

NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

This NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT (this “**Agreement**”) is entered into as of March __, 2021 (the “**Effective Date**”), by and between _____ (“**Prospective Purchaser**”), and Debtor-in-Possession, BIOXXEL, LLC Debtor (“**Debtor**”).

RECITALS

On February 2, 2021 (“**Petition Date**”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Central District of California (“**Case**”), Case No. 8:21-bk-10256-TA (“**Bankruptcy Case**”). The Debtor continues to manage its affairs as debtor and debtor-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108. No party has requested the appointment of a trustee or examiner.

The Debtor is a California limited liability corporation that owns the Property (defined below). In turn, the Debtor is owned by Bioxxel Investment Holding Inc., (“**BIHI**”) and Pharmaxx, Inc. (“**Pharmaxx**”). Both BIHI and Pharmaxx are owned by Mr. Phoung Nguyen (“**Mr. Nguyen**”). Mr. Nguyen owns and operates four (4) of the Tenants occupying the Property. Specifically, the four (4) insider related tenants include: (1) Pharmaxx; (2) International Pharmaceutical Distribution Co., Ltd.; (3) ExxelUSA, Inc.; and (4) Pharmaxx Medical Inc. (collectively the “**Insider Tenants**”).

In light of the interrelated entities and ownership, Mr. Nguyen believed that it was in the best interest of all parties that a CRO be appointed. To effectuate an orderly management transition, Mr. Nguyen executed a corporate resolution authorizing the appointment of the CRO (the “**CRO Resolution**”). In light of the CRO Resolution, the Debtor amended its articles of incorporation to allow for the appointment and management by the CRO (“**Bylaw Amendments**”). The appointment of the CRO was approved by the Court on _____.

The Debtor is the legal and equitable owner of an approximate 100,000 square-foot industrial building located at 30590 Cochise Circle, Murrieta, California (“**Property**”). When the Bankruptcy Case was commenced, Debtor’s secured lender, BREF1 30590 Cochise, LLC (“**BREF**”), was in the process of foreclosing on the Property. The Bankruptcy Case was filed to preserve the significant equity cushion that exists in the Property, thereby preserving the value for unsecured creditors.

In order to maximize value and to have a completely transparent and orderly liquidation of the Debtor’s assets, including the sale of the Property, free and clear of liens and interests pursuant to 11 U.S.C. §363(f), and subject to overbid and Court approval, Mr. Nguyen and the CRO authorized the Debtor to file the Chapter 11 and list the Property for sale.

In his due diligence, the CRO obtained a preliminary title report dated on January 6, 2021 (“**January 2021 PTR**”), and a summary property report dated February 3, 2021 (“**February 2021 Property Report**”). These records indicate that BREF’s lien is the only recorded monetary lien against the Property other than recorded property tax liens. Thus, as of the **Petition Date**, given the BREF payoff demand of \$6.78 million, the CRO believes that there may be substantial equity

in the Property that can be captured for the benefit of secured, administrative, and unsecured creditors.

The Prospective Purchaser and Debtor are involved in discussions over the possibility of an asset sale agreement with respect to the Property (the “**Potential Transaction**”).

In relation to the Potential Transaction, the Debtor may disclose to Prospective Purchaser certain “Confidential Information,” defined below:

Debtor desires to prevent the unauthorized use and disclosure of the Confidential Information.

DEFINITIONS

“**Confidential Information**” as used herein, the term means any and all information, including without limitation, Phase I reports, engineering studies, improvement plans, consultant reports, financial statements, leases, rent rolls, existing permits, as all of the preceding relate to the Property that Debtor provides to Prospective Purchaser or any of its Representatives (defined below), that is identified as confidential, or which Debtor desires to treat as confidential, whether prepared by or for Debtor or its Representatives.

“**Representatives**” as used herein, the term means any Parties’ respective agents, consultants, representatives, affiliates, directors, officers, shareholders, employees, partners, members, agents, representatives or advisors (including, without limitation, attorneys, accountants, consultants, and financial advisors).

AGREEMENT

NOW, THEREFORE, for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Nondisclosure Obligations**. Subject to the exceptions set forth below, Prospective Purchaser promises to receive and hold the Confidential Information received from the Debtor or his Representatives in confidence and to not report or publish such information to the general public or third parties.

