Financing Orders, consent to the granting of adequate protection payments or liens, superpriority administrative expense claims or liens having priority senior to or <i>pari passu</i> with those granted to the DIP Lender or Prepetition Lender;</li> <li>o. hire, terminate, or change the compensation of the executive officers, including approving any option grants or stock awards to executive officers;</li> <li>p. relocate any item of the Collateral (other than relocations of the Collateral as necessary to support or perform the Debtor's projects in the ordinary course of business) unless such relocation is within the continental United States and twenty (20) days' prior written notice of such relocation is provided to the DIP Lender;</li> <li>q. change its company name, legal form, jurisdiction of formation or location of chief executive office address;</li> <li>r. amend, restate, replace or modify, supplement or waive any provision of its organizational documents (including by side letter) and any other organizational document applicable to DIP Borrower;</li> <li>s. create, or authorize the creation of, or issue or obligate itself to issue shares of, or reclassify, any equity securities or any rights, options, or warrants to purchase such equity securities, securities of any type whatsoever that are, or may become, convertible or exchangeable into or exercisable for such equity securities;</li> <li>t. purchase or redeem or pay or declare any dividend or make any distribution on, any equity securities;</li> <li>u. create, adopt, amend, terminate or repeal any equity (or equity-linked) compensation plan or amend or waive any of the terms of any option or other grant pursuant to any such plan;</li> <li>v. create, or hold equity securities in, any subsidiary that is not wholly owned (either directly or through one (1) or more other subsidiaries) by the Debtor, or permit any subsidiary to create, or authorize the creation of, or issue or obligate itself to issue, any equity securities, or sell, transfer or otherwise dispose of any equity securities of any direct or indirect subsidiary of the</li> </ul> |
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|                           | <p>Debtor, or permit any direct or indirect subsidiary to sell, lease, transfer, exclusively license or otherwise dispose (in a single transaction or series of related transactions) of all or substantially all of the assets of such subsidiary;</p> <p>w. (i) merge with, consolidate with or into, dissolve or liquidate into or convey, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets, property or equity securities (in each case, whether now owned or hereafter acquired) to or in favor of any person, or (ii) split or divide into two or more persons;</p> <p>x. engage in any line of business different from those lines of business carried on by the DIP Borrower on the date hereof;</p> <p>y. amend, restate, supplement or otherwise modify any of any of the Debtor's organizational documents in any respect adverse to the DIP Lender (including, without limitation, any change to the board of directors, managers or any equivalent governing body of the Debtor).</p> |
| <b>Case Milestones:</b>   | <p>The Debtor shall in all respects comply with the Case Milestones. Failure to timely comply with any Case Milestone shall be a default and Event of Default hereunder. As used herein, the term "<u>Case Milestones</u>" means the events and deadlines in the Case Milestone schedule set forth on <u>Exhibit B</u> hereto, with which the Debtor shall comply in all respects, including, for the purpose of ensuring the timely pursuit and consummation of an Acceptable 363 Sale by no later than 60 days after the Petition Date, provided that such Case Milestones may be extended by the written consent of the DIP Lender (in its sole discretion).</p>                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Events of Default:</b> | <p>The following shall constitute events of default, each an "<u>Event of Default</u>" under the DIP Documents (and, for the avoidance of doubt, shall trigger the DIP Termination Events included in the Financing Order):</p> <p>a. The failure by the DIP Borrower to perform or comply with any material term, condition, covenant or obligation (including a payment obligation) contained in the DIP Documents or any of the Financing Orders.</p> <p>b. The cessation of the DIP Facility to be in full force and effect, the DIP Facility being declared by the Bankruptcy Court to</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

