

---

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

---

**FORM 10-Q**

---

**Quarterly Report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

For the quarterly period ended March 31, 2004

**Transition Report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File No. 1-13726

---

**Chesapeake Energy Corporation**

(Exact Name of Registrant as Specified in Its Charter)

---

**Oklahoma**  
(State or other jurisdiction of  
incorporation or organization)

**6100 North Western Avenue**  
**Oklahoma City, Oklahoma**  
(Address of principal executive offices)

**73-1395733**  
(I.R.S. Employer  
Identification No.)

**73118**  
(Zip Code)

**(405) 848-8000**  
Registrant's telephone number, including area code

---

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act). YES  NO

As of May 5, 2004, there were 242,196,292 shares of our \$0.01 par value common stock outstanding.

---

**CHESAPEAKE ENERGY CORPORATION AND SUBSIDIARIES**  
**INDEX TO FORM 10-Q FOR THE QUARTER ENDED MARCH 31, 2004**

|  | <u>Page</u> |
|--|-------------|
| <b>PART I. Financial Information</b>   |             |
| Item 1. Condensed Consolidated Financial Statements (Unaudited):   |             |
| <a href="#">Condensed Consolidated Balance Sheets as of March 31, 2004 and December 31, 2003</a>                             | 3           |
| <a href="#">Condensed Consolidated Statements of Operations for the Three Months Ended March 31, 2004 and 2003</a>           | 4           |
| <a href="#">Condensed Consolidated Statements of Cash Flows for the Three Months Ended March 31, 2004 and 2003</a>           | 5           |
| <a href="#">Condensed Consolidated Statements of Comprehensive Income for the Three Months Ended March 31, 2004 and 2003</a> | 6           |
| <a href="#">Notes to Condensed Consolidated Financial Statements</a>   | 7           |
| Item 2. <a href="#">Management's Discussion and Analysis of Financial Condition and Results of Operations</a>                | 21          |
| Item 3. <a href="#">Quantitative and Qualitative Disclosures About Market Risk</a>   | 30          |
| Item 4. <a href="#">Controls and Procedures</a>  | 34          |
| <b>PART II. Other Information</b>  |             |
| Item 1. <a href="#">Legal Proceedings</a>  | 35          |
| Item 2. <a href="#">Changes in Securities and Use of Proceeds</a>  | 35          |
| Item 3. <a href="#">Defaults Upon Senior Securities</a>  | 36          |
| Item 4. <a href="#">Submission of Matters to a Vote of Security Holders</a>  | 36          |
| Item 5. <a href="#">Other Information</a>  | 36          |
| Item 6. <a href="#">Exhibits and Reports on Form 8-K</a>   | 36          |

## CHESAPEAKE ENERGY CORPORATION AND SUBSIDIARIES

CONDENSED CONSOLIDATED BALANCE SHEETS  
(Unaudited)

|  | March 31,<br>2004   | December 31,<br>2003 |
|--|---------------------|----------------------|
| (\$ in thousands)  |                     |                      |
| <b>ASSETS</b>  |                     |                      |
| <b>CURRENT ASSETS:</b>   |                     |                      |
| Cash and cash equivalents  | \$ 189,425          | \$ 40,581            |
| Accounts receivable:   |                     |                      |
| Oil and gas sales  | 205,826             | 173,792              |
| Joint interest, net of allowances of \$3,523,000 and \$2,669,000, respectively   | 40,408              | 37,789               |
| Short-term derivatives   | —                   | 1,777                |
| Related parties  | 5,310               | 2,983                |
| Other  | 32,618              | 26,830               |
| Deferred income tax asset  | 76,671              | 36,705               |
| Short-term derivative instruments  | —                   | 2,690                |
| Inventory and other  | 21,210              | 19,257               |
|  | <u>571,468</u>      | <u>342,404</u>       |
| <b>PROPERTY AND EQUIPMENT:</b>   |                     |                      |
| Oil and gas properties, at cost based on full-cost accounting:   |                     |                      |
| Evaluated oil and gas properties   | 7,012,420           | 6,221,576            |
| Unevaluated properties   | 301,657             | 227,331              |
| Less: accumulated depreciation, depletion and amortization   | (2,599,185)         | (2,480,261)          |
|  | <u>4,714,892</u>    | <u>3,968,646</u>     |
| Other property and equipment   | 240,378             | 225,891              |
| Less: accumulated depreciation and amortization  | (66,347)            | (61,420)             |
|  | <u>4,888,923</u>    | <u>4,133,117</u>     |
| <b>OTHER ASSETS:</b>   |                     |                      |
| Long-term derivative instruments   | 15,385              | 17,493               |
| Long-term investments  | 33,357              | 31,544               |
| Other assets   | 48,329              | 47,733               |
|  | <u>97,071</u>       | <u>96,770</u>        |
| <b>TOTAL ASSETS</b>  | <b>\$ 5,557,462</b> | <b>\$ 4,572,291</b>  |
| <b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>  |                     |                      |
| <b>CURRENT LIABILITIES:</b>  |                     |                      |
| Accounts payable   | \$ 246,892          | \$ 164,264           |
| Accrued interest   | 42,677              | 46,648               |
| Short-term derivative instruments  | 202,606             | 92,651               |
| Other accrued liabilities  | 117,851             | 108,020              |
| Revenues and royalties due others  | 132,546             | 101,573              |
|  | <u>742,572</u>      | <u>513,156</u>       |
| <b>LONG-TERM LIABILITIES:</b>  |                     |                      |
| Long-term debt, net  | 2,012,147           | 2,057,713            |
| Revenues and royalties due others  | 14,829              | 13,921               |
| Asset retirement obligation  | 57,476              | 48,812               |
| Long-term derivative instruments   | 19,623              | 4,736                |
| Deferred income tax liability  | 368,808             | 191,026              |
| Other liabilities  | 11,828              | 10,117               |
|  | <u>2,484,711</u>    | <u>2,326,325</u>     |
| <b>CONTINGENCIES AND COMMITMENTS (Note 3)</b>  |                     |                      |
| <b>STOCKHOLDERS' EQUITY:</b>   |                     |                      |
| Preferred Stock, \$.01 par value, 10,000,000 shares authorized: 6.75% cumulative convertible preferred stock, 2,997,800 and 2,998,000 shares issued and outstanding as of March 31, 2004 and December 31, 2003, respectively, entitled in liquidation to \$149,890,000 and \$149,900,000 | 149,890             | 149,900              |
| 6.00% cumulative convertible preferred stock, 4,600,000 shares issued and outstanding as of March 31, 2004 and December 31, 2003, respectively, entitled in liquidation to \$230,000,000   | 230,000             | 230,000              |
| 5.00% cumulative convertible preferred stock, 1,725,000 shares issued and outstanding as of March 31, 2004   | 172,500             | 172,500              |

