

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

OREXIGEN THERAPEUTICS, INC.,

Debtor.¹

Chapter 11

Case No. 18-10518 (KG)

NOTICE OF ORDER (A) APPROVING THE DISCLOSURE STATEMENT ON AN INTERIM BASIS, (B) ESTABLISHING PROCEDURES FOR SOLICITATION AND TABULATION OF VOTES TO ACCEPT OR REJECT THE PLAN, (C) APPROVING THE FORMS OF BALLOTS AND SOLICITATION MATERIALS, (D) ESTABLISHING THE VOTING RECORD DATE, (E) SCHEDULING THE CONFIRMATION HEARING AND DEADLINE FOR FILING OBJECTIONS TO FINAL APPROVAL OF THE DISCLOSURE STATEMENT AND CONFIRMATION OF THE PLAN, AND (F) APPROVING THE RELATED FORM OF NOTICE

TO ALL HOLDERS OF CLAIMS AND INTERESTS AND PARTIES IN INTEREST:

1. **PLEASE TAKE NOTICE THAT** on March 27, 2019, the United States Bankruptcy Court for the District of Delaware (the “Court”) entered the *Order (A) Approving the Disclosure Statement on an Interim Basis, (B) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan, (C) Approving the Forms of Ballots and Solicitation Materials, (D) Establishing the Voting Record Date, (E) Scheduling the Confirmation Hearing and Deadline for Filing Objections to Final Approval of the Disclosure Statement and Confirmation of the Plan, and (F) Approving the Related Form of Notice* (D.I. 999) (the “Joint Interim Approval and Procedures Order”) which, among other things: (a) granted interim approval to the amended disclosure statement for the amended plan of liquidation (as may be amended or supplemented from time to time and including all exhibits thereto, the “Disclosure Statement”) of Orexigen Therapeutics, Inc. (the “Debtor”) and (b) authorized the Debtor to solicit votes with regard to the acceptance or rejection of Debtor’s amended plan of liquidation (as may be amended or supplemented from time to time and including all exhibits thereto, the “Plan”).²
2. **PLEASE TAKE FURTHER NOTICE THAT April 9, 2019 at 4:00 p.m. prevailing Eastern Time** is the Voting Record Date for purposes of determining (a) which Holders of Claims are entitled to vote on the Plan and (b) whether Claims have been properly

¹ The last four digits of the Debtor’s federal tax identification number are 8822. The Debtor’s mailing address for purposes of this Chapter 11 Case is Orexigen Therapeutics, Inc. c/o Hogan Lovells US LLP, 875 Third Avenue, New York, NY 10022, Attn: Chris Bryant and John Beck.

² Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Disclosure Statement or the Plan, as applicable.



transferred to an assignee pursuant to Bankruptcy Rule 3001(e) such that the applicable assignee can vote as the Holder of the Claim.