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|  | <p>be null and void, or the DIP Lender ceasing to have the benefit of the DIP Liens granted by the Financing Orders.</p> <p>c. Except as for the Carve Out and any valid, perfected, enforceable and non-avoidable Permitted Prior Lien, the entry of any order of the Bankruptcy Court granting to any third party a claim or lien <i>pari passu</i> with or senior to the DIP Liens granted to the DIP Lender hereunder.</p> <p>d. Until the DIP Obligations and any Prepetition Note Obligations that have not been indefeasibly discharged with Roll Up DIP Loans are indefeasibly repaid in full in cash (other than contingent obligations for which no claim has been made or threatened) and all commitments under the DIP Facility terminated: (i) the DIP Borrower makes any payment of prepetition principal or interest or otherwise on account of any prepetition indebtedness for borrowed money or payables other than the DIP Obligations under the DIP Facility or solely in accordance with the DIP Budget (subject only to the Permitted Variances) or the Financing Orders; (ii) the validity or enforceability of any provision of the DIP Documents or the DIP Obligations or the Prepetition Note Documents or the Prepetition Note Obligations are contested by the DIP Borrower (or any party acting on its behalf or on behalf of the bankruptcy estate); and (iii) the DIP Borrower (or any party acting on its behalf or on behalf of the bankruptcy estate) denies in writing that it has any further liability or obligation under any provision of the DIP Documents or the Prepetition Note Documents.</p> <p>e. The DIP Borrower fails to make any payments, including interest payments, due under any of the DIP Documents or the Financing Orders within three (3) business days of when due.</p> <p>f. Failure of the DIP Borrower to meet any of the applicable Case Milestones.</p> <p>g. The entry of an order converting the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code, or the Debtor filing a motion or not timely opposing a motion seeking such relief.</p> <p>h. The entry of an order dismissing the Chapter 11 Case, or the Debtor filing a motion or not timely opposing a motion seeking such relief without the consent of the DIP Lender.</p> <p>i. The entry of an order in the Chapter 11 Case appointing any examiner having expanded powers beyond those set forth in</p> |
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|  | <p>Section 1106(a)(3) and (4) of the Bankruptcy Code or a trustee to operate all or any material part of the DIP Borrower's business.</p> <p>j. The entry of an order in the Chapter 11 Case granting relief from the automatic stay so as to: allow a third party or third parties to proceed against any property with a value in excess of \$50,000, including the DIP Collateral and the Prepetition Collateral, of the Debtor or to commence or continue any prepetition litigation against the DIP Borrower involving potential liability in excess of \$50,000 in the aggregate.</p> <p>k. The commencement of any actions by the DIP Borrower or affiliate or subsidiaries thereof (or any party acting on its behalf or on behalf of the bankruptcy estate) that challenges the rights and remedies of any of the DIP Lender under the DIP Documents or Prepetition Lender under the Prepetition Note Documents.</p> <p>l. Without the prior written consent of the DIP Lender and other than as provided for in the DIP Documents and the Carve Out, the bringing of any motion or taking of any action, seeking entry of an order, or the entry of an order by the Bankruptcy Court, in the Chapter 11 Case (i) granting superpriority administrative expense status to any claim <i>pari passu</i> with or senior to the claims of the DIP Lender or the Prepetition Lender, (ii) permitting the Debtor to obtain financing under Section 364 of the Bankruptcy Code, (iii) permitting the Debtor to grant security interests or liens under Section 364 of the Bankruptcy Code, (iv) permitting the Debtor to use cash collateral under Section 364 of the Bankruptcy Code other than as contemplated herein, or (v) authorizing the Debtor to take other actions adverse to any DIP Lender or Prepetition Lender or their rights and remedies under the DIP Documents, the Prepetition Note Documents or their interest in Prepetition Collateral or the DIP Collateral under Section 364 of the Bankruptcy Code.</p> <p>m. The entry of any order terminating the Debtor's exclusive right to file a plan or the expiration of the Debtor's exclusive right to file a plan.</p> <p>n. There shall arise any superpriority claim in the Chapter 11 Case which is <i>pari passu</i> with or senior to the priority of the claims of the DIP Lender, except with respect to the Carve-Out and as set forth in the DIP Documents.</p> |
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|  | <ul style="list-style-type: none"> <li>o. The entry of any order in the Chapter 11 Case which provides adequate protection, or the granting by the Debtor of similar relief in favor of any one or more of the Debtor's prepetition creditors, contrary to the terms and conditions of any of the Financing Orders or the DIP Documents.</li> <li>p. The DIP Borrower or any of its affiliates or subsidiaries (or any party acting on its behalf or on behalf of the bankruptcy estate), or any person claiming by or through any of the foregoing, shall obtain court authorization to commence, or shall commence, join in, assist, fail to object to after DIP Lender so requests, or otherwise participate as an adverse party in any suit or other proceeding against the DIP Lender regarding the DIP Documents or the DIP Obligations, or the Prepetition Note Documents or the Prepetition Note Obligations.</li> <li>q. The Challenge Period has been extended without DIP Lender's consent.</li> <li>r. A plan shall be filed by the Debtor, or be confirmed in the Chapter 11 Case, or any order shall be entered which dismisses the Chapter 11 Case and which plan or order (i) (x) does not provide for termination of the unused commitments under the DIP Facility and the indefeasible payment in full in cash on the effective date of such plan or order of the DIP Obligations (other than contingent indemnity obligations for which no claim has been made or threatened) and any Prepetition Note Obligations that have not been indefeasibly discharged with Roll Up DIP; or (y) is not satisfactory to the DIP Lender in its sole and absolute discretion, and (ii) does not provide, to the extent permitted by applicable law, for release and exculpatory provisions relating to the DIP Lender and the Prepetition Lender (in their capacities as such) that are satisfactory to the DIP Lender in its sole and absolute discretion, or the DIP Borrower or any of its subsidiaries shall file, propose, support, or fail to contest in good faith the filing or confirmation of such a plan or the entry of such an order.</li> <li>s. Any final judgment or order as to liability not covered by insurance or third party indemnity, or debt for the payment of money, in excess of \$50,000 shall be rendered against the DIP Borrower, and, in each case, there shall be a period of ten (10) consecutive days during which a stay of enforcement of such</li> </ul> |