2. **Exceptions**. The confidentiality obligations hereunder shall not apply to any documents or information that:

- (a) is or becomes generally available to the public other than as a result of a disclosure by Prospective Purchaser or by any of its Representatives in violation of this Agreement.
- (b) was within Prospective Purchaser’s or its Representatives’ possession prior to its being furnished to them by or on behalf of Debtor (unless it was provided by or on behalf of the Debtor prior to the Effective Date, in which case it is subject to this Agreement), provided that the source of such information was not actually known by Prospective Purchaser or by

any of its Representatives to be bound by a confidentiality agreement with, or other contractual, legal or fiduciary obligation of confidentiality to, Debtor or its Representatives with respect to such information;

- (c) becomes available to Prospective Purchaser or to its Representatives on a non-confidential basis from a source other than Debtor or their Representatives, provided that the source of such information was not known by Prospective Purchaser or by any of its Representatives to be bound by a confidentiality agreement with, or other contractual, legal or fiduciary obligation of confidentiality to Debtor or its Representatives with respect to such information;
- (d) was independently prepared, submitted, learned or obtained by Prospective Purchaser;
- (e) Prospective Purchaser is the subject of written permission to disclose by the Debtor or Debtor's attorney;
- (f) must be disclosed pursuant to a valid order of a court, or other demand of a governmental body having jurisdiction; or
- (g) must be disclosed to the extent that Prospective Purchaser or his representatives are subject to examination by a regulatory or self-regulatory authority, bank examiner or auditor, internal or external, where disclosure is in connection with an audit or examination by, or a document request from, a regulatory or governmental entity or where disclosure is in connection with any internal audit or report.

3. **Use of Confidential Information.** Prospective Purchaser hereby agrees that it and its Representatives shall use the Confidential Information solely for the purpose of evaluating the Potential Transaction, and that the Confidential Information shall be kept strictly confidential by Prospective Purchaser and by its Representatives and shall not be used or disclosed except as and to the extent permitted herein.

4. **Communication Through Designated Persons.** All communications with Debtor in connection with or relating to the Confidential Information or the possible transaction contemplated herein are to be made only to Onyx Asset Advisors, Debtor's financial advisor, or Marshack Hays LLP, Debtor's legal counsel, and other individuals, if any, hereafter designated in writing to you by the Debtor (collectively, the "**Contact Individuals**"). Accordingly, other than the Contact Individuals, you agree not to:

- (a) directly or indirectly contact or communicate with any officer, executive or other employee of Debtor or Insider Tenant's concerning or relating to the Potential Transaction or any Confidential Information; or
- (b) seek any information or direct communication in connection herewith or therewith from any such person.

5. **No Waiver of Rights.** Neither this Agreement, nor the delivery of any Confidential Information to Prospective Purchaser or to any of its Representatives or to any other person or entity, shall constitute a waiver by Debtor of any privilege (including, without limitation, privileges pertaining to attorney-client communications and attorney work product) that may be asserted by Debtor. Prospective Purchaser agrees that statements made, and written materials made available, by Debtor to Prospective Purchaser or to its Representatives shall be subject to any applicable privileges provided in Section 1152 of the California Evidence Code and Rule 408 of the Federal Rules of Evidence, or any similar statute or rule that may be applicable in any proceeding involving Debtor, including, without limitation, civil actions, arbitrations and contested matters and adversary and other proceedings under the United States Bankruptcy Code. In the event that Prospective Purchaser or any of its Representatives are required (by subpoena or other similar process) to disclose any of the Confidential Information, Prospective Purchaser shall provide Debtor and Debtor's counsel with prompt written notice of any such requirement so that Debtor may seek a protective order or other appropriate remedy with respect thereto. If, in the absence of (i) a protective order or other remedy or (ii) the receipt of a written waiver by Debtor, Prospective Purchaser or any of its Representatives are, in Prospective Purchaser's reasonable opinion or in the reasonable opinion of its counsel, legally compelled to disclose Confidential Information to any tribunal or else stand liable for contempt or suffer other penalty, Prospective Purchaser or its Representatives may disclose to such tribunal only that portion of the Confidential Information that, in such reasonable opinion, is legally required to be disclosed, provided that Prospective Purchaser exercises its reasonable best efforts to preserve the confidentiality of the Confidential Information, including, without limitation, by cooperating with Debtor to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information by such tribunal. Neither Prospective Purchaser nor its Representatives shall not be liable for any disclosure to any tribunal made in accordance with the requirements of this paragraph.

6. **Return of Confidential Information.** All documents and other tangible objects containing or representing Confidential Information and all copies thereof which are in the possession of Prospective Purchaser shall be and shall remain the property of Debtor and shall be promptly returned to Debtor upon reasonable request of Debtor. All written materials prepared by Prospective Purchaser relating to this Agreement will be held by Prospective Purchaser and kept confidential and subject to the terms of this Agreement, or promptly destroyed at the request of Debtor (in which case, such destruction will be certified to Debtor in writing). Notwithstanding the return of the Confidential Information, Prospective Purchaser and its Representatives shall continue to be bound, for a period of two (2) years from the date hereof, by Prospective Purchaser's obligations of confidentiality and other obligations hereunder. Additionally, if Prospective Purchaser is not the successful purchaser of the Property it shall destroy all Confidential Information within thirty (30) days of the entry of an order of the Bankruptcy Court confirming the sale of the Property. Prospective Purchaser further agrees not to solicit or contact the Insider Tenants or any tenants at the Property at any time.

