

THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
(Greenbelt Division)

In re
PG&E NATIONAL ENERGY
GROUP, INC.
Debtor.

* Chapter 11 Case
*
* Case No. 03-30459-PM
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PLAN OF REORGANIZATION FOR PG&E NATIONAL ENERGY GROUP, INC.

Dated: July 8, 2003

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PLAN OF REORGANIZATION

PG&E National Energy Group, Inc., one of the debtors and debtors in possession in the above captioned chapter 11 cases, hereby proposes this Plan of Reorganization:

ARTICLE I.

DEFINITIONS

As used in the Plan, the following terms have the respective meanings specified below (such meaning to be equally applicable to both the singular and the plural, and masculine and feminine forms of the terms defined):

1.01. “Administrative Claim” means a Claim for payment of costs or expenses of administration specified in sections 503(b) and 507(a)(1) of the Bankruptcy Code, other than a Fee Claim.

1.02. “Affiliate Debtors” means the debtors and debtors in possession in the Chapter 11 Cases other than the Debtor.

1.03. “Allowed Claim” means a Claim: (a) either (i) proof of which has been timely filed with the Bankruptcy Court or has been deemed timely filed by a Final Order; or (ii) if not so filed, scheduled by the Debtor other than as disputed, contingent or unliquidated; and

(b) allowed by a Final Order, by this Plan, or because no party in interest timely has filed an objection, filed a motion to equitably subordinate, or otherwise sought to limit recovery on such Claim. An Allowed Claim shall not include interest accruing after the Petition Date on the amount of any Claim except as expressly provided herein.

1.04. “*Allowed [Class Designation/Type] Claim*” means an Allowed Claim in a specified class or of a specified type.

1.05. “*Avoidance Action*” means an action pursuant to sections 544, 545, 547, 548, 549, 550, or 553 of the Bankruptcy Code brought by or on behalf of the Debtor.

1.06. “*Bankruptcy Code*” means sections 101, et seq. of title 11 of the United States Code, as now in effect or hereafter amended.

1.07. “*Bankruptcy Court*” means the United States Bankruptcy Court for the District of Maryland or any other court or adjunct thereof exercising competent jurisdiction.

1.08. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure, as amended from time to time, and the Local Rules of the Bankruptcy Court, as applicable to the Chapter 11 Cases

1.09. “*Bar Date*” means the date established by the Bankruptcy Court as the last date for filing proofs of pre-Petition Date Claims against the Debtor.

1.10. “*Business Day*” means any day other than Saturday, Sunday or “legal holiday” as such term is defined in Bankruptcy Rule 9006(a).

1.11. “*Cash*” means cash and cash equivalents, including but not limited to bank deposits, checks, and other similar items.

1.12. “*Cash On Hand*” means Cash available for use by the Debtor in the operation of its business, net of any Cash necessary to make Distributions to holders of

Administrative Claims, Fee Claims, Secured Claims, Priority Claims, and Priority Tax Claims (or, in the case of those of such Claims that are Disputed Claims, to establish appropriate reserves), that is not subject to any secured claims, interests, liens, or encumbrances other than any liens created pursuant to the New Indentures.

1.13. “*Chapter 11 Cases*” means these jointly administered cases under chapter 11 of the Bankruptcy Code concerning the Debtor and the Affiliate Debtors, Case Nos. 03-____ (____)

1.14. “*Claim*” means a claim against the Debtor, as such term is defined in section 101(5) of the Bankruptcy Code.

1.15. “*Class*” means a group of Claims or Interests as classified under this Plan.

1.16. “*Committee*” means the Official Committee of Unsecured Creditors appointed for the Debtor by the United States Trustee as it may be reconstituted from time to time. In the event that multiple official committees of creditors are appointed by the United States Trustee for the Debtor in the Chapter 11 Cases, then any provision in the Plan conferring consent and/or consultation rights upon the Committee shall apply to each official committee appointed for the Debtor directly affected by the exercise of such rights; *provided, however*, that nothing herein shall confer rights on any committee appointed solely for the Affiliate Debtors.

1.17. “*Confirmation Date*” means the date on which the Clerk of the Bankruptcy Court enters the Confirmation Order on the Bankruptcy Court’s docket.

1.18. “*Confirmation Hearing*” means the hearing pursuant to which the Bankruptcy Court enters the Confirmation Order.

1.19. “*Confirmation Order*” means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

1.20. “*Creditor*” means a Person that holds a Claim.

1.21. “*Debtor*” means PG&E National Energy Group, Inc.

1.22. “*Disclosure Statement*” means the disclosure statement respecting the Plan approved by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code.

1.23. “*Disputed Claim*” means a Claim (or any portion thereof) as to which:

- (a) an objection has been timely filed, and such objection has not been: (i) withdrawn, or (ii) overruled or denied in whole by a Final Order;
- (b) before the deadline for an objection to the Claim to be filed, the amount of the Claim specified in the applicable proof of Claim exceeds the amount of any corresponding Claim scheduled by the Debtor in the Schedules as being neither disputed nor contingent or no such amount is scheduled as being neither disputed nor contingent;
- (c) there is a dispute as to classification of the Claim;
- (d) there is a dispute as to the appropriate estimated amount of such Claim under section 502(c) of the Bankruptcy Code, pursuant to Section 5.02(k) of the Plan; or
- (e) the Claim is contingent or unliquidated.

1.24. “*Distribution*” means the distribution in accordance with this Plan of Cash or other property, as the case may be.

1.25. “*Distribution Address*” means the last known address of a Creditor, whether derived from the Schedules, a proof of claim filed with the Court or other written notification to the Debtor as to where a distribution under a Plan is to be sent.

1.26. “*Distribution Date*” means any date that is: (a) the Initial Distribution Date; (b) any Interim Distribution Date; or (c) the Final Distribution Date.

1.27. “*Effective Date*” means a date to be determined by the Debtor that will be no later than fifteen (15) days after the later of: (a) the date each of the conditions to the Effective Date has been satisfied or waived, provided no stay of the Confirmation Order is then in effect; or (b) the date any stay of the Confirmation Order is vacated or any appeal, rehearing, remand, or petition for certiorari regarding the Confirmation Order is resolved by Final Order in a manner that does not reverse or materially modify the Confirmation Order.

1.28. “*Equipment Revolver Guarantee*” means that certain guarantee and agreement (Turbine Credit Agreement), dated as of May 29, 2001, made by PG&E National Energy Group, Inc. in favor of Société Générale.

1.29. “*Excess Cash*” means the amount, if any, of Cash On Hand as of the Effective Date that exceeds \$[] million.

1.30. “*Executory Contract*” means any executory contract or unexpired lease within the meaning of section 365 of the Bankruptcy Code in effect between the Debtor and another Person as of the Petition Date.

1.31. “*Face Amount*” means respecting a Claim: (i) if the holder of such Claim has not filed a proof of Claim by the applicable bar date and there is no Final Order fixing the allowed amount of such Claim, the amount of such Claim that is listed in the Schedules as undisputed, noncontingent and liquidated or, if no amount is listed, zero (\$0) dollars; (ii) if the holder of such Claim has filed a proof of Claim by the applicable bar date, the liquidated amount as stated in such proof of Claim, or, if no liquidated amount is listed, then zero (\$0) dollars unless such amount is allowed or estimated by order of the Bankruptcy Court; (iii) an amount fixed or estimated by order of the Bankruptcy Court; or (iv) in all other cases, zero (\$0) dollars.

1.32. “*Fee Claim*” means any Claim against the Debtor of a professional person employed under section 327 or 1103 of the Bankruptcy Code in accordance with sections 328, 330 and/or 331 of the Bankruptcy Code, and/or which is entitled to the priority pursuant to section 503(b)(2), 503(b)(3)(F), 503(b)(4) or 503(b)(5) of the Bankruptcy Code.

1.33. “*Final Distribution Date*” means:

(a) with respect to each Claim that is not a Class 3 Claim, the first Business Day twenty (20) days (or such longer period not to exceed sixty (60) days as may be reasonably determined by the Reorganized Debtor) after the later of: (i) the Effective Date; and (ii) the date that such Claim becomes an Allowed Claim; and

(b) with respect to Class 3 Claims, the first Business Day twenty (20) days (or such longer period not to exceed sixty (60) days as may be reasonably determined by the Reorganized Debtor) after the date on which all Disputed Claims in Class 3 have been resolved by Final Order.