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|  | <p>judgment or order, by reason of a pending appeal or otherwise, shall not be in effect;</p> <p>t. The Bankruptcy Court shall enter an order authorizing the sale of all or substantially all of the assets of the Debtor that is not an Acceptable 363 Sale;</p> <p>u. The entry of an order in the Chapter 11 Case avoiding or permitting avoidance of any portion of the payments made on account of the DIP Obligations, the DIP Documents, the Prepetition Note Obligations, and the Prepetition Note Documents or in each case any related documents or any other indebtedness provided to the Debtor by any DIP Lender or the Prepetition Lender, or the taking of any action by the DIP Borrower (or any party acting on its behalf or on behalf of the bankruptcy estate) to challenge or support a challenge of any such payments;</p> <p>v. The Financing Orders and the terms thereof shall cease to create valid and perfected DIP Liens on the DIP Collateral and claims as required hereunder (other than an immaterial portion thereof);</p> <p>w. The Final Order does not include a waiver, in form and substance satisfactory to the DIP Lender in its sole and absolute discretion, of (i) the right to surcharge the Prepetition Collateral and/or the DIP Collateral under Section 506(c) of the Bankruptcy Code; (ii) any ability to limit the extension under Section 552(b) of the Bankruptcy Code of the liens of the Prepetition Lender on the Prepetition Collateral to any proceeds, products, offspring, or profits of the Prepetition Collateral acquired by the DIP Borrower after the Petition Date and (iii) the doctrine of marshaling;</p> <p>x. The filing or support of any pleading by the DIP Borrower (or any party acting on its behalf or on behalf of the bankruptcy estate) seeking, or otherwise consenting to, any relief, the granting or prosecution of which could reasonably be expected to result in the occurrence of a DIP Event of Default, including the support or acceptance of any sale that is not an Acceptable 363 Sale.</p> <p>y. Any non-monetary final judgment or order with respect to a post-petition event shall be rendered against the Debtor which does or could reasonably be expected to have a Material Adverse Effect, and, in each case, there shall be a period of</p> |
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|  | <p>ten (10) consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect.</p> <p>z. The Research Collaboration Agreement by and among Pioneering Medicines 08, Inc., Omega Therapeutics, Inc., Pioneering Medicines (NN), LLC, PM (NN) Explorations, Inc., and Novo Nordisk A/S (“<b>Novo</b>”) dated as of December 31, 2023 (as amended, supplemented, and/or modified from time to time, the “<b>Novo Collaboration Agreement</b>”) is terminated (whether by court order or otherwise), or there is any order preventing the assignment thereof.</p> <p>aa. DIP Borrower shall fail to perform any of its material obligations under the Novo Collaboration Agreement.</p> <p>bb. Any of the Financing Orders being amended or modified without the consent of the DIP Lender.</p> <p>cc. Any vendor contract or customer contract is terminated or modified and such modification or termination does or could reasonably be expected to cause a Material Adverse Effect.</p> <p>dd. The commencement of any investigation of the Debtor by any federal or state agency or other governmental or judicial entity, and such investigation does or could reasonably be expected to cause a Material Adverse Effect.</p> <p>ee. The issuance by any tax authority of one or more deficiency notices with respect to the Debtor or any subsidiary of the Debtor exceeding, in the aggregate, \$50,000 at any time.</p> <p>ff. Failure to repay the DIP Obligations and any Prepetition Note Obligations that have not been indefeasibly discharged with Roll Up DIP Loans in full in cash, under in respect of or in connection with the DIP Facility on the Maturity Date.</p> <p>gg. The occurrence of any default under or material breach of any agreement or obligation of DIP Borrower under this DIP Term Sheet, the RSA or any Definitive Document (as defined in the RSA).</p> <p>hh. The occurrence of any default under or material breach of the RSA by Debtor or the termination by Debtor of the RSA.</p> |
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|                          | <p>ii. The DIP Borrower files a motion seeking the approval of a sale pursuant to section 363 of the Bankruptcy Code that is not an Acceptable 363 Sale.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Remedies:</b>         | <p>Notwithstanding the provisions of Section 362 of the Bankruptcy Code, but subject to the applicable provisions of the Financing Orders governing a DIP Termination Event (as defined in the Financing Orders), if any Event of Default occurs and is continuing, the DIP Lender may immediately take any or all of the following actions:</p> <ul style="list-style-type: none"> <li>a. terminate the commitment of the DIP Lender to make DIP Loans and its consent to use of proceeds of DIP Facility and Cash Collateral;</li> <li>b. declare that the unpaid amount of the DIP Obligations, all interest accrued and unpaid thereon, and all other amounts owing or payable under the DIP Documents, this DIP Term Sheet and the Financing Orders to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the DIP Borrower;</li> <li>c. foreclose upon the DIP Collateral; or</li> <li>d. take any other action or exercise any other right or remedy as permitted by the DIP Documents or applicable law.</li> </ul>                                                                                                                                                   |
| <b>Release of Claims</b> | <p>The Financing Order shall provide for the following release, in which the Debtor will acknowledge the following:</p> <p>Subject to any Challenge rights under the Financing Orders, effective upon entry of the Interim Order and as of such date, and subject to the terms thereof and the right of any party in interest to commence a Challenge pursuant to the Financing Orders, the Debtor has no defense, counterclaim, offset, recoupment, claim or demand of any kind or nature whatsoever that can be asserted to reduce or eliminate all of any part of the Debtor's liability to repay the DIP Lender or the Prepetition Lender or to seek affirmative relief or damages of any kind or nature from the DIP Lender or the Prepetition Lender. Upon entry of the Interim Order, subject to the right of any party in interest to commence a Challenge pursuant to the Financing Orders, the Debtor fully, finally and forever release and discharge the DIP Lender, the Prepetition Lender and each of their respective officers, directors, servants, agents, attorneys, assigns, heirs, parents, subsidiaries, and each Person acting for or on behalf of any of them, each solely in their capacity as such (collectively, the "<u>Released DIP</u></p> |