7. **Accuracy of Confidential Information.** Prospective Purchaser acknowledges and agrees that;

- (a) all documentation relating to the Property, including, but not limited to, the Confidential Information (the "**Property Information**"), delivered or

made available to Prospective Purchaser and/or its Representatives by the CRO, Debtor and its Representatives may have been prepared by third parties and may not be the work product of the Debtor;

- (b) CRO and Debtor have not made an independent investigation or verification of, nor has any knowledge of, the accuracy or completeness of the Property Information;
- (c) the CRO and Debtor makes no representation that Debtor owns or has any right to the Confidential Information or has the right to disseminate it;
- (d) the Property Information delivered or made available to Prospective Purchaser and Prospective Purchaser's representatives is furnished to each of them at the request, and for the convenience, of Prospective Purchaser;
- (e) Prospective Purchaser is relying solely on its own investigations, examinations, and inspections of the Property and Potential Transaction and those of Prospective Purchaser's Representatives; and
- (f) CRO and Debtor expressly disclaim any representations or warranties with respect to the accuracy or completeness of the Property Information and Prospective Purchaser releases the CRO and Debtor and their respective agents, attorneys, and representatives, from any and all liability with respect thereto.

8. **Disclosure to Representatives.** Subject to the requirement that the Confidential Information be kept in the strictest confidence, Prospective Purchaser may make disclosures of the Confidential Information to his Representatives, provided before receiving any Confidential Information, the Prospective Purchaser's Representative is provided a copy of this Agreement and executes a Declaration Concerning Receipt of Confidential Information, a form of which is attached hereto as **Exhibit A**.

9. **Capacity.** The CRO and/or his professionals are signing this Agreement in their capacity solely as professionals of and/or the court appointed Chief Restructuring Officer of the Debtor and Debtor in Possession in Chapter 11 Bankruptcy Case. Nothing contained herein, relating to the Property or Debtor shall in any way impute liability to Joshua Teeple, personally, or as a member of any professional organization including Grobstein Teeple, or anyone acting on his or their behalf, including but not limited to his counsel Marshack Hays LLP, and his financial advisors Onyx Asset Advisors.

10. **Remedies.** Prospective Purchaser understands and agrees that money damages would not be a sufficient remedy for any breach of this Agreement by Prospective Purchaser or by any of its Representatives and that Debtor shall (without any requirement for posting a bond or other security, which requirements Prospective Purchaser hereby expressly waives) be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach. Such remedies shall not be deemed to be the exclusive remedies for a breach by Prospective Purchaser or by any of its Representatives of this Agreement but shall be in addition to all other remedies available at law or in equity to Debtor.

11. **Miscellaneous.**

- (a) **Additional Acts.** The Parties agree to execute and deliver all documents and instruments and to perform such additional acts as the other party may reasonably request, or as may be necessary or appropriate to effectuate, consummate, or perform any of the terms, provisions, or conditions of this Agreement. In no event shall any documents presented require or infer a representation or warranty by the Debtor.
- (b) **Modification.** Any modification of this Agreement shall be valid and binding only if in writing and signed by all of the Parties hereto.
- (c) **Waiver.** No waiver of any of the terms or conditions of this Agreement shall be binding or effective for any purpose unless expressed in writing and executed by the Party to be bound thereby.
- (d) **Notices.** Any notices, services of process, summons or other communication (collectively, the “**Notice**”) given hereunder shall be in writing, and shall be deemed to be properly given if given as follows:

TO DEBTOR:

David Wood
Marshack Hays LLP
e-mail: dwood@marshackhays.com

TO PROSPECTIVE PURCHASER:

Name: _____
Address: _____

Telephone Number: _____
Facsimile: _____
e-mail: _____

or to such other address as the Party to whom Notice is to be given hereunder may have furnished in writing to the other Parties in accordance herewith. All Notices shall be deemed received on the date of service of such Notice if Notice is effectuated via telefacsimile transmission or by hand delivery, or, if Notice is effectuated by first class mail, on the third business day after such Notice is mailed.

- (e) **Severability.** If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such portion shall be deemed severed from the Agreement, and the remaining parts shall

remain in full force and effect as if no such invalid or unenforceable provision had been a part of the Agreement and, to the extent necessary, this Agreement shall be modified by such Court to fully implement the rights and duties of the Parties set forth herein.