1.34. “*Final Order*” means an order or judgment, as entered on the docket of the applicable court, that has not been reversed, modified or amended, is not stayed, and as to which the time to appeal from or to seek review or rehearing or petition for certiorari of has expired without an appeal or application for review or rehearing or petition having been filed.

1.35. “*General Unsecured Claim*” means any Claim against the Debtor, other than a Secured Claim, Administrative Claim, Fee Claim, Priority Claim, Priority Tax Claim, or Subordinated Claim.

1.36. “*GenHoldings Guarantee*” means that certain amended and restated guarantee and agreement (GenHoldings I, LLC), dated as of March 15, 2002, made by PG&E National Energy Group, Inc. in favor of Société Générale.

1.37. “*Guaranty Claim*” means any General Unsecured Claim against the Debtor that is set forth in Schedule [6.02(k)] hereto.

1.38. “*Impaired*” means any Claim in a class that is impaired within the meaning of section 1124 of the Bankruptcy Code.

1.39. “*Initial Distribution Date*” means, with respect to Allowed Claims in Class 3, the first Business Day twenty (20) days (or such longer period not to exceed sixty (60) days as may be reasonably determined by the Reorganized Debtor) after the Effective Date.

1.40. “*Interest*” means: (a) an equity interest in the Debtor; or (b) any warrants, options, or other contractual rights to purchase an equity interest in the Debtor.

1.41. “*Interim Distribution Date*” means any date after the Initial Distribution Date on which the Reorganized Debtor determines, in its sole discretion, that an interim distribution should be made to Class 3 in light of, *inter alia*, reductions in Disputed Claims and the administrative costs of such distribution.

1.42. “*IRC*” means the Internal Revenue Code of 1986, as amended from time to time.

1.43. “*Lake Road Guarantee*” means that certain guarantee and agreement (Lake Road), dated as of April 6, 2001, made by PG&E National Energy Group, Inc. in favor of Citibank, N.A., as security agent for certain financial institutions.

1.44. “*La Paloma Guarantee*” means that certain guarantee and agreement (La Paloma), dated as of April 6, 2001, made by PG&E National Energy Group, Inc. in favor of Citibank, N.A., as security agent for certain financial institutions.

1.45. “*Lien*” means any conveyance in trust, assignment or pledge of, mortgage or lien on, security interest in, or charge or encumbrance of any kind in or against, any property of the Debtor.

1.46. “*New Common Stock*” means the shares of authorized common stock of the Reorganized Debtor to be issued under the Plan.

1.47. “*New Indentures*” means the respective indentures pursuant to which the New Tranche A Notes and the New Tranche B Notes are to be issued, in the forms annexed as Exhibits “[]” and “[]”, respectively, to the Disclosure Statement.

1.48. “*New Stock Option Plan*” means a stock option plan approved by the board of directors of the Reorganized Debtor, providing for the issuance to management of options to purchase up to 5% of the New Common Stock or such greater percentage as may be approved by a majority of the holders of the New Common Stock.

1.49. “*New Tranche A Notes*” means the senior secured notes due [2008] in the amount of \$500 million to be issued by the Reorganized Debtor pursuant to the terms of the applicable New Indenture and distributed to holders of Class 3 Claims pursuant to Section 6.1 hereof.

1.50. “*New Tranche B Notes*” means the [9%] junior secured notes due [2009] (to be junior in priority only to New Tranche A Notes) in the amount of \$500 million to be issued by the Reorganized Debtor pursuant to the terms of the applicable New Indenture and distributed to holders of Class 3 Claims pursuant to Section 6.1 hereof.

1.51. “*Old Senior Notes*” means the 10.375% Senior Notes due 2011, in the original principal amount of \$1 billion, issued by the Debtor pursuant to the Old Indenture.

1.52. “*Old Indenture*” means the indenture, dated as of May 22, 2001, for the Old Senior Notes.

1.53. “*Old Indenture Trustee*” means Wilmington Trust Company or its successor, as trustee under the Old Indenture.

1.54. “*Parent Litigation Claim*” means any and all claims or causes of action of the Debtor against PG&E Corporation, whether or not known, contingent, liquidated, or matured.

1.55. “*Person*” means an individual, a corporation, a limited liability company, a partnership or limited liability partnership, an association, a joint stock company, a joint venture, an estate, a trust, an unincorporated organization, or a government or any subdivision thereof, or any other entity.

1.56. “*Petition Date*” means July 8, 2003, the date on which the Chapter 11 Cases were commenced.

1.57. “*Plan*” means this plan under chapter 11 of the Bankruptcy Code (including all exhibits and schedules annexed hereto), as the same may be altered, amended, or modified from time to time (after the Confirmation Date, such amendments or modifications being effective only if approved by order of the Bankruptcy Court).

1.58. “*PG&E Energy Trading LC Facility*” means (i) \$35,000,000 credit agreement, dated as of November 13, 1998, among PG&E Energy Trading-Gas Corporation, PG&E Energy Trading, Canada Corporation, PG&E Energy Trading-Power Holdings Corporation, PG&E Energy Trading-Power, L.P. and The Chase Manhattan Bank, as amended and (ii) the credit agreement, dated as of November 13, 1998, among PG&E Energy Trading-Gas

Corporation, PG&E Energy Trading, Canada Corporation, PG&E Energy Trading-Power Holdings Corporation, PG&E Energy Trading-Power, L.P. and Bank of Montreal, as amended.

1.59. “*Priority Claim*” means any Claim to the extent entitled to priority in payment pursuant to section 507(a) of the Bankruptcy Code, other than an Administrative Claim or Priority Tax Claim.

1.60. “*Priority Tax Claim*” means any unsecured Claim, to the extent entitled to priority in payment under section 507(a)(8) of the Bankruptcy Code.

1.61. “*Ratable Share*” means a number (expressed as a percentage), calculated as of the date ten (10) Business Days (or such other fixed period reasonably determined by the Reorganized Debtor) prior to each Distribution Date equal to the proportion that an Allowed Claim in a Class bears to the aggregate amount of Allowed Claims in such Class as of the date of determination. Solely for the purpose of calculating the amount to be distributed to holders of Allowed Class 3 Claims and reserved for the holders of Disputed Claims alleged to be Class 3 Claims on a Distribution Date, the Reorganized Debtor shall treat each Disputed Claim alleged to be a Class 3 Claim as an Allowed Class 3 Claim in the Face Amount of such Disputed Claim, unless: (a) otherwise ordered by the Bankruptcy Court; or (b) estimated under the Plan pursuant to Section 6.02(i) hereof, in which case the amount so ordered or estimated, as the case may be, shall be utilized in lieu of the Face Amount.

1.62. “*Record Date*” means the date established in the Confirmation Order for determining the identity of holders of Allowed Claims entitled to Distributions under the Plan. If no Record Date is established in the Confirmation Order, then the Record Date shall be the Confirmation Date.

1.63. “*Reorganized Debtor*” means the Debtor on and after the Effective Date.

1.64. “*Revolving Credit Agreement*” means that certain \$1,250,000,000 amendment and restated credit agreement, dated as of August 22, 2001, among PG&E National Energy Group, Inc. as the Borrower, The Chase Manhattan Bank, as Issuing Bank, the several lenders from time to time parties thereto, Barclays Bank PLC and Westdeutsche Landesbank Girozentral, New York Branch as Documentation Agents, Dresdner Bank AG, New York and Grand Cayman Branches, and the Royal Bank of Scotland PLC, as Syndication Agents, The Chase Manhattan Bank, as Administrative Agent and J.P. Morgan Securities Inc., as Lead Arranger and Bookrunner, as amended.

1.65. “*Schedules*” means the schedules, as amended from time to time, of assets and liabilities filed by the Debtor with the Bankruptcy Court in accordance with sections 521 and 1106(a)(2) of the Bankruptcy Code.