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|                                                   | <p><u>Parties</u>”) of and from any and all actions, causes of action, demands, suits, claims, liabilities, liens, lawsuits, adverse consequences, amounts paid in settlement, costs, damages, debts, deficiencies, diminution in value, disbursements, expenses, losses and other obligations of any kind or nature whatsoever, in each case, existing at the time of entry of the Final Order, whether in law, equity or otherwise (including, without limitation, those arising under sections 541 through 550 of the Bankruptcy Code and interest or other carrying costs, penalties, legal, accounting and other professional fees and expenses, and incidental, consequential and punitive damages payable to third parties), directly or indirectly arising out of, connected with or relating to the Prepetition Note Documents, the DIP Documents and the Financing Orders; <i>provided</i> that the foregoing shall not release any claims against a Released DIP Party that a court of competent jurisdiction determines, pursuant to a final, non-appealable order, results primarily from the gross negligence or willful misconduct of such Released DIP Party. For the avoidance of doubt, no release granted in this Interim Order shall release the DIP Lender or the Prepetition Lender from any Derivative Actions.</p>                                                                                                                                                                                  |
| <p><b>Amendments and Waivers; Assignments</b></p> | <p>Except as otherwise provided herein or therein, the provisions of the DIP Documents and the Financing Orders may not be amended or waived without the written consent of the DIP Borrower and the DIP Lender. This DIP Term Sheet shall be binding upon each party hereto and its respective successors and permitted assigns and shall inure to the benefit of the DIP Lender and the successors and permitted assigns of the DIP Lender. No other person or entity shall be a direct or indirect legal beneficiary of or have any direct or indirect cause of action or claim in connection with, this DIP Term Sheet or any related documentation. The rights and obligations of the Debtor hereunder may not be assigned by the Debtor without the prior written consent of the DIP Lender, which consent may be granted or withheld in the DIP Lender’s sole discretion.</p> <p>The rights and remedies of the DIP Lender expressly set forth herein and in the related documentation are cumulative and in addition to, and not exclusive of, all other rights and remedies available at law, in equity or otherwise. No failure or delay on the part of the DIP Lender in exercising any right, power or privilege shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege or be construed to be a waiver of any default or Event of Default.</p> |
| <p><b>Expenses and Indemnification:</b></p>       | <p>The DIP Lender and the Prepetition Lender (and their affiliates and respective officers, directors, employees, advisors and agents) (each such person, an “<u>Indemnitee</u>”) will have no liability for, and will be</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