|   |                     |                     |
|---|---------------------|---------------------|
| and December 31, 2003, entitled in liquidation to \$172,500,000   |                     |                     |
| 4.125% cumulative convertible preferred stock, 275,000 and 0 shares issued and outstanding as of March 31, 2004 and December 31, 2003, respectively, entitled in liquidation to \$275,000,000 | 275,000             | —                   |
| Common Stock, \$.01 par value, 350,000,000 shares authorized, 247,005,377 and 221,855,894 shares issued as of March 31, 2004 and December 31, 2003, respectively                              | 2,470               | 2,218               |
| Paid-in capital   | 1,687,844           | 1,389,212           |
| Accumulated deficit   | (72,600)            | (168,617)           |
| Accumulated other comprehensive income (loss), net of tax of \$52,219,000 and \$12,449,000, respectively  | (92,834)            | (20,312)            |
| Less: treasury stock, at cost; 5,071,571 common shares as of March 31, 2004 and December 31, 2003   | (22,091)            | (22,091)            |
|   | <u>2,330,179</u>    | <u>1,732,810</u>    |
| <b>Total Stockholders' Equity</b>   | <b>2,330,179</b>    | <b>1,732,810</b>    |
| <b>TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY</b>   | <b>\$ 5,557,462</b> | <b>\$ 4,572,291</b> |

The accompanying notes are an integral part of these condensed consolidated financial statements.