1.66. “*Secured Claim*” means any Claim to the extent such claim constitutes a secured Claim pursuant to section 506 or 1111(b) of the Bankruptcy Code.

1.67. “*Securities Act*” means the Securities Act of 1933, as amended.

1.68. “*Subordinated Claim*” means a Claim against the Debtor subject to subordination pursuant to section 510 of the Bankruptcy Code.

1.69. “*Unclaimed Property*” means any Cash or other distributable property unclaimed on or after the Effective Date or the date on which an additional Distribution would have been made in respect of a Claim. Unclaimed Property shall include: (a) checks (and the funds represented thereby) mailed to a Distribution Address and returned as undeliverable without a proper forwarding address; (b) funds for uncashed checks; and (c) checks (and the

funds represented thereby) not mailed or delivered because no Distribution Address to mail or deliver such property was available, notwithstanding efforts by the Debtor to locate such address which were commercially reasonable under the circumstances.

ARTICLE II.

UNCLASSIFIED CLAIMS

2.01. *Administrative Claims.* Administrative Claims are unclassified under the Plan. Each holder of an Allowed Administrative Claim shall receive: (i) to the extent not already paid, Cash on the later of the Effective Date and the first Business Day after the date that is thirty (30) calendar days after the date on which such Administrative Claim becomes an Allowed Administrative Claim in the full amount of such Allowed Administrative Claim; or (ii) to the extent not yet due and payable, payment in accordance with the terms and conditions of the particular transaction giving rise to the Administrative Claim; (iii) to the extent such Claims are Administrative Claims of the United States Trustee for fees pursuant to 28 U.S.C. § 1930(a)(6), Cash in accordance with the applicable schedule for payment of such fees; or (iv) treatment on such other terms as may be mutually agreed upon in writing between the holder of such Allowed Administrative Claim and the Debtor, prior to the Effective Date, or the Reorganized Debtor, on or after the Effective Date; *provided, however*, that interim and/or final payment of Allowed Administrative Claims approved by the Court shall be paid at the time of and in accordance with such Court approval.

2.02. *Fee Claims.* Fee Claims are unclassified under the Plan. Each holder of an Allowed Fee Claim shall receive, in Cash, to the extent not already paid, the amounts allowed by the Court: (i) on or as soon as practicable following the date upon which the Court order allowing such Allowed Fee Claim is issued; or (ii) upon such other terms as may be

mutually agreed upon between the holder of such Allowed Fee Claim and the Debtor. Any and all parties requesting allowance and/or payment of a Fee Claim for any period ending on or before the Effective Date must file and serve final applications therefor no later than forty-five (45) days after the Effective Date.

2.03. *Priority Tax Claims.* Priority Tax Claims are unclassified under the Plan. On the later of the Effective Date or as soon as reasonably practicable thereafter and ten (10) Business Days after the date on which a Priority Tax Claim becomes an Allowed Claim, such Claim shall be paid in full, in Cash; *provided, however,* that the Debtor shall have the option, exercisable upon written notice to the relevant Priority Tax Claim holder sent prior to the Effective Date, to pay any Priority Tax Claim over a period not longer than six (6) years from the date of assessment of the applicable tax, with interest on the unpaid portion payable annually in arrears at the rate of interest ordered by the Bankruptcy Court (or agreed to by the holder of the Claim and the Debtor).

ARTICLE III.

CLASSIFICATION OF CLAIMS AND INTERESTS

For purposes of the Plan, Claims are classified as follows:

3.01. *“Class 1 Claims”* shall consist of all Secured Claims against the Debtor.

3.02. *“Class 2 Claims”* shall consist of all Priority Claims against the Debtor that are not Secured Claims.

3.03. *“Class 3 Claims”* shall consist of all General Unsecured Claims.

3.04. *“Class 4 Claims”* shall consist of all Subordinated Claims.

3.05. *“Class 5 Interests”* shall consist of all Interests.

3.06. *Elimination of Classes for Voting Purposes.* Any Class of Claims that is not occupied as of the date of the commencement of the Confirmation Hearing by an Allowed Claim or a Claim temporarily Allowed under Rule 3018 of the Bankruptcy Rules or as to which no vote is cast shall be deemed deleted from the Plan for purpose of voting on acceptance or rejection of the Plan by any such Class under section 1129(a)(8) of the Bankruptcy Code.

ARTICLE IV.

TREATMENT OF CLASSES OF CLAIMS AND INTERESTS

Each Allowed Claim or Interest shall receive the treatment specified below for the applicable Class in full settlement of all rights of the holder of such Allowed Claim or Interest; provided, however, that the holder of such Claim or Interest may agree to and receive less favorable treatment.

4.01. *Class 1 - Secured Claims.* Class 1 is not Impaired.

(a) *Election of Alternative Treatments.* At the election of the Reorganized Debtor, on or before the later of the Effective Date or as soon as reasonably practicable thereafter and ten (10) Business Days after the date on which a Class 1 Claim becomes an Allowed Claim, such Claim shall be satisfied in full by either:

(i) reinstating the Claim, that is, leaving unaltered the legal, equitable, and contractual rights respecting such Claim in accordance with section 1124 of the Bankruptcy Code, including: (A) curing all pre- and postpetition defaults other than defaults relating to the insolvency or financial condition of the Debtor or its status as a debtor under the Bankruptcy Code; and (B) reinstating the maturity date of the Claim;

(ii) paying such Claim in full, in Cash, in an amount equal to such Allowed Class 1 Claim on the Effective Date or as soon as reasonably practicable thereafter; or

(iii) transferring title to the property securing such Allowed Class 1 Claim to the holder of such Claim. Within thirty (30) days after mailing by the Debtor or the Reorganized Debtor of notice of the election of this option (iii), the holder of

an Allowed Class 1 Claim shall be entitled to amend in writing or file a proof of claim for any unsecured deficiency Claim respecting such Claim (to the extent such holder has recourse to a Debtor respecting such Class 1 Claim, and provided the holder has timely filed a proof of claim respecting such Class 1 Claim or whose Class 1 Claim was listed in the Schedules as nondisputed, noncontingent, and liquidated). To the extent, if any, allowed, such deficiency claim shall be treated in Class 3 or Class 4, as appropriate.

4.02. *Class 2 - Priority Claims.* Class 2 is not Impaired. On the later of the Effective Date or as soon as reasonably practicable thereafter and ten (10) Business Days after the date on which a Class 2 Claim becomes an Allowed Class 2 Claim, such Claim shall be paid in full, in Cash.

4.03. *Class 3 - General Unsecured Claims.*

(a) *Treatment.* Class 3 is Impaired. On the later of each Distribution Date and ten (10) Business Days after the date on which a Class 3 Claim becomes an Allowed Class 3 Claim, each holder of an Allowed Class 3 Claim shall receive its Ratable Share of: (a) 100% of the shares of the New Common Stock subject to dilution by the New Stock Option Plan; (b) the New Tranche A Notes; (c) the New Tranche B Notes; and (d) Excess Cash.

(b) *Allowance of Certain General Unsecured Claims.* The obligations of the Debtor under the Old Senior Notes, the Revolving Credit Agreement, the Equipment Revolver Guarantee, the La Paloma Guarantee, the Lake Road Guarantee, the GenHoldings Guarantee and the PG&E Energy Trading LC Facility shall be Allowed Class 3 Claims in the respective amounts set forth on Schedule [4.03] hereto, and not be subject to setoff, recoupment, subordination, recharacterization, or counterclaim, in accordance with Section [6.05] hereof or otherwise; *provided, however,* that: (i) no holder of a Claim allowed hereby shall be entitled to receive more than the full amount of such Claim, from any source; and (ii) upon motion filed and served by a party in interest not later than three (3) Business Days after the Effective Date, the Bankruptcy Court may, prior to the Initial Distribution Date, determine the extent of any actual

or estimated recoveries on account of any such Claim from sources other than the Reorganized Debtor and, upon the determination by the Bankruptcy Court of any such amount, there shall be a corresponding credit against the recovery on the applicable Creditor's Allowed Class 3 Claim, solely to the extent necessary to ensure that such Creditor does not receive Distributions in excess of 100% of the amount of such Allowed Class 3 Claim.