3. **PLEASE TAKE FURTHER NOTICE THAT** if you are a Holder of a Claim against the Debtor as of the Voting Record Date and are entitled to vote on the Plan, you will receive a Ballot and voting instructions appropriate for your Claim(s). For your vote to be counted in connection with Confirmation of the Plan, you must follow the appropriate voting instructions, complete all required information on the Ballot and execute and return the completed Ballot so that it is **actually received** in accordance with the voting instructions by **May 13, 2019, at 4:00 p.m. (prevailing Eastern Time)** (the “Voting Deadline”). Any failure to follow the voting instructions included with the Ballot may disqualify your Ballot and your vote on the Plan.
4. **PLEASE TAKE FURTHER NOTICE THAT** the Court has established **May 6, 2019, at 4:00 p.m. (prevailing Eastern Time)** as the deadline for filing and serving objections to the Confirmation of the Plan (the “Objection Deadline”). Any objection to confirmation of the Plan must be in writing, comply with the Bankruptcy Rules and Local Rules, set forth the name, address, phone number and email of the objector, the nature and amount of the Claim or Interests held or asserted by the objector against the Debtor, state with particularity the basis and nature of any objection to the adequacy of the Disclosure Statement and confirmation of the Plan and a proposed modification to the Plan and Disclosure Statement that would resolve such objection, and be filed, together with proof of service thereof (with a copy to chambers), and served by no later than the Objection Deadline upon: (i) counsel to the Debtor: Hogan Lovells US LLP, 875 Third Avenue, New York, NY, 10022, Attn: Christopher R. Donoho III, Christopher R. Bryant and John D. Beck; (ii) co-counsel to the Debtor: Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, 16th Floor, Wilmington, DE 19899, Attn: Andrew R. Remming and Robert J. Dehney; (iii) the Office of the United States Trustee: 844 King Street, Suite 2207, Lockbox #35, Wilmington, Delaware, 19899, Attn: Richard L. Schepacarter; (iv) counsel to certain of the Prepetition Secured Noteholders: Quinn Emanuel Urquhart & Sullivan LLP, 865 S. Figueroa Street, 10th Floor, Los Angeles, CA 90017, Attn: Eric Winston and Bennett Murphy; (v) counsel to the Creditors’ Committee: Irell & Manella LLP, 840 Newport Center Drive, Suite 400, Newport Beach, CA 92660, Attn: Jeffrey M. Reisner and Kerri A. Lyman; (vi) counsel to the Prepetition Secured Notes Indenture Trustee: Kelley Drye & Warren LLP, 101 Park Ave, New York, NY 10178, Attn: James Carr and Benjamin D. Feder; and (vii) such other parties as the Court may order.
5. **PLEASE TAKE FURTHER NOTICE THAT** objections to the adequacy of the Disclosure Statement on a final basis and confirmation of the Plan, if any, shall not raise any objections to the following relief approved in the Joint Interim Approval and Procedures Order: (i) approval of the Disclosure Statement on an interim basis; (ii) the voting procedures; (iii) the forms of notice to be provided to creditors and interest holders; (iv) the forms of ballots to be provided to creditors and interest holders entitled to vote on the Plan; or (v) any other relief granted pursuant to the Joint Interim Approval and Procedures Order.

6. **PLEASE TAKE FURTHER NOTICE THAT** the Court will hold a hearing (the “Confirmation Hearing”) to consider final approval of the adequacy of the Disclosure Statement and confirmation of the Plan on **May 17, 2019 at 11:00 a.m. (prevailing Eastern Time)**, before the Honorable Kevin Gross, United States Bankruptcy Judge, in Courtroom #3 of the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 5th Floor, Wilmington, Delaware 19801. The Confirmation Hearing may be continued from time to time without further notice other than the announcement by the Debtor in open court of the adjourned date(s) at the Confirmation Hearing or any continued hearing or as indicated in any notice of agenda of matters scheduled for hearing filed with the Court. The Debtor may modify the Plan and Disclosure Statement, if necessary, prior to, during, or as a result of the Confirmation Hearing in accordance with the terms of the Plan and Disclosure Statement without further notice.
7. **PLEASE TAKE FURTHER NOTICE THAT** your rights are described in the Disclosure Statement. The Disclosure Statement and the Plan are available by going to the Debtor’s case website <https://www.kccllc.net/orexigen> or by contacting KCC via email at OrexigenInfo@kccllc.com or via telephone at (888) 830-4646 (U.S./Canada) or (310) 751-2641 (International).
8. **PLEASE TAKE FURTHER NOTICE THAT**³ Article VI of the Plan contains the following release, exculpation and injunction provisions:

³ The Plan defines Debtor Related Persons, Related Persons, Exculpated Parties and Released Parties as follows:

“Debtor Related Persons” means, with respect to the Debtor and its Estate, their respective current and former advisors, attorneys, financial advisors, investment bankers, and agents, all solely in their capacity as such. For the avoidance of doubt, “Debtor Related Persons” shall not include any of the Debtor’s current or former officers or directors, except that “Debtor Related Persons” shall include (i) Lota Zoth, in her capacity as a director, and (ii) Thomas Lynch in his capacities as an officer and director.