- (f) **Successors and Assigns.** This Agreement will be binding upon the Parties and their respective representatives, successors, and assigns, and will inure to the benefit of all Parties hereto and their respective representatives, successors, and assigns.
- (g) **Attorneys' Fees.** All Parties to this Agreement agree to bear their own attorneys' fees and costs in its preparation. In the event of any dispute arising out of the interpretation of this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs.
- (h) **Governing Law.** The validity of this Agreement, the construction and enforcement of its terms, and the interpretation of the rights granted to the Parties hereunder shall be governed by and construed in accordance with the laws of the State of California as applied by the United States Bankruptcy Court for the Central District of California. In the event of any dispute, the United States Bankruptcy Court for the Central District of California, Santa Ana Division, shall be the exclusive forum to resolve such dispute.
- (i) **Mutually Drafted.** This Agreement is to be interpreted without regard to the drafting party. The terms and intent of this Agreement, with respect to the rights and obligations of all Parties identified in this Agreement, shall be interpreted and construed on the assumption that all Parties participated equally in its drafting.
- (j) **No Waiver; Delay in Acting.** To be effective, any waiver by any Party of any rights hereunder must be expressed in a writing executed by such Party. If any Party waives any power, right or remedy arising hereunder or under any applicable law, then such waiver shall not be deemed to be a waiver upon the later occurrence or recurrence of any events giving rise to the earlier waiver. No failure or delay by any Party to insist upon the strict performance of any term, condition, covenant, or agreement of this Agreement, or to exercise any right, power or remedy hereunder shall constitute a waiver of any such term, condition, covenant or agreement or of any such breach, or preclude such Party from exercising any such right, power, or remedy at any later time or times.
- (k) **Captions.** Any captions to the paragraphs of this Agreement are solely for the convenience of the Parties, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provisions thereof.

- (l) **Execution in Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original, with the same force and effect as if all signatures appeared on the same document. Delivery of this Agreement may be effectuated by hand delivery, mail, overnight courier or electronic communication (including by PDF sent by electronic mail, facsimile or similar means of electronic communication). Signatures delivered by electronic communication shall have the same legal effect as manual signatures.

- (m) **Entire Agreement.** This Agreement contains the entire agreement between the Parties and constitutes the complete, final and exclusive embodiment of their agreement with respect to the subject matters hereof and supersedes all prior and contemporaneous oral and written agreements, correspondence and discussions between the Parties. The terms of this Agreement are contractual and not mere recitals. Each Party certifies that it has read all of the foregoing Agreement, and fully understands all of the terms hereof. Each Party acknowledges and represents that it enters into this Agreement of its own will and not due to any representation, commitment, promise, pressure, or duress from any other Party. This Agreement is executed without reliance upon any promise or representation by any Party other than those expressly contained in this Agreement. Except as provided in paragraph 11(e) hereof, each Party agrees that each provision of this Agreement is interdependent with, and made in consideration of, each other provision. This Agreement shall not be amended or modified except by an instrument in writing signed by all Parties.

- (n) **Independent Advice.** Each Party acknowledges that it has consulted with and has relied upon its own legal counsel as it deemed necessary in connection with the negotiation, execution and delivery of this Agreement.

- (o) **Authority to Sign.** Each of the Parties herein represents and warrants that the execution, delivery and performance of this Agreement has been duly authorized and signed by a person who meets statutory or other binding approval to sign on behalf of its business organization as named in this Agreement.

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IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

PROSPECTIVE PURCHASER:

By: _____
Its: _____

DEBTOR:

EXHIBIT A

**DECLARATION CONCERNING RECEIPT OF CONFIDENTIAL
INFORMATION SUBJECT TO PROTECTIVE ORDER**

State of _____
County of _____

1. I, _____, certify that I have received and read the NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT dated March ____, 2021 (the "Agreement").

2. I further certify that I fully understand the terms, conditions and requirements of the Agreement.

3. Before reviewing or receiving access to any Confidential Information, as defined in the Agreement, and as a condition for such review and/or access, I understand and agree that I am personally bound by and subject to all of the terms and provisions of the Agreement.

4. I subject myself to the jurisdiction and venue of the United States Bankruptcy Court for the Central District of California for purposes of enforcement of the Agreement and my undertaking pursuant to this Declaration. I acknowledge that a violation of this Declaration and the Stipulation shall entitle parties to seek both legal and equitable remedies against me.

I declare under penalty of perjury that the foregoing is true and

correct. Dated: this ____ day _____ 2021.

Printed Name: _____