4.04. *Class 4 - Subordinated Claims.* Class 4 is Impaired. Class 4 Claims shall receive no distributions under the Plan. Class 4 is deemed to have rejected the Plan.

4.05. *Class 5 – Interests.* Class 5 is Impaired. Class 5 Interests shall receive no distributions under the Plan, and all Interests shall be deemed canceled as of the Effective Date. Class 5 is deemed to have rejected the Plan.

ARTICLE V.

MEANS OF IMPLEMENTATION OF THE PLAN

5.01. *Distributions to Holders of Old Senior Notes Claims.*

(a) All Distributions on account of Old Senior Notes Claims shall be made to the Old Indenture Trustee for further distribution to individual holders of Old Senior Notes Claims. Any such distribution made by the Old Indenture Trustee shall be made pursuant to the Old Indenture. Notwithstanding any provision in the Plan to the contrary, the Old Indenture shall continue in effect to the extent necessary to allow the Old Indenture Trustee to receive and make distributions pursuant to the Plan on account of Old Senior Notes Claims. Any actions taken by the Old Indenture Trustee on or after the Effective Date that are not for this purpose shall be null and void as against the Reorganized Debtor, and the Reorganized Debtor shall have no obligations to the Old Indenture Trustee for any fees, costs or expenses incurred in connection with any such actions.

(b) As of the close of business on the Record Date, the transfer ledgers for the Old Senior Notes shall be closed, and there shall be no further changes in the record holders of any Old Senior Notes. The Reorganized Debtor and the Old Indenture Trustee shall have no obligation to recognize any transfer of Old Senior Notes occurring on or after the Record Date. The Reorganized Debtor and the Old Indenture Trustee shall instead be entitled to recognize and treat with for all purposes hereunder only with those holders listed on the transfer ledgers of the Old Indenture Trustee as of the close of business on the Record Date.

(c) On the Distribution Date, in recognition of and as a compromise of, pursuant to Bankruptcy Rule 9019(a), any Administrative Claims of the Old Indenture Trustee pursuant to section 503(b) of the Bankruptcy Code, the Reorganized Debtor shall pay the reasonable fees and expenses of the Old Indenture Trustee outstanding as of the Effective Date, in an amount not to exceed \$100,000, without the need for any further order of the Bankruptcy Court. Such payment shall be in addition to, and not in lieu of, any amount that may become payable to the Old Indenture Trustee for its reasonable fees and expenses associated with receiving and making Distributions under the Plan, subject and pursuant to clause (a) above.

(d) Nothing in this Plan shall either enhance or impair any right of the Old Indenture Trustee to enforce a charging lien against the New Common Stock for amounts due to the Old Indenture Trustee under the Old Indenture.

5.02. *Distributions With Respect to Claims of Financial Institutions.* All Distributions to be made in respect of Claims arising under revolving credit, loan, letter of credit, guaranty, and similar agreements pursuant to which an administrative agent is designated to receive payments on behalf of a syndicate of lenders, shall be made to such administrative agent on behalf of all the lenders, rather than separately to the individual lenders.

5.03. *New Stock Option Plan.* On the Effective Date, the Reorganized Debtor shall adopt and implement the New Stock Option Plan without the need for any further corporate action in connection therewith.

5.04. *Non-voting Stock.* The certificate of incorporation and by-laws of the Reorganized Debtor shall, *inter alia*, prohibit the issuance of nonvoting stock to the extent required by section 1123(a) of the Bankruptcy Code.

5.05. *Exemption From Securities Laws.* The Confirmation Order will provide that the offer and sale of the New Common Stock that is issued pursuant to the Plan is exempt from registration pursuant to section 1145(a) of the Bankruptcy Code and that, subject to Section [5.06] below, such New Common Stock may be resold by the holders thereof without restriction, except to the extent that any such holder is deemed to be an “underwriter” as defined in section 1145(b)(1) of the Bankruptcy Code with respect to the New Common Stock.

5.06. *Restriction on Transfer of New Common Stock.* If the Debtor determines, in consultation with the Committee, that it is necessary or advisable to restrict the transfer of the New Common Stock to preserve certain tax attributes of the Debtor for purposes of an election made pursuant to section 382(l)(5) of the IRC or otherwise, then the certificate of incorporation of the Reorganized Debtor may contain such restrictions.

5.07. *Registration Rights Agreement.* On or about the Effective Date, the Reorganized Debtor shall execute and deliver a registration rights agreement in substantially the form annexed as Appendix [] to the Disclosure Statement. Such registration rights agreement shall obligate the Reorganized Debtor to use commercially reasonable efforts to effect, within nine (9) months following the Effective Date, the registration under the Securities Act of 1933, as amended, of New Common Stock held by persons who may be deemed affiliates of the

Reorganized Debtor for purposes of such Act, such registration to be effected pursuant to customary demand and “piggyback” registration provisions, all at the times and in accordance with the terms set forth in such registration rights agreement.

5.08. *Listing of New Common Stock.* The Reorganized Debtor shall use commercially reasonable efforts to cause the shares of the New Common Stock to be listed on a national securities exchange or a qualifying interdealer quotation system on or after the effective date of the registration described in the immediately preceding paragraph. The Reorganized Debtor will be a reporting company under the Securities Exchange Act of 1934 and will file periodic and current reports as required thereunder.

5.09. *Corporate Authorization.*

(a) *Certificate of Incorporation and Bylaws.* The certificate of incorporation and by-laws of the Reorganized Debtor shall be amended and restated in the form annexed as Exhibit “[_]” to the Disclosure Statement.

(b) *Governance Action.* Any action under the Plan to be taken by or required of the Reorganized Debtor, including, without limitation, the adoption or amendment of the certificate of incorporation and by-laws, issuance of securities and instruments, shall be authorized and approved in all respects, without any requirement of further action by the Board of Directors of the Debtor or the Reorganized Debtor.

(c) *Effectuating Documents and Further Transactions.* The Debtor and, subsequently, the Reorganized Debtor shall be authorized to execute, deliver, file, or record such documents, contracts, instruments, releases and other agreements and take such other action as may be necessary to effectuate and further evidence the terms and conditions of the Plan.

5.10. *Post-Effective Date Management of the Reorganized Debtor.*

(a) On the Effective Date, the board of directors of the Reorganized Debtor shall consist of the Debtor's Chief Executive Officer and four additional persons to be designated by the Committee.

(b) At least two (2) days prior to the commencement of the Confirmation Hearing, the Debtor will file with the Court a schedule setting forth the names and respective initial terms of each of the persons to be appointed as the directors of the Reorganized Debtor pursuant to this section. Except as otherwise provided herein, the members of the existing Board of Directors of the Debtor shall have no continuing obligations to the Reorganized Debtor on or after the Effective Date.

5.11. *Debtor's Retention of Causes of Action.* Except: (a) with respect to any claims of the Debtor against parties identified on Schedule [4.03] hereof (which claims shall be deemed to be waived and released pursuant to the Plan); or (b) otherwise as expressly provided herein, on the Effective Date, the Debtor's rights in respect of existing and potential Avoidance Actions and Parent Litigation Claims shall be preserved and become property of the Reorganized Debtor. On the Effective Date, the Reorganized Debtor shall be deemed the representative of the Debtor's estates under section 1123(b) of the Bankruptcy Code and will be authorized and shall have the power to commence and prosecute any and all causes of action that could have been asserted by the Debtor. **ALL AVOIDANCE ACTIONS AND PARENT LITIGATION CLAIMS SHALL SURVIVE CONFIRMATION AND THE COMMENCEMENT OR PROSECUTION OF AVOIDANCE ACTIONS AND PARENT LITIGATION CLAIMS SHALL NOT BE BARRED OR LIMITED BY ANY ESTOPPEL, WHETHER JUDICIAL, EQUITABLE, OR OTHERWISE.**

5.12. *Treatment of Claims By And Against Subsidiaries.*

(a) All Allowed Claims held by any direct or indirect subsidiaries of the Debtor (including, but not limited to, the Affiliate Debtors), shall be afforded identical treatment under the Plan as that applicable to similarly-situated unaffiliated Creditors.