“Related Persons” means, with respect to any Person, such Person’s current and former officers, directors, principals, employees, members, managers, advisors, attorneys, financial advisors, investment bankers, or agents, all solely in their capacity as such.

“Exculpated Parties” means (a) The Debtor and its Estate, (b) the DIP Lenders, (c) the Required Prepetition Secured Noteholders, (d) the Prepetition Secured Notes Indenture Trustee, (e) the Creditors’ Committee, (f) the members of the Creditors’ Committee (in such capacity), (g) the Wind Down Administrator (in such capacity), (h) the Wind Down Committee, (i) the members of the Wind Down Committee (in such capacity), (j) the Sole Continuing Director (in such capacity), (k) the Sole Continuing Officer (in such capacity), (l) the 401(k) Administrator (in such capacity), (m) the Prepetition Unsecured Notes Indenture Trustees, and (n) KCC (in its capacity as Claims Agent, Noticing Agent and Balloting Agent), including any and all Related Persons of each of the foregoing in such capacities.

“Released Parties” means, subject to the limitations expressly provided in the Plan, (a) the Debtor and its Estate and all of their respective Debtor Related Persons; (b) the DIP Lenders and all of their respective Related Persons; (c) Baupost Group Securities, EcoR1 Capital Fund, L.P., EcoR1 Capital Fund Qualified, L.P., Biotechnology Value Trading Fund OS, LP, Biotechnology Value Fund II, LP, and Biotechnology Value Fund II, LP (each, solely in their capacity as a Prepetition Secured Noteholder) and all Related Persons of each of the foregoing (each, solely in their capacity as a Related Person of a Prepetition Secured Noteholder); (d) the Creditors’ Committee and its members (each, solely in their capacity as a Creditors’ Committee member) and all of their respective Related Persons (each, solely in their capacity as a Related Person of the Creditors’ Committee or a member); (e) the Prepetition Secured Notes Indenture Trustee and its Related Persons and (f) the Prepetition Unsecured Notes Indenture Trustees.