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|                       | <p>indemnified and held harmless against, any losses, claims, damages, liabilities or expenses incurred in respect of the financing contemplated hereby or the use or the proposed use of proceeds thereof, except to the extent they are found by a final, non-appealable judgment of a court of competent jurisdiction to arise from the gross negligence or willful misconduct of the relevant indemnified person. Such indemnity shall not be available (i) to the extent arising from a material breach of any obligation of such Indemnitee under the DIP Documents or (ii) to the extent arising out of any loss, claim, damage, liability or expense that does not involve an act or omission of the DIP Borrower and that is brought by an Indemnitee against another Indemnitee (other than claims against an Indemnitee in its capacity or in fulfilling its role as DIP Lender or any similar role under the DIP Documents).</p> |
| <b>Severability</b>   | <p>If any term or other provision of this DIP Term Sheet is invalid, illegal or incapable of being enforced by any rule of law, or public policy, all other conditions and provisions of this DIP Term Sheet will nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto will negotiate in good faith to modify this DIP Term Sheet so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.</p>                                                                                                                                            |
| <b>Survival</b>       | <p>All representations, warranties, covenants, agreements, and conditions contained in or made pursuant to the DIP Documents shall survive (a) the making of the DIP Loans and the payment of the DIP Obligations and (b) the performance, observance and compliance with the covenants, terms and conditions, express or implied, of all DIP Documents, until the due and punctual (i) indefeasible payment of the DIP Obligations and (ii) performance, observance and compliance with the covenants, terms and conditions, express or implied, of this DIP Term Sheet and all of the other DIP Documents; provided, however, that the Indemnification &amp; Expenses provision shall survive (x) indefeasible payment of the DIP Obligations and (y) performance, observance and compliance with the covenants, terms and conditions, express or implied, of this DIP Term Sheet and all of the other DIP Documents.</p>                  |
| <b>Governing Law:</b> | <p>The laws of the State of New York and the Bankruptcy Code.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |

|                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|---------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Financing Orders Governs</b> | <p>In the event of any conflict between this DIP Term Sheet and the RSA, this DIP Term Sheet shall control, and in the event of a conflict between the RSA or this DIP Term Sheet, on the one hand, and the terms of the Financing Orders, on the other, the terms of the Financing Orders shall govern.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Jurisdiction</b>             | <p>Each party hereto hereby consents and agrees that the state and federal courts located in the State of New York shall have jurisdiction to hear and determine any claims or disputes between the parties hereto pertaining to this DIP Term Sheet or any related documentation or to any matter arising out of or relating to this DIP Term Sheet or any related documentation <i>provided</i> that during the Chapter 11 Case (including if the Chapter 11 Case is closed and then reopened) the Bankruptcy Court shall have exclusive jurisdiction to hear and determine any claims or disputes between the parties hereto pertaining to this DIP Term Sheet or any related documentation or to any matter arising out of or relating to this DIP Term Sheet or any related documentation; <i>provided, further</i> that nothing in this DIP Term Sheet shall be deemed to operate to preclude the DIP Lender from bringing suit or taking other legal action in any other jurisdiction to realize on any security for the DIP Obligations, or to enforce a judgment or other court order in favor of the DIP Lender.</p> <p>Each party hereto hereby waives, to the fullest extent permitted by applicable law, any right to jury trial with respect to any claim, demand, action or cause of action arising under this DIP Term Sheet and the related documentation or in any way connected with or related to the dealings in respect hereof or thereof, in each case whether now existing or hereafter arising, and whether in contract, tort, equity or otherwise.</p> |

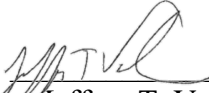
**IN WITNESS WHEREOF**, the parties hereto have caused this DIP Term Sheet to be executed as of the date first set forth above.

**[SIGNATURE PAGES TO FOLLOW]**

18734663.4

**Signature Page**

**OMEGA THERAPEUTICS, INC.**

By: 

Name: Jeffrey T. Varsalone

Title: Independent Restructuring Expert Director

**Address for notice:**

Omega Therapeutics, Inc.  
Attn: Kaan Certel; Barbara Chan  
Attn: Finance Department  
140 First Street  
Suite 501  
Cambridge, MA 02141  
[kcertel@omegatx.com](mailto:kcertel@omegatx.com)  
[bchan@omegatx.com](mailto:bchan@omegatx.com)  
[jvarsalone@vrsrestructuring.com](mailto:jvarsalone@vrsrestructuring.com)

**With a copy to counsel (which shall not constitute notice):**

**Morris, Nichols, Arsht & Tunnell LLP**  
Eric D. Schwartz  
Derek C. Abbott  
Andrew R. Remming  
Daniel B. Butz  
Jonathan M. Weyand  
Luke Brzozowski  
1201 N. Market Street, 16th Floor Wilmington,  
Delaware 19801  
Telephone: (302) 658-9200  
[eschwartz@morrisnichols.com](mailto:eschwartz@morrisnichols.com)  
[dabbott@morrisnichols.com](mailto:dabbott@morrisnichols.com)  
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[lbrzozowski@morrisnichols.com](mailto:lbrzozowski@morrisnichols.com)

**Signature Page**

PIONEERING MEDICINES 08-B, INC.