(b) All claims held by the Debtor against any of its direct or indirect subsidiaries of the Debtor (including, but not limited to, the Affiliate Debtors) are specifically preserved and shall not be impaired or released under the Plan; *provided, however*, that such claims may be subject to a subsidiary's right of setoff to the extent available under section 553 of the Bankruptcy Code and applicable non-bankruptcy law.

ARTICLE VI.

TREATMENT OF CLAIMS AND DISTRIBUTIONS UNDER PLAN

6.01. *Distributions to Holders of Claims.*

(a) On the Initial Distribution Date or as soon as reasonably practicable thereafter, the Reorganized Debtor shall distribute the New Common Stock, New Tranche A Notes, New Tranche B Notes and the Excess Cash allocable to Allowed Class 3 Claims. For the purpose of calculating distributions to holders of Allowed Class 3 Claims on the Initial Distribution Date (or to the Old Indenture Trustee for further distribution to holders of Allowed Class 3 Claims, as applicable) all Disputed Claims alleged to be in Class 3 will be treated as though such Claims will be Allowed Class 3 Claims in the amounts asserted or as estimated by the Court pursuant to section 502(c) of the Bankruptcy Code, as applicable.

(b) Upon any Interim Distribution Date, the Reorganized Debtor may make interim distributions to holders of Allowed Class 3 Claims in light of resolutions of Disputed Claims since the date of the immediately prior Distribution.

(c) On the Final Distribution Date or as soon as reasonably practicable thereafter, the Reorganized Debtor shall make the balance of all Distributions required under the Plan.

(d) The Reorganized Debtor may employ or contract with other entities to assist it in making the Distributions required by the Plan.

6.02. *Miscellaneous Distribution Provisions.*

(a) *Unclaimed Property.* If a Distribution under the Plan remains unclaimed twelve (12) months following the date of such Distribution, then the holder of the applicable Allowed Claim shall cease to be entitled to such Distribution and such Distribution shall be retained by the Reorganized Debtor.

(b) *Method of Cash Distributions.* Any Cash payment to be made pursuant to the Plan may be made by draft, check, wire transfer, or as otherwise required or provided in any relevant agreement or applicable law.

(c) *Fractional Plan Securities.* Notwithstanding any other provision of the Plan, only whole numbers of shares of New Common Stock will be issued. When any Initial Distribution or Interim Distribution on account of an Allowed Claim would otherwise result in the issuance of a number of shares of New Common Stock that is not a whole number, the actual distribution of shares of such stock only will include the next lower whole number. When any Final Distribution on account of an Allowed Claim would otherwise result in the issuance of a number of shares of New Common Stock that is not a whole number, the actual distribution of shares of such stock will be rounded to the next higher or lower whole number as follows: (i) fractions equal to or greater than $\frac{1}{2}$ will be rounded to the next higher whole number; and (ii) fractions less than $\frac{1}{2}$ will be rounded to the next lower number. The total number of shares of New Common Stock specified to be distributed to holders of Class 3 Claims will be adjusted as

necessary to account for the rounding provided for herein. If, as a result of such rounding, the amount of shares of New Common Stock to be distributed to holders of Allowed Class 3 Claims differs from the aggregate number of shares of New Common Stock specified to be distributed pursuant to the Plan to holders of Allowed Claims in such Class, the aggregate number of shares of New Common Stock specified with respect to holders of Allowed Claims in such Class will be adjusted upward or downward to provide for the appropriate distribution of New Common Stock, as the case may be. No consideration will be provided in lieu of fractional shares that are rounded down, except that with respect to Distributions to be made on the Initial Distribution Date or Distributions to be made on Interim Distribution Dates or on such other dates as specified in Section 4.03(a) hereto, such fractional shares shall, with respect to each Allowed Class 3 Claim, be deemed held by the Reorganized Debtor for the benefit of the holder of such Allowed Class 3 Claim, to be aggregated with the remaining Distribution to be allocated to such holder on the Final Distribution Date. In addition, notwithstanding the foregoing, no *de minimis* distribution shall be made, as provided in Section 6.02 of this Plan.

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

(e) *No Distribution in Excess of Allowed Amount of Claim.* Notwithstanding anything to the contrary herein, no holder of an Allowed Claim shall receive, respecting such Claim, any Distribution (of a value set forth herein) in excess of the allowed amount of such Claim. Except as expressly provided herein, no Claim shall be allowed to the extent that it is for postpetition interest.

(f) *Disputed Payments.* If any dispute arises as to the identity of the holder of an Allowed Claim entitled to receive any Distribution under the Plan, the Reorganized Debtor may

retain such Distribution until its disposition is determined by a Final Order or written agreement among the interested parties to such dispute and withhold from such Distribution an amount equal to the fees and costs incurred by the Reorganized Debtor in resolving such dispute.

(g) *De Minimis Distributions.* No: (i) Cash payment of less than \$50.00; (ii) Distribution of less than \$1,000 face value of New Tranche A Notes; (iii) Distribution of less than \$1,000 face value of New Tranche B Notes; or (iv) Distribution of less than [___] shares of New Common Stock, shall be required to be made to the holder of any Claim.

(h) *Withholding Taxes.* Any federal or state withholding taxes or other amounts required to be withheld under any applicable law shall be deducted and withheld from any Plan distributions.

(i) *Estimation of Disputed Claims (Other Than Guaranty Claims).* Unless otherwise provided for herein, upon notice and a hearing, the Court shall estimate the aggregate Face Amount of all Disputed Claims in any Class that are disputed, contingent and/or unliquidated. The aggregate Face Amount of: (a) Disputed Claims; and (b) Allowed Claims shall set the maximum allowable aggregate amount of Claims in each relevant Class that is eligible to receive Distributions hereunder. The existence of a Disputed Claim in any Class shall not impair or impede the making of a Distribution to Allowed Claims in the same or other Classes. If the allowed amount of any particular Disputed Claim is reconsidered under section 502(j) of the Bankruptcy Code and Bankruptcy Rule 3008 and/or is allowed in an amount that is greater than the estimated amount of such Claim or the ultimately allowed amount of all Disputed Claims in a particular Class is greater than the estimated aggregate Face Amount of such Claims, no claimant shall have recourse to the Reorganized Debtor (or any property thereof), any Distribution made to a creditor in any other Class herein, or any Cash, previously

distributed on account of any Allowed Claim (however, nothing herein shall modify any right of a holder of a reconsidered Claim under the penultimate sentence of section 502(j) of the Bankruptcy Code).

(j) *Distribution When a Disputed Claim Becomes an Allowed Claim.* Promptly after a Disputed Claim becomes an Allowed Claim, unless a later time is provided for in the Plan or by agreement of the parties, the Reorganized Debtor shall make a Distribution to the holder of such Allowed Claim as if such Claim had been an Allowed Claim on all the prior Distribution Date(s).

(k) *Estimation of Guaranty Claims.* Annexed as Schedule [6.02(k)] hereto is a list of all Guaranty Claims and the Debtor's corresponding estimate of the amount owed in respect of each Guaranty Claim. The Guaranty Claims arise out of *inter alia*, prepetition guarantees by the Debtor of loan repayment obligations and obligations under tolling agreements to which the Debtor and certain of the Debtor's affiliates are parties.

(i) Unless the holder of a Guaranty Claim files a timely objection to the Claim amount estimated by the Debtor with the Bankruptcy Court, the Debtor's estimate of such Claim shall be deemed a final and conclusive estimate of the applicable Guaranty Claim for all purposes under the Plan, pursuant to section 502(c) of the Bankruptcy Code.

(ii) If a timely objection to the Debtor's estimate of any Guaranty Claim is filed with the Bankruptcy Court, then the estimated amount of such Claim for all purposes under the Plan shall be established by the Bankruptcy Court at a hearing to be scheduled by the Debtor or the Reorganized Debtor on not less than five (5) Business Days' notice to the objecting party.

(iii) For the purposes of this Section [6.02(k)], an objection shall be deemed timely if it is filed and served in accordance with any deadlines and procedures established by the Bankruptcy Court in connection with the filing and service of objections to confirmation of the Plan.