**CHESAPEAKE ENERGY CORPORATION AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**  
(Unaudited)

|   | Three Months Ended<br>March 31, |                  |
|---|---------------------------------|------------------|
|   | 2004                            | 2003             |
| (\$ in thousands, except<br>per share data)   |                                 |                  |
| <b>REVENUES:</b>  |                                 |                  |
| Oil and gas sales   | \$ 419,793                      | \$ 286,019       |
| Oil and gas marketing sales   | 143,336                         | 90,308           |
| <b>Total Revenues</b>   | <b>563,129</b>                  | <b>376,327</b>   |
| <b>OPERATING COSTS:</b>   |                                 |                  |
| Production expenses   | 44,803                          | 31,457           |
| Production taxes  | 14,936                          | 18,597           |
| General and Administrative Expenses:  |                                 |                  |
| General and administrative (excluding stock based compensation)                         | 8,166                           | 5,379            |
| Stock based compensation  | 1,869                           | —                |
| Oil and gas marketing expenses  | 139,664                         | 89,358           |
| Oil and gas depreciation, depletion and amortization                                    | 119,908                         | 76,614           |
| Depreciation and amortization of other assets   | 5,739                           | 3,684            |
| Provisions for legal settlements  | —                               | 286              |
| <b>Total Operating Costs</b>  | <b>335,085</b>                  | <b>225,375</b>   |
| <b>INCOME FROM OPERATIONS</b>   | <b>228,044</b>                  | <b>150,952</b>   |
| <b>OTHER INCOME (EXPENSE):</b>  |                                 |                  |
| Interest and other income   | 1,343                           | 763              |
| Interest expense  | (46,545)                        | (37,004)         |
| Loss on repurchases or exchanges of Chesapeake debt                                     | (6,925)                         | —                |
| <b>Total Other Income (Expense)</b>   | <b>(52,127)</b>                 | <b>(36,241)</b>  |
| <b>INCOME BEFORE INCOME TAX AND CUMULATIVE EFFECT OF ACCOUNTING CHANGE</b>              | <b>175,917</b>                  | <b>114,711</b>   |
| <b>INCOME TAX EXPENSE:</b>  |                                 |                  |
| Current   | —                               | —                |
| Deferred  | 63,327                          | 43,591           |
| <b>Total Income Tax Expense</b>   | <b>63,327</b>                   | <b>43,591</b>    |
| <b>NET INCOME BEFORE CUMULATIVE EFFECT OF ACCOUNTING CHANGE</b>                         | <b>112,590</b>                  | <b>71,120</b>    |
| <b>CUMULATIVE EFFECT OF ACCOUNTING CHANGE, NET OF INCOME TAXES OF \$1,464,000</b>       | <b>—</b>                        | <b>2,389</b>     |
| <b>NET INCOME</b>   | <b>112,590</b>                  | <b>73,509</b>    |
| <b>PREFERRED STOCK DIVIDENDS</b>  | <b>(8,168)</b>                  | <b>(3,526)</b>   |
| <b>NET INCOME AVAILABLE TO COMMON SHAREHOLDERS</b>                                      | <b>\$ 104,422</b>               | <b>\$ 69,983</b> |
| <b>EARNINGS PER COMMON SHARE — BASIC:</b>   |                                 |                  |
| Income before cumulative effect of accounting change                                    | \$ 0.44                         | \$ 0.34          |
| Cumulative effect of accounting change  | —                               | 0.01             |
|   | <b>\$ 0.44</b>                  | <b>\$ 0.35</b>   |
| <b>EARNINGS PER COMMON SHARE — ASSUMING DILUTION:</b>                                   |                                 |                  |
| Income before cumulative effect of accounting change                                    | \$ 0.38                         | \$ 0.31          |
| Cumulative effect of accounting change  | —                               | 0.01             |
|   | <b>\$ 0.38</b>                  | <b>\$ 0.32</b>   |
| <b>CASH DIVIDEND DECLARED PER COMMON SHARE</b>  | <b>\$ 0.035</b>                 | <b>\$ 0.03</b>   |
| <b>WEIGHTED AVERAGE COMMON AND COMMON EQUIVALENT SHARES OUTSTANDING (in thousands):</b> |                                 |                  |
| Basic   | 236,884                         | 197,608          |
| Assuming dilution   | 299,241                         | 230,672          |

The accompanying notes are an integral part of these condensed consolidated financial statements.

**CHESAPEAKE ENERGY CORPORATION AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(Unaudited)

|  | Three Months Ended<br>March 31, |                    |
|--|---------------------------------|--------------------|
|  | 2004                            | 2003               |
| (\$ in thousands)  |                                 |                    |
| <b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>   |                                 |                    |
| NET INCOME   | \$ 112,590                      | \$ 73,509          |
| <b>ADJUSTMENTS TO RECONCILE NET INCOME TO NET CASH PROVIDED BY OPERATING ACTIVITIES:</b>               |                                 |                    |
| Depreciation, depletion and amortization   | 124,599                         | 78,680             |
| Deferred income taxes  | 63,156                          | 45,055             |
| Unrealized (gains) losses on derivatives   | 22,739                          | (27,710)           |
| Amortization of loan costs and bond discount   | 2,022                           | 1,936              |
| Cumulative effect of accounting change   | —                               | (3,853)            |
| Loss on repurchases or exchanges of Chesapeake debt  | 6,925                           | —                  |
| Income from equity investment  | (422)                           | —                  |
| Stock-based compensation   | 1,869                           | —                  |
| Other  | 76                              | 96                 |
|  | <u>333,554</u>                  | <u>167,713</u>     |
| Cash provided by operating activities before changes in assets and liabilities                         |                                 |                    |
| Changes in assets and liabilities  | 8,216                           | (68,661)           |
|  | <u>341,770</u>                  | <u>99,052</u>      |
| <b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>   |                                 |                    |
| Acquisitions of oil and gas companies, proved properties and unproved properties, net of cash acquired | (482,153)                       | (819,142)          |
| Exploration and development of oil and gas properties  | (235,888)                       | (154,563)          |
| Additions to buildings and other fixed assets  | (11,434)                        | (9,379)            |
| Divestitures of oil and gas properties   | 249                             | 667                |
| Deposit on pending acquisition of Permian Resources  | (3,750)                         | —                  |
| Investment in Pioneer Drilling Company   | —                               | (20,000)           |
| Additions to drilling rig equipment  | (2,466)                         | (36)               |
| Other  | 8                               | 164                |
|  | <u>(735,434)</u>                | <u>(1,002,289)</u> |
| Cash used in investing activities  |                                 |                    |
| <b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>   |                                 |                    |
| Proceeds from long-term borrowings   | 381,000                         | 139,000            |
| Payments on long-term borrowings   | (381,000)                       | (139,000)          |
| Cash received from issuance of senior notes, net of offering costs                                     | —                               | 290,920            |
| Proceeds from issuance of preferred stock, net of offering costs                                       | 267,737                         | 222,907            |
| Proceeds from issuance of common stock, net of offering costs  | 298,107                         | 177,526            |
| Cash paid to purchase or exchange senior notes, including redemption premium                           | (57,271)                        | —                  |
| Cash paid for common stock dividend  | (7,588)                         | (5,705)            |
| Cash paid for preferred stock dividend   | (8,063)                         | (2,530)            |
| Cash paid for treasury stock   | —                               | (2,109)            |
| Net increase in outstanding payments in excess of cash balance   | 47,059                          | 11,676             |
| Other financing costs  | (179)                           | (595)              |
| Cash received from exercise of stock options   | 2,706                           | 1,514              |
|  | <u>542,508</u>                  | <u>693,604</u>     |
| Cash provided by financing activities  |                                 |                    |
| Net increase (decrease) in cash and cash equivalents   | 148,844                         | (209,633)          |
| Cash and cash equivalents, beginning of period   | 40,581                          | 247,637            |
|  | <u>\$ 189,425</u>               | <u>\$ 38,004</u>   |
| Cash and cash equivalents, end of period   |                                 |                    |