Article VI

RELEASES, DISCHARGE, INJUNCTION AND EXCULPATION

6.1. Exculpation and Limitation of Liability. EFFECTIVE AS OF THE EFFECTIVE DATE, THE EXCULPATED PARTIES SHALL NEITHER HAVE, NOR INCUR ANY LIABILITY TO ANY HOLDER OF A CLAIM OR AN INTEREST, THE DEBTOR, OR ANY OTHER PARTY-IN-INTEREST, OR ANY OF THEIR RESPECTIVE RELATED PERSONS, FOR ANY PREPETITION OR POSTPETITION ACT OR OMISSION IN CONNECTION WITH, RELATING TO, OR ARISING OUT OF, THE CASE, THE DECISION TO FILE THE CASE, THE ACTIONS TAKEN IN PREPARATION TO FILE THE CASE, THE FORMULATION, NEGOTIATION, OR IMPLEMENTATION OF THE DISCLOSURE STATEMENT OR THIS PLAN, THE SOLICITATION OF ACCEPTANCES OF THIS PLAN, THE PURSUIT OF CONFIRMATION OF THIS PLAN, THE CONFIRMATION OF THIS PLAN, THE CONSUMMATION OF THIS PLAN, THE PURSUIT OF THE SALE OR THE SALE, OR THE ADMINISTRATION OF THIS PLAN OR THE PROPERTY TO BE DISTRIBUTED UNDER THIS PLAN, EXCEPT FOR ACTS OR OMISSIONS THAT ARE THE RESULT OF WILLFUL MISCONDUCT, GROSS NEGLIGENCE, FRAUD OR CRIMINAL ACTS; *PROVIDED, HOWEVER*, THAT (I) THE FOREGOING IS NOT INTENDED TO LIMIT OR OTHERWISE IMPACT ANY DEFENSE OF QUALIFIED IMMUNITY THAT MAY BE AVAILABLE UNDER APPLICABLE LAW; (II) EACH EXCULPATED PARTY SHALL BE ENTITLED TO RELY UPON THE ADVICE OF COUNSEL CONCERNING HIS, HER OR ITS DUTIES PURSUANT TO, OR IN CONNECTION WITH THE CASE, THE DECISION TO FILE THE CASE, THE ACTIONS TAKEN IN PREPARATION TO FILE THE CASE, THE FORMULATION, NEGOTIATION, OR IMPLEMENTATION OF THE DISCLOSURE STATEMENT OR THIS PLAN, THE SOLICITATION OF ACCEPTANCES OF THIS PLAN, THE PURSUIT OF CONFIRMATION OF THIS PLAN, THE CONFIRMATION OF THIS PLAN, THE CONSUMMATION OF THIS PLAN, THE PURSUIT OF THE SALE OR THE SALE, OR THE ADMINISTRATION OF THIS PLAN OR THE PROPERTY TO BE DISTRIBUTED UNDER THIS PLAN; AND (III) THE FOREGOING EXCULPATION SHALL NOT BE DEEMED TO, RELEASE, AFFECT, OR LIMIT ANY OF THE RIGHTS AND OBLIGATIONS OF THE EXCULPATED PARTIES FROM, OR EXCULPATE THE EXCULPATED PARTIES WITH RESPECT TO, ANY OF THE EXCULPATED PARTIES' OBLIGATIONS OR COVENANTS ARISING PURSUANT TO THIS PLAN, THE CONFIRMATION ORDER, OR THE WIND DOWN ENTITY AGREEMENT.

6.2. Releases and Related Matters.

(a) **Releases by the Debtor.** NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, AS OF THE EFFECTIVE DATE, FOR GOOD AND VALUABLE CONSIDERATION, THE ADEQUACY OF WHICH IS HEREBY CONFIRMED, INCLUDING: (1) THE SETTLEMENT, RELEASE AND COMPROMISE OF DEBT AND ALL OTHER GOOD AND VALUABLE CONSIDERATION PAID PURSUANT HERETO; AND (2) THE SERVICES OF THE DEBTOR'S PRESENT AND FORMER OFFICERS, DIRECTORS, MANAGERS AND ADVISORS IN FACILITATING THE EXPEDIENT IMPLEMENTATION OF THE

TRANSACTIONS, DISTRIBUTIONS AND LIQUIDATION CONTEMPLATED HEREBY, THE DEBTOR, AND ANY PERSON OR ENTITY SEEKING TO EXERCISE THE RIGHTS OF THE DEBTOR'S ESTATE, INCLUDING, WITHOUT LIMITATION, ANY SUCCESSOR TO THE DEBTOR OR ANY ESTATE REPRESENTATIVE APPOINTED OR SELECTED PURSUANT TO SECTION 1123(B)(3) OF THE BANKRUPTCY CODE (INCLUDING THE WIND DOWN ENTITY AND WIND DOWN ADMINISTRATOR), SHALL BE DEEMED TO FOREVER RELEASE, WAIVE, AND DISCHARGE EACH OF THE RELEASED PARTIES FROM ANY AND ALL CLAIMS, OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, DEMANDS, DEBTS, REMEDIES, RIGHTS, CAUSES OF ACTION, RIGHTS OF SETOFF AND LIABILITIES WHATSOEVER (INCLUDING ANY DERIVATIVE CLAIMS ASSERTED ON BEHALF OF THE DEBTOR) IN CONNECTION WITH OR IN ANY WAY RELATING TO THE DEBTOR, THE CONDUCT OF THE DEBTOR'S BUSINESSES, THE CASE, THE DISCLOSURE STATEMENT OR THIS PLAN (OTHER THAN THE RIGHTS OF THE DEBTOR, THE WIND DOWN ADMINISTRATOR OR A CREDITOR HOLDING AN ALLOWED CLAIM TO ENFORCE THE OBLIGATIONS UNDER THE CONFIRMATION ORDER AND THIS PLAN AND THE CONTRACTS, INSTRUMENTS, RELEASES, AND OTHER AGREEMENTS OR DOCUMENTS DELIVERED THEREUNDER) WHETHER LIQUIDATED OR UNLIQUIDATED, FIXED OR CONTINGENT, MATURED OR UNMATURED, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, THEN EXISTING OR THEREAFTER ARISING, IN LAW, EQUITY, OR OTHERWISE, THAT ARE BASED IN WHOLE OR PART ON ANY ACT, OMISSION, TRANSACTION, EVENT, OR OTHER OCCURRENCE TAKING PLACE PRIOR TO THE EFFECTIVE DATE; *PROVIDED, HOWEVER*, THAT NOTHING IN THIS SECTION **Error! Reference source not found.:**