6.03. *Objections to Claims.* Unless otherwise ordered by the Bankruptcy Court, all objections to Claims shall be filed with the Bankruptcy Court and served on the

applicable claimant on or prior to ninety (90) days after the later of: (a) the Effective Date; and (b) the date a Claim is filed with the Bankruptcy Court and served on counsel for the Reorganized Debtor.

6.04. *Settlement of Claims.* Subsequent to the Effective Date, the Reorganized Debtor shall have the authority to resolve any Disputed Claim for an Allowed Claim of less than \$100,000 without further Court order and subject only to the filing of a notice of such settlement with the Court. Any such settlement shall be binding upon all parties in interest in the Chapter 11 Cases.

6.05. *Setoff and Recoupment.* The Reorganized Debtor may, but shall not be required to, set off or recoup against any Allowed Claim and the distributions to be made pursuant to the Plan on account of such Claim, claims of any nature that the Debtor or Reorganized Debtor may have against the holder of such Allowed Claim; *provided, however,* that neither the failure to effect such a setoff or recoupment nor the allowance of any Claim against the Debtor or Reorganized Debtor shall constitute a waiver or release by the Debtor or Reorganized Debtor of any claim that the Debtor or the Reorganized Debtor may possess against such holder.

ARTICLE VII.

EXECUTORY CONTRACTS AND UNEXPIRED LEASES

7.01. *Rejection.*

(a) *Leases and Contracts to be Rejected.* On the Confirmation Date, but subject to the occurrence of the Effective Date, the Debtor, pursuant to section 365 of the Bankruptcy Code, shall reject all of its executory contracts and unexpired leases except those that: (i) are the subject of motions to assume or reject pending on the Confirmation Date; (ii) were assumed or

rejected before the Confirmation Date; (iii) are listed on Schedule 7.02 annexed hereto; or (iv) become the subject of a dispute over the amount or manner of cure and for which the Debtor or the Reorganized Debtor, as the case may be, makes a motion, at any time, to reject such contract or lease based upon the existence of such dispute; *provided, however*, that the Debtor shall not be required to assume or reject any executory contract or unexpired lease with any party that is a debtor under the Bankruptcy Code unless and until such contract or lease has been assumed or rejected by such other party.

(b) *Effect of Post-Confirmation Rejection.* The entry by the Bankruptcy Court after the Confirmation Date of an order authorizing the rejection of an executory contract or unexpired lease shall result in such rejection being a prepetition breach under sections 365(g) and 502(g) of the Bankruptcy Code.

(c) *Deadline to File Rejection Damage Claims.* Each Person who is a party to a contract or lease rejected under the Plan must file with the Bankruptcy Court and served on the Debtor's attorneys, not later than thirty (30) days after the Confirmation Date, a proof of Claim for damages alleged to arise from the rejection of the applicable contract or lease or be forever barred from filing a Claim, or sharing in distributions under the Plan, related to such alleged rejection damages.

7.02. *Assumption.*

(a) *Leases and Contracts to be Assumed.* Annexed hereto as Schedule 7.02 is a list of the executory contracts and unexpired leases deemed to be assumed by the Debtor under the Plan as of the Confirmation Date (but subject to the occurrence of the Effective Date) pursuant to section 365 of the Bankruptcy Code, and the cure amounts necessary for such assumptions.

(b) *Deadline to Object to Cure Amounts.* If prior to the Confirmation Date or such other date as the Bankruptcy Court may fix, a party to such an executory contract or unexpired lease listed on Schedule 7.02 hereto fails to file with the Bankruptcy Court and serve upon the attorneys for the Debtor an objection to the applicable cure amount listed on such Schedule, then such party shall be forever barred from asserting any additional or other amounts against the Debtor respecting such cure amount.

(c) *Method of Cure.* At the election of the Reorganized Debtor, any monetary defaults under each executory contract and unexpired lease to be assumed under this Plan shall be satisfied pursuant to section 365(b)(1) of the Bankruptcy Code, in one of the following ways: (a) by payment of the default amount in Cash within forty-five (45) days after the Effective Date or such longer period ordered by the Bankruptcy Court; or (b) on such other terms as may be agreed to by the parties to such executory contract or unexpired lease. If a dispute occurs regarding: (x) the cure amount; (y) the ability of the Debtor to provide adequate assurance of future performance under the contract or lease to be assumed; or (z) any other matter pertaining to assumption, then the cure payments required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order resolving the dispute and approving assumption. Notwithstanding anything herein to the contrary, the Debtor shall retain their right to reject any executory contract or unexpired lease that is subject to a dispute concerning amounts necessary to cure any defaults, until thirty (30) days following entry of a Final Order establishing the cure amount.

ARTICLE VIII.

DISCHARGE, RELEASE, INDEMNIFICATION, ABANDONMENT,
AND SETTLEMENT OF CLAIMS

8.01. *Discharge.*

(a) *Scope.* Except as otherwise provided in the Plan or Confirmation Order, in accordance with section 1141(d)(1) of the Bankruptcy Code, entry of the Confirmation Order acts as a discharge, effective as of the Effective Date, of all Claims. The discharge of the Debtor shall be effective as to each Claim, regardless of whether a proof of claim therefor was filed, whether the Claim is an Allowed Claim, whether the Claim has been asserted, or whether the holder thereof votes to accept the Plan. On the Effective Date, as to every discharged Claim, any holder of such Claim shall be precluded from asserting such Claim against the Debtor or the Reorganized Debtor's assets or properties, or any other or further Claim based upon any document, instrument, act, omission, transaction or other activity of any kind or nature relating to any Claim.

(b) *Injunction.* In accordance with sections 524 and 1141 of the Bankruptcy Code, the discharge provided by this section and by the Confirmation Order, *inter alia*, acts as an injunction against the commencement or continuation of any action, employment of process or act to collect, offset or recover the Claims discharged hereby.

(c) *Release of Securities.* Each holder of any Claim, shall surrender to the Reorganized Debtor any note, instrument, document, certificate, subordinated note, agreement, certificated security or other item, if any, evidencing such Claim. No Distribution hereunder shall be made to or on behalf of any holder of a Claim unless and until such holder executes and delivers to the Reorganized Debtor such items described above, or demonstrates non-availability of such items to the satisfaction of the Reorganized Debtor, including requiring such holder to

post a lost instrument or other indemnity bond, among other things, to hold the Reorganized Debtor or the Old Indenture Trustee, as applicable, harmless in respect of such instrument or other item described above and any Distributions made in respect thereof. The Reorganized Debtor or the Old Indenture Trustee, as applicable, may reasonably require the holder of such Claim to hold the Reorganized Debtor or the Old Indenture Trustee, as applicable, harmless up to the amount of any Distribution made in respect of such unavailable note, instrument, document, certificate, subordinated note, agreement, certificated security or other item evidencing such Claim. Any such holder that fails to execute and deliver such release of liens or other items described above or satisfactorily explain their non-availability to the Reorganized Debtor or the Old Indenture Trustee, as applicable, within 240 days of the Effective Date shall be deemed to have no further claim against the Debtor and the Reorganized Debtor or their property in respect of such Claim and shall not participate in any Distribution hereunder, and the Distribution that would otherwise have been made to such holder shall be treated as Unclaimed Property.

(d) *Satisfaction of Claims and Interests.* The treatment to be provided for respective Allowed Claims pursuant to this Plan shall be in full satisfaction, settlement, release and discharge of such respective Claims or Interests.

(e) *Consent to Use of Tax Attributes.* As of the Effective Date, all Creditors entitled to Distributions under the Plan shall be conclusively deemed to acknowledge and agree that from and after the Effective Date, the Reorganized Debtor shall be entitled to utilize, without compensation, all losses and tax attributes of: (i) the Reorganized Debtor; and (ii) (A) all entities that are members of the consolidated federal income tax group of which the Reorganized Debtor is the common parent; and (B) all entities that are disregarded as entities separate from their owners where such owners are entities described in clause (ii)(A).