The accompanying notes are an integral part of these condensed consolidated financial statements.

**CHESAPEAKE ENERGY CORPORATION AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME**  
**(Unaudited)**

|   | Three Months Ended<br>March 31, |           |
|---|---------------------------------|-----------|
|   | 2004                            | 2003      |
|   | (\$ in thousands)               |           |
| Net Income  | \$ 112,590                      | \$ 73,509 |
| Other comprehensive income, net of income tax:  |                                 |           |
| Change in fair value of derivative instruments, net of income taxes of (\$36,804,000) and (\$29,760,000)                        | (65,430)                        | (48,555)  |
| Reclassification of (gain) or loss on settled contracts, net of income taxes of (\$6,581,000) and \$31,191,000                  | (11,699)                        | 50,891    |
| Ineffective portion of derivatives qualifying for cash flow hedge accounting, net of income taxes of \$2,591,000 and (\$18,000) | 4,607                           | (30)      |
| Comprehensive income  | \$ 40,068                       | \$ 75,815 |

The accompanying notes are an integral part of these condensed consolidated financial statements.



**CHESAPEAKE ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
**(Unaudited)**

**1. Basis of Presentation and Summary of Significant Accounting Policies***Principles of Consolidation*

The accompanying unaudited consolidated financial statements of Chesapeake Energy Corporation and Subsidiaries have been prepared in accordance with the instructions to Form 10-Q as prescribed by the Securities and Exchange Commission. All material adjustments (consisting solely of normal recurring adjustments) which, in the opinion of management, are necessary for a fair presentation of the results for the interim periods have been reflected. The results for the three months ended March 31, 2004 are not necessarily indicative of the results to be expected for the full year. This Form 10-Q relates to the three months ended March 31, 2004 (the "Current Quarter") and the three months ended March 31, 2003 (the "Prior Quarter").

*Stock Options and Restricted Stock*

Chesapeake has elected to follow APB No. 25, *Accounting for Stock Issued to Employees* and related interpretations in accounting for its employee stock options. Under APB No. 25, compensation expense is recognized for the difference between the option price and market value on the measurement date. In March 2000, the Financial Accounting Standards Board issued FASB Interpretation No. 44 (FIN 44), which provided clarification regarding the application of APB No. 25. FIN 44 specifically addressed the accounting consequence of various modifications to the terms of a previously granted fixed-price stock option. Pursuant to FIN 44, we recognized a reduction of compensation expense of \$36,900 and \$22,600 in the Current Quarter and the Prior Quarter, respectively, as a result of modifications to fixed-price stock options that were made during the years ended December 31, 2003, 2001 and 2000. No compensation expense has been recognized for stock options upon original issuance in 2004 or 2003 because the exercise price of the stock options granted under the plans equaled the market price of the underlying stock on the date of grant.

Presented below is pro forma financial information assuming Chesapeake has applied the fair value method under SFAS No. 123:

|  | Three Months Ended<br>March 31,                |                  |
|--|--|------------------|
|  | 2004   | 2003             |
|  | (\$ in thousands, except per<br>share amounts) |                  |
| <b>Net Income</b>                                    |  |                  |
| As reported  | \$ 112,590                                     | \$ 73,509        |
| Less compensation expense, net of tax <sup>(1)</sup> | (3,044)  | (2,475)          |
| <b>Pro forma</b>                                     | <b>\$ 109,546</b>                              | <b>\$ 71,034</b> |
| <b>Basic earnings per common share</b>               |  |                  |
| As reported  | \$ 0.44  | \$ 0.35          |
| Less compensation expense, net of tax <sup>(1)</sup> | (0.01)   | (0.01)           |
| <b>Pro forma</b>                                     | <b>\$ 0.43</b>                                 | <b>\$ 0.34</b>   |
| <b>Diluted earnings per common share</b>             |  |                  |
| As reported  | \$ 0.38  | \$ 0.32          |
| Less compensation expense, net of tax <sup>(1)</sup> | (0.01)   | (0.01)           |
| <b>Pro forma</b>                                     | <b>\$ 0.37</b>                                 | <b>\$ 0.31</b>   |

(1) Adjustments are net of reductions to compensation expense related to FIN 44 of \$36,900 and \$22,600 in the Current Quarter and the Prior Quarter, respectively.