DocuSigned by:  
By: Paul Biondi  
9F23D2488F0E431...

Name: Paul Biondi

Title: President

Address for notice:

Pioneering Medicines 08-B, Inc.

c/o FLAGSHIP PIONEERING

55 Cambridge Parkway, 8th Floor

Cambridge, MA 02142

Attn: Charles Carelli

Email: [legalnotices@flagshippioneering.com](mailto:legalnotices@flagshippioneering.com)

With copy to counsel (which shall not constitute notice)

GOODWIN PROCTER LLP

Kizzy L. Jarashow

Stacy Dasaro

James Lathrop

The New York Times Building

620 Eighth Avenue

New York, New York 10018

Email: [kjarashow@goodwinlaw.com](mailto:kjarashow@goodwinlaw.com)

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[jlathrop@goodwinlaw.com](mailto:jlathrop@goodwinlaw.com)

EXHIBIT A: BUDGET

[SEE ATTACHED.]

**Confirmation Date**

|                                           |              |              |              |              |              |              |              |              |               |               |               |               |               | Pre-Sale               | Post-Sale              |                |
|-------------------------------------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|---------------|---------------|---------------|---------------|---------------|------------------------|------------------------|----------------|
| Week / Month Ending                       | 2/14/2025    | 2/21/2025    | 2/28/2025    | 3/7/2025     | 3/14/2025    | 3/21/2025    | 3/28/2025    | 4/4/2025     | 4/11/2025     | Apr-25        | May-25        | Jun-25        | Jul-25        | Post-Petition<br>Total | Post-Petition<br>Total | Total          |
| Net Cash Receipts                         | \$ -         | \$ -         | \$ -         | \$ 772,626   | \$ -         | \$ -         | \$ -         | \$ 967,700   | \$ -          | \$ -          | \$ -          | \$ -          | \$ -          | \$ 1,740,326           | \$ -                   | \$ 1,740,326   |
| Methodology Disbursements                 |              |              |              |              |              |              |              |              |               |               |               |               |               |                        |                        |                |
| Rent                                      | \$ -         | \$ -         | \$ -         | \$ 1,363,760 | \$ -         | \$ -         | \$ -         | \$ 1,363,760 | \$ -          | \$ -          | \$ -          | \$ -          | \$ -          | \$ 2,727,520           | \$ -                   | \$ 2,727,520   |
| Insurance                                 | -            | -            | -            | 4,197        | -            | -            | -            | 4,197        | -             | -             | -             | -             | -             | 8,394                  | -                      | 8,394          |
| Equipment / Equipment Lease               | -            | 53,140       | 1,360        | -            | -            | 53,140       | 1,360        | -            | -             | -             | -             | -             | -             | 109,000                | -                      | 109,000        |
| Employee Wages & Benefits                 | 287,718      | 7,500        | 281,800      | 73,320       | 287,718      | 5,000        | 6,800        | 348,320      | 12,718        | 330,000       | -             | -             | -             | 1,310,895              | 330,000                | 1,640,895      |
| Ordinary Course / 327(e) Professionals    | -            | -            | 10,000       | -            | 10,000       | -            | -            | -            | 10,000        | -             | 10,000        | -             | -             | 30,000                 | 10,000                 | 40,000         |
| Lab Services & Supplies                   | 9,512        | 657          | 362          | 16,183       | 362          | 533          | 362          | 1,358        | 16,012        | 894           | 16,544        | -             | -             | 45,339                 | 17,439                 | 62,778         |
| Total Methodology Disbursements           | \$ 297,230   | \$ 61,297    | \$ 293,522   | \$ 1,457,460 | \$ 298,080   | \$ 58,673    | \$ 8,522     | \$ 1,717,635 | \$ 38,730     | \$ 330,894    | \$ 26,544     | \$ -          | \$ -          | \$ 4,231,147           | \$ 357,439             | \$ 4,588,586   |
| Non-Methodology Disbursements             |              |              |              |              |              |              |              |              |               |               |               |               |               |                        |                        |                |
| R&D Supplies & Equipment                  | \$ 35,836    | \$ 112,000   | \$ 23,141    | \$ 22,641    | \$ 33,673    | \$ 81,534    | \$ -         | \$ 47,579    | \$ 5,710      | \$ -          | \$ -          | \$ -          | \$ -          | \$ 362,113             | \$ -                   | \$ 362,113     |
| Technology & Communication                | 177,447      | -            | -            | 51,485       | 3,600        | 17,954       | -            | 1,012        | 46,274        | 3,600         | -             | -             | -             | 297,772                | 3,600                  | 301,372        |
| General & Administrative                  | 7,253        | 4,025        | 8,100        | 6,600        | 600          | 7,500        | 600          | 600          | 6,600         | 8,100         | 7,200         | -             | -             | 41,878                 | 15,300                 | 57,178         |
| Utilities                                 | 1,900        | -            | -            | 1,900        | -            | -            | -            | -            | 1,900         | -             | -             | -             | -             | 5,700                  | -                      | 5,700          |
| Taxes                                     | -            | -            | -            | 3,000        | -            | -            | 50,000       | -            | -             | 21,325        | -             | -             | -             | 53,000                 | 21,325                 | 74,325         |
| Total Non-Methodology Disbursements       | \$ 222,435   | \$ 116,025   | \$ 31,241    | \$ 85,626    | \$ 37,873    | \$ 106,988   | \$ 50,600    | \$ 49,191    | \$ 60,484     | \$ 33,025     | \$ 7,200      | \$ -          | \$ -          | \$ 760,463             | \$ 40,225              | \$ 800,687     |
| Total Operating Disbursements             | \$ 519,665   | \$ 177,322   | \$ 324,763   | \$ 1,543,086 | \$ 335,952   | \$ 165,660   | \$ 59,122    | \$ 1,766,826 | \$ 99,214     | \$ 363,919    | \$ 33,744     | \$ -          | \$ -          | \$ 4,991,610           | \$ 397,664             | \$ 5,389,274   |
| Operating Cash Flow                       | \$ (519,665) | \$ (177,322) | \$ (324,763) | \$ (770,460) | \$ (335,952) | \$ (165,660) | \$ (59,122)  | \$ (799,126) | \$ (99,214)   | \$ (363,919)  | \$ (33,744)   | \$ -          | \$ -          | \$ (3,251,285)         | \$ (397,664)           | \$ (3,648,948) |
| Cumulative Operating Cash Flow            | (1,830,812)  | (2,008,134)  | (2,332,897)  | (3,103,357)  | (3,439,310)  | (3,604,970)  | (3,664,092)  | (4,463,218)  | (4,562,432)   | (4,926,351)   | (4,960,095)   | (4,960,095)   | (4,960,095)   | (3,251,285)            | (397,664)              | (3,648,948)    |
| Restructuring Costs Summary               |              |              |              |              |              |              |              |              |               |               |               |               |               |                        |                        |                |
| Debtor Counsel & Advisors                 | \$ 661,111   | \$ 311,111   | \$ 286,111   | \$ 361,111   | \$ 286,111   | \$ 286,111   | \$ 261,111   | \$ 336,111   | \$ 1,111,111  | \$ 92,308     | \$ 230,769    | \$ 184,615    | \$ 92,308     | \$ 3,900,000           | \$ 600,000             | \$ 4,500,000   |
| Lender Counsel                            | 494,091      | 59,091       | 59,091       | 59,091       | 59,091       | 59,091       | 59,091       | 59,091       | 59,091        | -             | -             | -             | -             | 966,818                | -                      | 966,818        |
| UCC Advisors                              | -            | -            | -            | -            | -            | -            | -            | -            | -             | 140,000       | 112,000       | 110,000       | 44,000        | -                      | 406,000                | 406,000        |
| Other Restructuring Costs                 | -            | -            | -            | 45,000       | -            | -            | -            | 45,000       | -             | 51,776        | 30,000        | 30,000        | 543,430       | 90,000                 | 655,206                | 745,206        |
| Total Disbursements                       | \$ 1,674,867 | \$ 547,524   | \$ 669,965   | \$ 2,008,288 | \$ 681,154   | \$ 510,862   | \$ 379,324   | \$ 2,207,028 | \$ 1,269,416  | \$ 648,003    | \$ 406,514    | \$ 324,615    | \$ 679,738    | \$ 9,948,428           | \$ 2,058,870           | \$ 12,007,298  |
| Beginning Cash (Book)                     | \$ 446,065   | \$ 2,703,151 | \$ 2,155,627 | \$ 1,485,662 | \$ 250,000   | \$ 2,379,514 | \$ 1,868,652 | \$ 1,489,328 | \$ 250,000    | \$ 2,058,870  | \$ 1,410,867  | \$ 1,004,353  | \$ 679,738    | \$ 446,065             | \$ 2,058,870           | \$ 446,065     |
| Net Cash Flow                             | (1,674,867)  | (547,524)    | (669,965)    | (1,235,662)  | (681,154)    | (510,862)    | (379,324)    | (1,239,328)  | (1,269,416)   | (648,003)     | (406,514)     | (324,615)     | (679,738)     | (8,208,103)            | (2,058,870)            | (10,266,973)   |
| Minimum Cash Requirement                  | 250,000      | 250,000      | 250,000      | 250,000      | 250,000      | 250,000      | 250,000      | 250,000      | 250,000       | 50,000        | 50,000        | 50,000        | -             | 250,000                | -                      | -              |
| DIP Draw (Repayment)                      | 3,931,953    | -            | -            | -            | 2,810,669    | -            | -            | -            | 3,078,286     | -             | -             | -             | -             | 9,820,908              | -                      | 9,820,908      |
| Ending Cash (Book)                        | \$ 2,703,151 | \$ 2,155,627 | \$ 1,485,662 | \$ 250,000   | \$ 2,379,514 | \$ 1,868,652 | \$ 1,489,328 | \$ 250,000   | \$ 2,058,870  | \$ 1,410,867  | \$ 1,004,353  | \$ 679,738    | \$ 0          | \$ 2,058,870           | \$ 0                   | -              |
| DIP + Bridge Financing Rollforward        |              |              |              |              |              |              |              |              |               |               |               |               |               |                        |                        |                |
| Beginning DIP + Bridge Balance            | \$ 1,475,178 | \$ 5,572,132 | \$ 5,572,132 | \$ 5,572,132 | \$ 5,572,132 | \$ 8,382,800 | \$ 8,382,800 | \$ 8,382,800 | \$ 8,382,800  | \$ 11,461,086 | \$ 11,461,086 | \$ 11,461,086 | \$ 11,461,086 | \$ 1,475,178           | \$ 11,461,086          | \$ 1,475,178   |
| DIP Lender Counsel (Pre-Petition amounts) | 165,000      | -            | -            | -            | -            | -            | -            | -            | -             | -             | -             | -             | -             | 165,000                | -                      | 165,000        |
| DIP Draw (Repayment)                      | 3,931,953    | -            | -            | -            | 2,810,669    | -            | -            | -            | 3,078,286     | -             | -             | -             | -             | 9,820,908              | -                      | 9,820,908      |
| Lending Fee                               | -            | -            | -            | -            | -            | -            | -            | -            | -             | -             | -             | -             | -             | -                      | -                      | -              |
| DIP PIK Interest                          | -            | -            | -            | -            | -            | -            | -            | -            | -             | -             | -             | -             | -             | -                      | -                      | -              |
| Ending DIP + Bridge Balance               | \$ 5,572,132 | \$ 5,572,132 | \$ 5,572,132 | \$ 5,572,132 | \$ 8,382,800 | \$ 8,382,800 | \$ 8,382,800 | \$ 8,382,800 | \$ 11,461,086 | \$ 11,461,086 | \$ 11,461,086 | \$ 11,461,086 | \$ 11,461,086 | \$ 11,461,086          | \$ 11,461,086          | \$ 11,461,086  |