- (i) SHALL BE DEEMED TO PROHIBIT THE WIND DOWN ADMINISTRATOR FROM OBJECTING TO OR SEEKING DISALLOWANCE OF ANY DISPUTED CLAIMS FILED BY ANY RELEASED PARTIES OR RELATED PERSONS; OR
- (ii) SHALL OPERATE AS A RELEASE, WAIVER OR DISCHARGE OF ANY CAUSES OF ACTION OR LIABILITIES UNKNOWN TO THE DEBTOR AS OF THE PETITION DATE ARISING OUT OF GROSS NEGLIGENCE, WILLFUL MISCONDUCT, FRAUD OR CRIMINAL ACTS OF ANY SUCH RELEASED PARTY OR RELATED PERSON.

(b) **Releases by Holders of Claims.** NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, ON THE EFFECTIVE DATE AND AS OF THE EFFECTIVE DATE, FOR GOOD AND VALUABLE CONSIDERATION, THE ADEQUACY OF WHICH IS HEREBY CONFIRMED, THE HOLDERS OF CLAIMS AGAINST THE DEBTOR WHO: (I) VOTES TO ACCEPT THIS PLAN, (II) IS DEEMED TO HAVE ACCEPTED THIS PLAN, (III) ABSTAINS FROM VOTING ON THIS PLAN, OR (IV) VOTES TO REJECT THIS PLAN AND DOES NOT OPT OUT OF THE RELEASES CONTAINED IN THIS PLAN SHALL BE DEEMED TO FOREVER RELEASE, WAIVE, AND DISCHARGE EACH OF THE RELEASED PARTIES FROM ANY AND ALL CLAIMS, OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES,