For purposes of the pro forma disclosures, the estimated fair value of the options is amortized to expense over the options' vesting period, which is four years.

During the Current Quarter, Chesapeake issued 1.1 million shares of restricted common stock to employees as a result of Chesapeake's normal compensation review process. The shares of restricted stock vest over a period of four years from the date of grant. Chesapeake recognized

## [Table of Contents](#)

amortization of compensation cost related to the restricted stock totaling \$1.9 million in the Current Quarter. This amount is reflected in the condensed consolidated statements of operations as a charge in the Current Quarter. No such cost was recognized in the Prior Quarter.

### *Critical Accounting Policies*

We consider accounting policies related to stock options, hedging, oil and gas properties, income taxes and business combinations to be critical policies. These policies are summarized in Management's Discussion and Analysis of Financial Condition and Results of Operations in our annual report on Form 10-K for the year ended December 31, 2003, except for our accounting policy related to stock options which is summarized in Note 1 of the notes to the consolidated financial statements included in our annual report on Form 10-K.

Emerging Issues Task Force (EITF) Issue No. 03-S, *Application of SFAS No. 142, Goodwill and Other Intangible Assets to Oil and Gas Companies*, considers whether oil and gas drilling rights represent intangible assets subject to the classification and disclosure provisions of SFAS 142. Chesapeake classifies the cost of oil and gas mineral rights as property and equipment and believes that this is consistent with oil and gas accounting and industry practice. If the EITF determines that oil and gas mineral rights are intangible assets and are subject to the applicable classification and disclosure provisions of SFAS 142, we estimate that \$283.1 million and \$227.3 million would be classified on our condensed consolidated balance sheets as "intangible undeveloped leasehold" and \$1.9 billion and \$1.4 billion would be classified as "intangible developed leasehold" as of March 31, 2004 and December 31, 2003, respectively. These amounts are net of accumulated depreciation, depletion and amortization. There would be no effect on the condensed consolidated statements of operations or cash flows as the intangible assets related to oil and gas mineral rights would continue to be amortized under the full cost method of accounting.

We will continue to classify our oil and gas mineral rights held under lease and other contractual rights representing the right to extract such reserves as tangible oil and gas properties until further guidance is provided.

## **2. Financial Instruments and Hedging Activities**

### *Oil and Gas Hedging Activities*

Our results of operations and operating cash flows are impacted by changes in market prices for oil and gas. To mitigate a portion of the exposure to adverse market changes, we have entered into various derivative instruments. As of March 31, 2004, our oil and gas derivative instruments were comprised of swaps, cap-swaps, basis protection swaps, call options and collars. These instruments allow us to predict with greater certainty the effective oil and gas prices to be received for our hedged production. Although derivatives often fail to achieve 100% effectiveness for accounting purposes, we believe our derivative instruments continue to be highly effective in achieving the risk management objectives for which they were intended.

- For swap instruments, Chesapeake receives a fixed price for the hedged commodity and pays a floating market price, as defined in each instrument, to the counterparty. The fixed-price payment and the floating-price payment are netted, resulting in a net amount due to or from the counterparty.
- For cap-swaps, Chesapeake receives a fixed price and pays a floating market price. The fixed price received by Chesapeake includes a premium in exchange for a "cap" limiting the counterparty's exposure. In other words, there is no limit to Chesapeake's exposure but there is a limit to the downside exposure of the counterparty. Because this derivative includes a written put option (i.e., the cap), cap-swaps do not qualify for designation as cash flow hedges (in accordance with SFAS 133) since the combination of the hedged item and the written put option does not provide as much potential for favorable cash flows as exposure to unfavorable cash flows.
- Basis protection swaps are arrangements that guarantee a price differential of oil or gas from a specified delivery point. Chesapeake receives a payment from the counterparty if the price differential is greater than the stated terms of the contract and pays the counterparty if the price differential is less than the stated terms of the contract.

## Table of Contents

- For call options, Chesapeake receives a cash premium from the counterparty in exchange for the sale of a call option. If the market price exceeds the fixed price of the call option, then Chesapeake pays the counterparty such excess. If the market price settles below the fixed price of the call option, no payment is due from Chesapeake.
- Collars contain a fixed floor price (put) and ceiling price (call). If the market price exceeds the call strike price or falls below the put strike price, then Chesapeake receives the fixed price and pays the market price. If the market price is between the call and the put strike price, then no payments are due from either party.