8.02. *Release.*

(a) The following release shall be valid, binding, and enforceable and shall supplement any benefits from sections 524 and 1141 of the Bankruptcy Code to the Debtor or the Reorganized Debtor and to other parties involved in the Chapter 11 Case:

AS OF THE CONFIRMATION DATE, BUT SUBJECT TO THE OCCURRENCE OF THE EFFECTIVE DATE: NEITHER: (i) THE DEBTOR, THE REORGANIZED DEBTOR, THEIR SUCCESSORS AND ASSIGNS; (ii) PRESENT DIRECTORS AND OFFICERS; (iii) FORMER DIRECTORS AND OFFICERS WHO HELD SUCH POSITION WITH THE DEBTOR AS OF OR SINCE THE PETITION DATE; AND (iv) AGENTS, ATTORNEYS, ADVISORS, FINANCIAL ADVISORS, INVESTMENT BANKERS AND EMPLOYEES OF THE DEBTOR, SHALL HAVE OR INCUR ANY LIABILITY TO ANY PERSON FOR ANY CLAIM, OBLIGATION, RIGHT, CAUSE OF ACTION OR LIABILITY (INCLUDING, BUT NOT LIMITED TO, ANY CLAIMS ARISING OUT OF ANY ALLEGED FIDUCIARY OR OTHER DUTY AND THE AVOIDANCE OF PREFERENCES OR FRAUDULENT CONVEYANCES) WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING OR HEREAFTER ARISING, BASED ON WHOLE OR IN PART ON ANY ACT OR OMISSION, TRANSACTION OR OCCURRENCE FROM THE BEGINNING OF TIME THROUGH THE EFFECTIVE DATE IN ANY WAY RELATING TO THE DEBTOR; AND ALL CLAIMS BASED UPON OR ARISING OUT OF SUCH ACTIONS OR OMISSIONS SHALL BE FOREVER WAIVED AND RELEASED; *provided, however,* THAT THIS SECTION SHALL HAVE NO EFFECT ON THE LIABILITY OF ANY ENTITY THAT OTHERWISE WOULD RESULT FROM ANY ACTION OR OMISSION

TO THE EXTENT THAT SUCH ACTION OR OMISSION IS DETERMINED IN A FINAL ORDER TO HAVE CONSTITUTED WILLFUL MISCONDUCT.

THE RELEASE DESCRIBED ABOVE SHALL BE ENFORCEABLE AS A MATTER OF CONTRACT AGAINST ANY HOLDER OF A CLAIM TIMELY NOTIFIED OF THE PROVISIONS OF THE PLAN. CLAIMANTS OF THE DEBTOR SHALL BE ENJOINED FROM COMMENCING OR CONTINUING ANY ACTION, EMPLOYMENT OF PROCESS OR ACT TO COLLECT, OFFSET OR RECOVER ANY CLAIM THAT IS RELEASED AS PROVIDED HEREIN.

8.03. *Revesting and Vesting.* Except as otherwise provided in this Plan, on the Effective Date all property comprising the estates of the Reorganized Debtor shall vest in the Reorganized Debtor, free and clear of all claims, liens, charges, encumbrances and interests of creditors and equity security holders (except to the extent that such claims, liens, charges, encumbrances and/or interests have been reinstated, or as otherwise expressly provided herein).

8.04. *Postconfirmation Operations.* As of the Effective Date, the Reorganized Debtor may operate its businesses and use, acquire and settle and compromise claims or interests without supervision of the Court free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by the Plan and Confirmation Order. Without limiting the foregoing, the Reorganized Debtor may pay the charges it incurs for professional fees, disbursements, expenses or related support services after the Confirmation Date without any application to the Court.

8.05. *Survival of Certain Indemnification Obligations.* The obligations of the Debtor to indemnify individuals who serve or served after the Petition Date as the Debtor's respective directors, officers, agents, employees, representatives, and others, including (without

limitation) professional persons retained by the Debtor, pursuant to the Debtor's certificate of incorporation, by-laws, applicable statutes and preconfirmation agreements in respect of all present and future actions, suits and proceedings against any of such officers, directors, agents, employees, representatives, and others, including (without limitation) professional persons retained by the Debtor, based upon any act or omission related to service with, for or on behalf of the Debtor on or before the Effective Date as such obligations were in effect at the time of any such act or omission, shall not be discharged or impaired by confirmation or consummation of this Plan, but shall survive unaffected by the reorganization contemplated by this Plan and shall be performed and honored by the Reorganized Debtor regardless of such confirmation, consummation, and reorganization.

8.06. *Limitation on Liability Regarding Chapter 11 Activities.* **NONE OF THE DEBTOR, THE COMMITTEE, THE INFORMAL GROUP OF HOLDERS OF THE OLD SENIOR NOTES, CITIBANK, N.A., CITIBANK USA, INC., JP MORGAN CHASE BANK, AND SOCIÉTÉ GÉNÉRALÉ OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, MEMBERS OR AGENTS (EACH ACTING IN SUCH CAPACITY), NOR ANY PROFESSIONAL PERSONS EMPLOYED BY ANY OF THEM WILL HAVE OR INCUR ANY LIABILITY TO ANY PERSON FOR ANY ACTION TAKEN OR OMITTED TO BE TAKEN IN CONNECTION WITH OR RELATED TO THE FORMULATION, PREPARATION, DISSEMINATION, IMPLEMENTATION, CONFIRMATION, OR CONSUMMATION OF THE PLAN, THE DISCLOSURE STATEMENT, ANY CONTRACT, RELEASE, OR OTHER AGREEMENT OR DOCUMENT CREATED OR ENTERED INTO, OR ANY OTHER ACTION TAKEN OR OMITTED TO BE TAKEN IN CONNECTION WITH THE PLAN**

OR THE CHAPTER 11 CASES, AND ALL CLAIMS BASED UPON OR ARISING OUT OF SUCH ACTIONS OR OMISSIONS WILL BE FOREVER WAIVED AND RELEASED; *provided, however,* THAT NOTHING HEREIN SHALL AFFECT THE LIABILITY OF ANY ENTITY THAT OTHERWISE WOULD RESULT FROM ANY ACTION OR OMISSION TO THE EXTENT THAT SUCH ACTION OR OMISSION IS DETERMINED IN A FINAL ORDER TO HAVE CONSTITUTED WILLFUL MISCONDUCT.

ARTICLE IX.

CONDITIONS TO CONFIRMATION AND EFFECTIVE DATE

9.01. *Conditions to Confirmation.* Except as provided in Section 9.03

below, the following are conditions precedent to confirmation of the Plan:

(a) The Bankruptcy Court shall have entered the Confirmation Order.

9.02. *Conditions to Effective Date.* Except as provided in Section 9.03

below, the Plan may not be consummated unless each of the conditions set forth below has been satisfied:

(a) The Confirmation Order shall have been entered and not be the subject of any judicial stay.

(b) The Debtor shall have received all authorizations, consents, regulatory approvals, rulings, letters, no-action letters, opinions or documents that are determined by the Debtor to be necessary to implement the Plan.

(c) The Debtor shall have not less than \$[200] million in Excess Cash.

(d) All instruments and documents required in connection with the issuance of the New Common Stock, the New Tranche A Notes, and the New Tranche B Notes shall have been fully executed.

(e) Not more than ninety (90) days shall have elapsed since the Confirmation Order shall have been entered.

9.03. *Waiver of Conditions to Confirmation and Effective Date.*

(a) *Waiving Party.* Each of the conditions to confirmation of the Plan or the occurrence of the Effective Date may be jointly waived in whole or part by the Debtor and the Committee, without notice and a hearing.

(b) *Effect of Waiver or Failure to Waive.* Any such waiver(s) shall not affect the Debtor's benefits under the "mootness doctrine." The failure to satisfy or waive any condition may be asserted by the Debtor, regardless of the circumstances giving rise to the failure of such condition to be satisfied (including, without limitation, any act, action, failure to act, or inaction by the Debtor). The failure of the Debtor to exercise any of the foregoing rights shall not be deemed a waiver of any other rights and each such right shall be deemed an ongoing right that may be asserted or waived (as set forth herein) at any time or from time to time.

(c) *Method of Waiver.* To be effective, any such waiver(s) must be in writing and filed with the Bankruptcy Court.