DEMANDS, DEBTS, RIGHTS, CAUSES OF ACTION, AND LIABILITIES WHATSOEVER IN CONNECTION WITH OR IN ANY WAY RELATING TO THE DEBTOR, THE CONDUCT OF THE DEBTOR'S BUSINESSES, THE CASE, THE DISCLOSURE STATEMENT OR THIS PLAN (OTHER THAN THE RIGHTS OF THE DEBTOR, OR A CREDITOR HOLDING AN ALLOWED CLAIM TO ENFORCE THE OBLIGATIONS UNDER THE CONFIRMATION ORDER AND THIS PLAN AND THE CONTRACTS, INSTRUMENTS, RELEASES, AND OTHER AGREEMENTS OR DOCUMENTS DELIVERED THEREUNDER), WHETHER LIQUIDATED OR UNLIQUIDATED, FIXED OR CONTINGENT, MATURED OR UNMATURED, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, THEN EXISTING OR THEREAFTER ARISING, IN LAW, EQUITY, OR OTHERWISE, WHETHER FOR TORT, CONTRACT, VIOLATION OF FEDERAL OR STATE SECURITIES LAW OR OTHERWISE, THAT ARE BASED IN WHOLE OR PART ON ANY ACT, OMISSION, TRANSACTION, EVENT, OR OTHER OCCURRENCE TAKING PLACE ON OR PRIOR TO THE EFFECTIVE DATE; *PROVIDED, HOWEVER*, THAT NOTHING IN THIS SECTION **Error! Reference source not found.**(b) SHALL OPERATE AS A RELEASE, WAIVER OR DISCHARGE OF ANY CAUSES OF ACTION OR LIABILITIES UNKNOWN TO SUCH PERSON AS OF THE PETITION DATE ARISING OUT OF GROSS NEGLIGENCE, WILLFUL MISCONDUCT, FRAUD OR CRIMINAL ACTS OF ANY SUCH RELEASED PARTY; *PROVIDED, FURTHER, HOWEVER*, THAT, FOR THE AVOIDANCE OF DOUBT, NOTHING IN THIS SECTION 6.2(b) SHALL OPERATE AS A RELEASE, WAIVER OR DISCHARGE OF ANY CLAIMS OR CAUSES OF ACTION (I) AGAINST THE DEBTOR OR ANY NON-DEBTOR, ARISING UNDER OR IN CONNECTION WITH THE SECURITIES LITIGATION OR (II) OF THE DEBTOR, TO THE EXTENT NOT OTHERWISE RELEASED UNDER SECTION 6.2(a), TO BE TRANSFERRED TO THE WIND DOWN ENTITY ON THE EFFECTIVE DATE.

(c) **Plan Settlement.** AS NOTED ABOVE, ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL, PURSUANT TO SECTION 1123(B) OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 9019, OF THE PLAN SETTLEMENT, INCLUDING THE FOREGOING RELEASE BY THE DEBTOR, WHICH INCLUDES BY REFERENCE EACH OF THE RELATED PROVISIONS AND DEFINITIONS CONTAINED HEREIN, AND FURTHER, SHALL CONSTITUTE THE BANKRUPTCY COURT'S FINDING THAT THE FOREGOING RELEASE BY THE DEBTOR IS: (1) IN EXCHANGE FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE RELEASED PARTIES; (2) A GOOD FAITH SETTLEMENT AND COMPROMISE OF THE CLAIMS AND INTERESTS RELEASED BY THE FOREGOING RELEASE BY THE DEBTOR; (3) IN THE BEST INTERESTS OF THE DEBTOR AND ALL HOLDERS OF CLAIMS AND INTERESTS; (4) FAIR, EQUITABLE AND REASONABLE; (5) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING; AND (6) A BAR TO THE DEBTOR OR THE WIND DOWN ADMINISTRATOR ASSERTING ANY CLAIM OR CAUSE OF ACTION RELEASED PURSUANT TO THE FOREGOING RELEASE BY THE DEBTOR.

(d) **Releases by Sabby Parties in Connection with the Sabby Settlement.** NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, ON