EXHIBIT B: CASE MILESTONE SCHEDULE

**Budget Milestones**

1. On or before the Petition Date, the DIP Lender shall have approved, based on then current information, the DIP Budget.

**DIP Facility Milestones**

1. Not later than one (1) business day after the Petition Date, the DIP Borrower shall have filed with the Bankruptcy Court a motion seeking approval of the DIP Facility, the Interim Order, and all fees, expenses, and other obligations thereunder.
2. Not later than three (3) days after the Petition Date, the Bankruptcy Court shall have entered the Interim Order.
3. Not later than thirty (30) days after the Petition Date, the Bankruptcy Court shall have entered the Final Order.

**363 Sale Milestones**

1. Not later than five (5) days after the Petition Date, the DIP Borrower shall have filed the Sale Motion in a form acceptable to the DIP Lender, which shall seek approval of an Acceptable 363 Sale.
2. Not later than thirty (30) days after the Petition Date, the Bankruptcy Court shall have entered a bidding procedures order, in form and substance reasonably acceptable to the DIP Lender, approving the Sale Motion for an Acceptable 363 Sale.
3. Not later than fifty-five (55) days following the Petition Date shall be the date specified for the auction, if necessary.
4. Not later than sixty (60) days after the Petition Date, the Bankruptcy Court shall have entered the Sale Order approving an Acceptable 363 Sale.
5. The closing of the Acceptable 363 Sale shall be no later than seventy (70) days following the Petition Date.

EXHIBIT C: SAMPLE VARIANCE REPORT