Chesapeake enters into counter-swaps from time to time for the purpose of locking in the value of a swap. Under the counter-swap, Chesapeake receives a floating price for the hedged commodity and pays a fixed price to the counterparty. The counter-swap is 100% effective in locking in the value of a swap since subsequent changes in the market value of the swap are entirely offset by subsequent changes in the market value of the counter-swap. We refer to this locked-in value as a locked swap. At the time Chesapeake enters into a counter-swap, Chesapeake removes the original swap's designation as a cash flow hedge and classifies the original swap as a non-qualifying hedge under SFAS 133. The reason for this new designation is that collectively the swap and the counter-swap no longer hedge the exposure to variability in expected future cash flows. Instead, the swap and counter-swap effectively lock in a specific gain (or loss) that will be unaffected by subsequent variability in oil and gas prices. Any locked-in gain or loss is recorded in accumulated other comprehensive income and reclassified to oil and gas sales in the month of related production.

In accordance with FASB Interpretation No. 39, Chesapeake nets the value of its derivative arrangements with the same counterparty in the accompanying condensed consolidated balance sheets, to the extent that a legal right of setoff exists.

Gains or losses from derivative transactions are reflected as adjustments to oil and gas sales on the condensed consolidated statements of operations. Pursuant to SFAS 133, certain derivatives do not qualify for designation as cash flow hedges. Changes in the fair value of these non-qualifying derivatives that occur prior to their maturity (i.e., temporary fluctuations in value) are reported currently in the condensed consolidated statements of operations as unrealized gains (losses) within oil and gas sales. Unrealized gains (losses) included in oil and gas sales in the Current Quarter and the Prior Quarter were (\$14.0) million and \$29.7 million, respectively.

Following provisions of SFAS 133, changes in the fair value of derivative instruments designated as cash flow hedges, to the extent they are effective in offsetting cash flows attributable to the hedged risk, are recorded in other comprehensive income until the hedged item is recognized in earnings. Any change in fair value resulting from ineffectiveness is recognized currently in oil and gas sales. We recorded a gain (loss) on ineffectiveness of (\$7.2) million and \$0.1 million in the Current Quarter and the Prior Quarter, respectively.

The estimated fair values of our oil and gas derivative instruments as of March 31, 2004 and December 31, 2003 are provided below. The associated carrying values of these instruments are equal to the estimated fair values.

|                                  | March 31,<br>2004 | December 31,<br>2003 |
|----------------------------------|-------------------|----------------------|
|                                  | (\$ in thousands) |                      |
| Derivative assets (liabilities): |                   |                      |
| Fixed-price gas swaps            | \$ (153,111)      | \$ (44,794)          |
| Fixed-price gas cap-swaps        | (41,057)          | (18,608)             |
| Gas basis protection swaps       | 72,276            | 46,205               |
| Gas call options (a)             | (19,206)          | (17,876)             |
| Fixed-price gas collars          | (6,374)           | —                    |
| Fixed-price gas locked swaps     | (3,929)           | 1,777                |
| Fixed-price crude oil cap-swaps  | (17,711)          | (11,692)             |
| Estimated fair value             | \$ (169,112)      | \$ (44,988)          |

- (a) After adjusting for the remaining \$14.6 million and \$16.8 million premium paid to Chesapeake by the counterparty, the net value of the call options as of March 31, 2004 and December 31, 2003 was (\$4.6) million and (\$1.1) million, respectively.

## [Table of Contents](#)

Based upon the market prices as of March 31, 2004, we expect to transfer a loss of approximately \$72.0 million from accumulated other comprehensive income (loss) to earnings during the next 12 months when the hedged transactions actually close. All hedged transactions as of March 31, 2004 are expected to mature by December 31, 2007, with the exception of the basis protection swaps which extend through 2009.

### *Interest Rate Derivatives*

We also utilize hedging strategies to manage our exposure to changes in interest rates. By entering into interest rate swaps, we convert a portion of our fixed rate debt to floating rate debt. To the extent the interest rate swaps have been designated as fair value hedges, changes in the fair value of the derivative instrument and the corresponding debt are reflected as adjustments to interest expense in the corresponding months covered by the derivative agreement.

In January 2004, Chesapeake acquired a \$50 million interest rate swap as part of the purchase of Concho Resources Inc. Under the terms of the interest rate swap, the counterparty pays a floating three month LIBOR rate and Chesapeake pays a fixed rate of 2.875%. Payments are made quarterly and the interest rate swap extends through September 2005. An initial liability of \$0.6 million was recorded based on the fair value of the interest rate swap at the time of acquisition. As of March 31, 2004, the interest rate swap had a fair value of (\$1.0) million. Because this instrument is not designated as a fair value hedge, an unrealized loss of \$0.4 million was recognized in the Current Quarter as part of interest expense.