THE EFFECTIVE DATE AND AS OF THE EFFECTIVE DATE, FOR GOOD AND VALUABLE CONSIDERATION, THE ADEQUACY OF WHICH IS HEREBY CONFIRMED, THE SABBY PARTIES, EACH OF THEIR RESPECTIVE SUBSIDIARIES AND AFFILIATES, AND THE RESPECTIVE PAST AND PRESENT AGENTS, ATTORNEYS, EMPLOYEES, OFFICERS, DIRECTORS, SHAREHOLDERS, SUCCESSORS, ASSIGNS, MEMBERS, REPRESENTATIVES (IN THEIR CAPACITY AS SUCH) OF EACH OF THE FOREGOING (COLLECTIVELY, THE “**SABBY RELEASE PARTIES**”), FOREVER, IRREVOCABLY AND UNCONDITIONALLY RELEASE AND DISCHARGE U.S. BANK NATIONAL ASSOCIATION, IN ITS CAPACITIES AS PREPETITION SECURED NOTES INDENTURE TRUSTEE AND PREPETITION COLLATERAL AGENT, THE PREPETITION SECURED NOTEHOLDERS (OTHER THAN THE SABBY PARTIES), THE COMMITTEE AND ITS MEMBERS (SOLELY IN THEIR CAPACITIES AS SUCH), THE WIND DOWN ENTITY, THE WIND DOWN ADMINISTRATOR, AND THE DEBTOR, THE RESPECTIVE SUBSIDIARIES AND AFFILIATES OF EACH OF THE FOREGOING, AND THE RESPECTIVE PAST AND PRESENT AGENTS, ATTORNEYS, EMPLOYEES, OFFICERS, DIRECTORS, SHAREHOLDERS, SUCCESSORS, ASSIGNS, MEMBERS, REPRESENTATIVES (IN THEIR CAPACITY AS SUCH) OF EACH OF THE FOREGOING (COLLECTIVELY, THE “**DEBTOR/SECURED PARTY RELEASE PARTIES**”), FROM ANY AND ALL ACTIONS, ATTORNEYS’ FEES, CHARGES, CLAIMS, COSTS, DEMANDS, EXPENSES, JUDGMENTS, LIABILITIES AND CAUSES OF ACTION OF ANY KIND, NATURE OR DESCRIPTION, WHETHER MATURED OR UNMATURED, CONTINGENT OR ABSOLUTE, LIQUIDATED OR UNLIQUIDATED, KNOWN OR UNKNOWN (COLLECTIVELY, “**SABBY LITIGATION RELATED CLAIMS**”) WHICH THE SABBY RELEASE PARTIES MAY NOW HAVE, HAVE EVER HAD, OR MAY IN THE FUTURE HAVE AGAINST THE DEBTOR/SECURED PARTY RELEASE PARTIES, ARISING OUT OF OR IN CONNECTION WITH THE CLAIMS AND DISPUTES ASSERTED IN THE SABBY LITIGATION. THE RELEASES PROVIDED HEREIN BY THE SABBY RELEASE PARTIES IN FAVOR OF THE DEBTOR/SECURED PARTY RELEASE PARTIES DO NOT IN ANY MANNER WHATSOEVER EXTEND TO PAYMENT OF THE SABBY SETTLEMENT AMOUNT OR ANY OBLIGATION OF U.S. BANK NATIONAL ASSOCIATION, IN ITS CAPACITIES AS PREPETITION SECURED NOTES INDENTURE TRUSTEE AND PREPETITION COLLATERAL AGENT, UNDER THE SABBY SETTLEMENT AGREEMENT OR TO DISTRIBUTIONS UNDER THIS PLAN OR ANY OTHER CHAPTER 11 PLAN IN THE CASE.

(e) **Releases by Debtor, U.S. Bank National Association, and Prepetition Secured Noteholders and Committee in Connection with Sabby Settlement.** NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, ON THE EFFECTIVE DATE AND AS OF THE EFFECTIVE DATE, FOR GOOD AND VALUABLE CONSIDERATION, THE ADEQUACY OF WHICH IS HEREBY CONFIRMED, THE DEBTOR/SECURED PARTY RELEASE PARTIES FOREVER, IRREVOCABLY AND UNCONDITIONALLY RELEASE AND DISCHARGE THE SABBY RELEASE PARTIES FROM ANY AND ALL SABBY LITIGATION RELATED CLAIMS WHICH THE DEBTOR/SECURED PARTY RELEASE PARTIES MAY NOW HAVE, HAVE EVER HAD, OR MAY IN THE FUTURE HAVE AGAINST THE SABBY

RELEASE PARTIES, ARISING OUT OF OR IN CONNECTION WITH THE CLAIMS AND DISPUTES ASSERTED IN THE SABBY LITIGATION. THE RELEASES PROVIDED HEREIN BY THE DEBTOR/SECURED PARTY RELEASE PARTIES IN FAVOR OF THE SABBY RELEASE PARTIES DO NOT IN ANY MANNER WHATSOEVER EXTEND TO THE OBLIGATION OF THE SABBY PARTIES UNDER THE SABBY SETTLEMENT AGREEMENT.