9.04. *Effect of Nonoccurrence of the Conditions to Effective Date.* If each of the conditions to the occurrence of the Effective Date has not been satisfied or duly waived on or before the first Business Day that is more than 179 days after the Confirmation Date (or by such later date as the Debtor proposes and the Bankruptcy Court approves, after notice and a hearing), upon motion by any party in interest, the Confirmation Order may be vacated by the Bankruptcy

Court; *provided, however*, that notwithstanding the filing of such a motion, the Confirmation Order shall not be vacated if each of the conditions to the Effective Date is either satisfied or duly waived before the Bankruptcy Court enters an order granting the relief requested in such motion. If the Confirmation Order is vacated pursuant to this section, then the Plan shall be null and void in all respects, and nothing contained in the Plan shall: (a) constitute a waiver or release of any Claims against, liens on property of the Debtor; or (b) prejudice in any manner the rights of the Debtor, including (without limitation) the right to seek further extensions of the exclusivity periods under section 1121(d) of the Bankruptcy Code, which exclusivity periods shall be deemed to have been extended to the date twenty (20) days after the date of entry of any order vacating the Confirmation Order, subject to the rights of any party to seek to shorten the exclusivity periods after notice and hearing.

ARTICLE X.

ADMINISTRATIVE PROVISIONS

10.01. *Retention of Jurisdiction.* Notwithstanding confirmation of the Plan or occurrence of the Effective Date, the Bankruptcy Court shall retain jurisdiction for the following purposes:

(a) Determination of the allowability of Claims against, or the administrative expenses of, the Debtor (except those Claims that are Allowed Claims pursuant to the Plan, unless such determination is pursuant to a reconsideration or modification of the entire Plan), and the validity, extent, priority, and nonavailability of consensual and nonconsensual liens and other encumbrances;

(b) Determination of any of the Debtor's tax liability pursuant to section 505 of the Bankruptcy Code;

(c) Approval, pursuant to section 365 of the Bankruptcy Code, of all matters related to the assumption, assumption and assignment, or rejection of any executory contract or unexpired lease of the Debtor;

(d) Resolution of controversies and disputes regarding the enforcement or interpretation of the Plan, the Confirmation Order, or the Bankruptcy Court's orders that survive Confirmation of the Plan pursuant to the Plan or other applicable law;

(e) Implementation of the provisions of the Plan, and entry or orders in aid of confirmation and consummation of the Plan and enforcing settlements or orders entered during the Chapter 11 Cases or as part of the Plan, including, without limitation, appropriate orders to protect the Reorganized Debtor from actions by Creditors of the Debtor and resolution of disputes and controversies regarding property of the Debtor's estate and the Reorganized Debtor;

(f) Modification of the Plan pursuant to section 1127 of the Bankruptcy Code;

(g) Commencement and adjudication of any causes of action that arose preconfirmation or in connection with the implementation of the Plan, including Avoidance Actions, Parent Litigation Claims, and other actions against third parties brought or to be brought by the Debtor, the Reorganized Debtor or other successors of the Debtor as the representative of the Debtor's estate, or a party in interest (as a representative of the Debtor's estate);

(h) Entry of a Final Order closing the Chapter 11 Cases;

(i) Resolution of disputes concerning Disputed Claims, Claims for disputed distributions and recharacterization or equitable subordination of Claims;

(j) Resolution of any disputes concerning any release under the Plan of a nondebtor or the injunction under the Plan, or in the Confirmation Order against acts, employment of process, or actions against such nondebtor;

(k) Resolution of any disputes concerning whether a Person had sufficient notice of, among other things, (i) the Chapter 11 Cases; (ii) the applicable Claims' bar date; (iii) the hearing on the approval of the Disclosure Statement as containing adequate information; or (iv) the hearing on confirmation of the Plan for the purpose of determining whether a Claim is discharged hereunder;

(l) Issuance of injunctions, grant and implementation of other orders, or taking such other actions as may be necessary or appropriate to restrain interference by any Person with consummation or enforcement of the Plan;

(m) Resolution of controversies and disputes regarding settlement agreements, orders, injunctions, judgments, and other matters entered or approved by the Bankruptcy Court in connection with any adversary proceeding, discovery, or contested matter in the Chapter 11 Cases;

(n) Correction of any defect, cure of any omission or reconcile any inconsistency in the Plan, the Confirmation Order, organizational documents of the Reorganized Debtor or any other documents relating to the Plan, as may be necessary to carry out the purposes or intent of the Plan;

(o) Adjudication of any pending adversary proceeding, or other controversy or dispute, in the Chapter 11 Cases, which arose pre-confirmation and over which the Bankruptcy Court had jurisdiction prior to confirmation of the Plan;

(p) Entry and implementation of such orders as may become necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated; and

(q) Determination of any other matters that may arise in connection with or related to the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release, or other agreement or document created in connection with the Plan or Disclosure Statement.

10.02. *Plan Revocation.*

(a) *Pre-Confirmation Amendments.* The Debtor reserves the right to modify the Plan at any time prior to the Confirmation Date.

(b) *Revocation of the Plan.* The Debtor reserves the right to revoke or withdraw the Plan prior to the Confirmation Date. If the Debtor revokes or withdraw the Plan, or if confirmation of the Plan does not occur, then the Plan and related Disclosure Statement shall be null and void, and nothing contained therein shall: (i) constitute a waiver or release of any Claims by or against, liens in property of, the Debtor; or (ii) serve as an admission of fact or conclusion of law or otherwise prejudice in any manner the rights of the Debtor in any further proceedings involving the Debtor.

10.03. *Successors and Assigns.* The rights, benefits, and obligations of any Person named or referred to in the Plan shall be binding upon, and shall inure to the benefit of, the heir, executor, administrator, successor, or assign of such Person.

10.04. *Severability.* Should any provision in the Plan be determined to be unenforceable following the Confirmation Date, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of the Plan; provided that the Plan, as modified, meets the requirements of the Bankruptcy Code, including, without limitation, section 1127 of the Bankruptcy Code.

10.05. *Governing Law.* Except to the extent the Bankruptcy Code, Bankruptcy Rules, other federal laws apply, or as otherwise expressly provided in the Plan, the rights and obligations arising under the Plan shall be governed by the laws of the State of New York without giving effect to principles of conflicts of law.

10.06. *Committees.* As of the Effective Date, the duties of any official committee for the Debtor in the Chapter 11 Cases shall terminate except as to: (a) any appeal or motion for reconsideration of the Confirmation Order; and (b) objections to Fee Claims.

10.07. *Application of Bankruptcy Code section 1146(c).* The issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under the Plan shall be entitled to the tax treatment provided by sections 1146(c) of the Bankruptcy Code and each recording or other agent of any governmental office shall record any such documents of issuance, transfer, or exchange without any further direction or order from the Court.

10.08. *Payment of Statutory Fees.* All fees payable pursuant to section 1930 of title 28, United States Code, due and payable through the Effective Date shall be paid by the Debtor or the Reorganized Debtor on or before the Effective Date and amounts due thereafter shall be paid by the Reorganized Debtor in the ordinary course.

10.09. *Continuation of Injunctions and Stays.* Unless otherwise provided, all injunctions or stays ordered in the Chapter 11 Case, pursuant to section 105 of the Bankruptcy Code or otherwise, and extant on the Confirmation Date shall remain in full force and effect unless or until subsequently modified or terminated.

10.10. *Undefined Terms.* Any term used herein that is not defined herein shall have the meaning ascribed to any such term used in the Bankruptcy Code and/or the Bankruptcy Rules, if used therein.

10.11. *Interpretation.* The words “herein,” “hereof,” “hereto,” “hereunder,” and others of similar inference refer to the Plan as a whole and not to any particular section, subsection, or clause contained in the Plan unless otherwise specified herein. The word “including” shall mean including, without limitation. The headings in the Plan are only for convenience of reference and shall not limit or otherwise affect the provisions of the Plan. A term used herein or elsewhere in the Plan that is not defined herein shall have the meaning ascribed to that term, if any, in the Bankruptcy Code or Bankruptcy Rules.

Submitted by:

Dated: July 8, 2003

PG&E NATIONAL ENERGY GROUP, INC.

By: _____
Vice President and General Counsel