In April 2002, Chesapeake entered into a "swaption" with an unrelated counterparty with respect to its 8.5% senior notes due 2012. The notional amount of the swaption was \$142.7 million. Under the swaption, the counterparty received the option to elect whether or not to enter into an interest rate swap with Chesapeake in March 2004, and Chesapeake received a \$7.8 million cash payment. The interest rate swap, if executed by the counterparty, required Chesapeake to pay a fixed rate of 8.5% while the counterparty would pay Chesapeake a floating rate of 6 month LIBOR plus 0.75%. Additionally, if the counterparty were to elect to enter into the interest rate swap, it could also elect to force Chesapeake to settle the transaction at the then current estimated fair value of the interest rate swap.

On March 10, 2004, the counterparty exercised its option to enter into the interest rate swap effective March 15, 2004 and immediately cash settle at the estimated fair value of the interest rate swap. On March 16, 2004, Chesapeake and the counterparty agreed to increase the fixed rate payable by Chesapeake to 8.68% in exchange for the counterparty agreeing to not force settle the swap prior to March 15, 2005. The counterparty may elect to terminate the swap and cause it to be settled at the then current estimated fair value of the interest rate swap on March 15, 2005 and annually thereafter through March 15, 2011. The interest rate swap expires on March 15, 2012. Chesapeake may elect to terminate the swap and cause it to be settled at the then current estimated fair value of the interest rate swap at any time during the term of the swap. Changes in the value of the interest rate swap will be recorded as adjustments to interest expense.

As of March 31, 2004, the fair value of the interest rate swap which resulted from the exercise of the swaption was a liability of \$40.7 million. Because the interest rate swap is not designated as a fair value hedge, changes in the fair value of the swap are recorded as adjustments to interest expense. The Current Quarter includes \$7.7 million of unrealized interest expense and \$0.2 million of realized interest expense.

### *Fair Value of Financial Instruments*

The following disclosure of the estimated fair value of financial instruments is made in accordance with the requirements of Statement of Financial Accounting Standards No. 107, *Disclosures About Fair Value of Financial Instruments*. We have determined the estimated fair value amounts by using available market information and valuation methodologies. Considerable judgment is required in interpreting market data to develop the estimates of fair value. The use of different market assumptions or valuation methodologies may have a material effect on the estimated fair value amounts.

The carrying values of items comprising current assets and current liabilities approximate fair values due to the short-term maturities of these instruments. We estimate the fair value of our long-term, fixed-rate debt using primarily quoted market prices. Our carrying amount for such debt, excluding discounts for interest rate swaps and

## Table of Contents

the swaption, as of March 31, 2004 and December 31, 2003 was \$2,012.1 million and \$2,058.1 million, respectively, compared to approximate fair values of \$2,236.8 million and \$2,279.5 million, respectively. The carrying amounts for our 6.75% convertible preferred stock, 6.00% convertible preferred stock and 5.00% convertible preferred stock as of March 31, 2004 were \$149.9 million, \$230.0 million and \$172.5 million, respectively, with a fair value of \$265.3 million, \$347.9 million and \$189.8 million, respectively. The carrying amount and fair value for our 4.125% convertible preferred stock as of March 31, 2004 was \$275.0 million.

### *Concentration of Credit Risk*

A significant portion of our liquidity is concentrated in cash and cash equivalents and derivative instruments that enable us to hedge a portion of our exposure to price volatility from producing oil and natural gas. These arrangements expose us to credit risk from our counterparties. Other financial instruments which potentially subject us to concentrations of credit risk consist principally of investments in equity instruments and accounts receivable. Our accounts receivable are primarily from purchasers of oil and natural gas products and exploration and production companies which own interests in properties we operate. The industry concentration has the potential to impact our overall exposure to credit risk, either positively or negatively, in that our customers may be similarly affected by changes in economic, industry or other conditions. We generally require letters of credit for receivables from customers which are judged to have sub-standard credit, unless the credit risk can otherwise be mitigated. Cash and cash equivalents are deposited with major banks or institutions and generally exceed the federally insured limits.

### **3. Contingencies and Commitments**

*Litigation.* Chesapeake is currently involved in various disputes incidental to its business operations. Management, after consultation with legal counsel, is of the opinion that the final resolution of all such currently pending or threatened litigation is not likely to have a material adverse effect on our consolidated financial position or results of operations.

*Employment Agreements with Officers.* Chesapeake has employment agreements with its chief executive officer, chief operating officer, chief financial officer and various other senior management personnel, which provide for annual base salaries, bonus compensation and various benefits. The agreements provide for the continuation of salary and benefits for varying terms in the event of termination of employment without cause. The agreements with the chief executive officer and chief operating officer have terms of five years commencing January 1, 2004. The term of each agreement is automatically extended for one additional year on each January 31 unless the company provides 30 days prior notice of non-extension or the parties otherwise terminate the agreement. The agreements with the chief financial officer and other senior managers expire on September 30, 2006. The company's employment agreements with the executive officers provide for payments in the event of a change in control. The chief executive officer and chief operating officer are each entitled to receive a payment in the amount of five times his base compensation and the prior year's benefits, plus a tax gross-up payment, and the chief financial officer and other officers are each entitled to receive a payment in the amount of two times the sum of his or her base compensation and bonuses paid during the prior year.