(f) **Sabby Litigation Settlement.** ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL, PURSUANT TO SECTION 1123(B) OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 9019, OF THE SABBY SETTLEMENT AGREEMENT, INCLUDING THE FOREGOING RELEASE BY THE DEBTOR OF THE SABBY RELATED PARTIES, WHICH INCLUDES BY REFERENCE EACH OF THE RELATED PROVISIONS AND DEFINITIONS CONTAINED HEREIN, AND FURTHER, SHALL CONSTITUTE THE BANKRUPTCY COURT'S FINDING THAT THE FOREGOING RELEASE BY THE DEBTOR IS: (1) IN EXCHANGE FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE SABBY RELATED PARTIES; (2) A GOOD FAITH SETTLEMENT AND COMPROMISE OF THE SABBY LITIGATION RELATED CLAIMS RELEASED BY THE FOREGOING RELEASE BY THE DEBTOR; (3) IN THE BEST INTERESTS OF THE DEBTOR AND ALL HOLDERS OF CLAIMS AND INTERESTS; (4) FAIR, EQUITABLE AND REASONABLE; (5) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING; AND (6) A BAR TO THE DEBTOR OR THE WIND DOWN ADMINISTRATOR ASSERTING ANY CLAIM OR CAUSE OF ACTION RELEASED PURSUANT TO THE FOREGOING RELEASE BY THE DEBTOR.

6.3. Injunction Related to Releases and Exculpations. Except as provided in this Plan or the Confirmation Order, as of the Effective Date, (i) all Persons that hold, have held, or may hold a Claim or Interest or any other cause of action, obligation, suit, judgment, damages, debt, right, remedy or liability of any nature whatsoever, relating to the Debtor or any of its respective assets, property and Estate, the Released Parties or the Exculpated Parties that is released or exculpated pursuant to Sections 6.1 or 6.2 of this Plan, (ii) all other parties in interest, and (iii) each of the Related Persons of each of the foregoing entities, are, and shall be, permanently, forever and completely stayed, restrained, prohibited, barred and enjoined from taking any of the following actions (whether directly or indirectly, derivatively or otherwise, on account of or based on the subject matter of such released Claims or Interests or other causes of action, obligations, suits, judgments, damages, debts, rights, remedies or liabilities, and of all Interests or other rights of a Holder of an equity security or other ownership interest): (a) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding (including, without limitation, any judicial, arbitral, administrative or other proceeding) in any forum; (b) enforcing, attaching (including, without limitation, any prejudgment attachment), collecting, or in any way seeking to recover any judgment, award, decree, or other order; (c) creating, perfecting or in any way enforcing in any matter, directly or indirectly, any Lien; (d) setting off (to the extent a request for setoff is pending as of the Effective Date), seeking reimbursement or contributions from, or subrogation against, in any manner, directly or indirectly, any amount against any liability or obligation owed to any Person discharged, released, or exculpated under Sections 6.1 or 6.2 of this Plan; and (e) commencing or

continuing in any manner, in any place of any judicial, arbitration or administrative proceeding in any forum, that does not comply with or is inconsistent with the provisions of this Plan or the Confirmation Order; *provided, however*, that, for the avoidance of doubt, nothing in the Plan, including this Section 6.2(g), or the Confirmation Order, shall enjoin or otherwise impact (x) the continued prosecution of the Securities Litigation, against all defendants named or to be named therein, (y) the rights of the Wind Down Entity with respect to the Wind Down Assets or (z) any rights the lead plaintiff in the Securities Litigation (on behalf of itself and the proposed class it represents in the Securities Litigation), the Debtor, the Debtor's Estate, or the Wind Down Entity may have to make a claim under, or receive the proceeds of, any insurance available in connection with the claims and causes of action asserted in the Securities Litigation or otherwise.

Dated: April 5, 2019

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

By: /s/ Andrew R. Remming
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