*Environmental Risk.* Due to the nature of the oil and gas business, Chesapeake and its subsidiaries are exposed to possible environmental risks. Chesapeake has implemented various policies and procedures to avoid environmental contamination and risks from environmental contamination. Chesapeake conducts periodic reviews, on a company-wide basis, to identify changes in our environmental risk profile. These reviews evaluate whether there is a probable liability, its amount, and the likelihood that the liability will be incurred. The amount of any potential liability is determined by considering, among other matters, incremental direct costs of any likely remediation and the proportionate cost of employees who are expected to devote a significant amount of time directly to any possible remediation effort. We manage our exposure to environmental liabilities on properties to be acquired by identifying existing problems and assessing the potential liability. Depending on the extent of an identified environmental problem, Chesapeake may exclude a property from the acquisition, require the seller to remediate the property to our satisfaction, or agree to assume liability for the remediation of the property. Chesapeake has historically not experienced any significant environmental liability, and is not aware of any potential material environmental issues or claims as of March 31, 2004.

### **4. Net Income Per Share**

Statement of Financial Accounting Standards No. 128, *Earnings Per Share*, requires presentation of "basic" and "diluted" earnings per share, as defined, on the face of the statements of operations for all entities with complex capital structures. SFAS 128 requires a reconciliation of the numerator and denominator of the basic and diluted EPS computations.

## [Table of Contents](#)

The following securities were not included in the calculation of diluted earnings per share, as the effect was antidilutive:

- For the Current Quarter and the Prior Quarter, outstanding warrants to purchase 0.4 million shares of common stock at a weighted-average exercise price of \$14.55, were antidilutive because the exercise prices of the warrants were greater than the average market price of the common stock.
- For the Current Quarter and the Prior Quarter, outstanding options to purchase 0.2 million and 0.4 million shares of common stock at a weighted-average exercise price of \$21.05 and \$14.84, respectively, were antidilutive because the exercise prices of the options were greater than the average market price of the common stock.

For the Current Quarter, the outstanding 275,000 shares of 4.125% cumulative convertible preferred stock were not considered to be convertible because the holders did not have the right to convert. A holder's right to convert will only arise when the closing sales price of our common stock reaches, or the trading price of the preferred stock falls below, specified thresholds or upon the occurrence of specified corporate transactions.

Reconciliations for the quarters ended March 31, 2004 and 2003 are as follows:

|  | <u>Income<br/>(Numerator)</u>         | <u>Shares<br/>(Denominator)</u> | <u>Per Share<br/>Amount</u> |
|--|---------------------------------------|---------------------------------|-----------------------------|
|  | (in thousands, except per share data) |                                 |                             |
| <b>For the Quarter Ended March 31, 2004:</b>   |                                       |                                 |                             |
| <b>Basic EPS</b>   |                                       |                                 |                             |
| Income available to common shareholders  | \$ 104,422                            | 236,884                         | \$ 0.44                     |
| <b>Effect of Dilutive Securities</b>   |                                       |                                 |                             |
| Assumed conversion as of the beginning of the period of preferred shares outstanding during the period:              |                                       |                                 |                             |
| Common shares assumed issued for 5.00% convertible preferred stock   | —                                     | 10,516                          |                             |
| Common shares assumed issued for 6.00% convertible preferred stock   | —                                     | 22,358                          |                             |
| Common shares assumed issued for 6.75% convertible preferred stock   | —                                     | 19,467                          |                             |
| Preferred stock dividends  | 8,168                                 | —                               |                             |
| Preferred stock dividend on 4.125% convertible preferred stock   | (32)                                  | —                               |                             |
| Restricted stock   | —                                     | 153                             |                             |
| Employee stock options   | —                                     | 9,863                           |                             |
| <b>Diluted EPS Income available to common shareholders and assumed conversions</b>                                   | <b>\$ 112,558</b>                     | <b>299,241</b>                  | <b>\$ 0.38</b>              |
| <b>For the Quarter Ended March 31, 2003:</b>   |                                       |                                 |                             |
| <b>Income before cumulative effect of accounting change, net of tax</b>  | <b>\$ 71,120</b>                      |                                 |                             |
| Preferred stock dividends  | (3,526)                               |                                 |                             |
| <b>Basic EPS Income available to common shareholders before cumulative effect of accounting change, net of tax</b>   | <b>\$ 67,594</b>                      | <b>197,608</b>                  | <b>\$ 0.34</b>              |
| <b>Effect of Dilutive Securities</b>   |                                       |                                 |                             |
| Assumed conversion as of the beginning of the period of preferred shares outstanding during the period:              |                                       |                                 |                             |
| Common shares assumed issued for 6.00% convertible preferred stock   | —                                     | 6,707                           |                             |
| Common shares assumed issued for 6.75% convertible preferred stock   | —                                     | 19,468                          |                             |
| Preferred stock dividends  | 3,526                                 | —                               |                             |
| Employee stock options   | —                                     | 6,889                           |                             |
| <b>Diluted EPS Income available to common shareholders before cumulative effect of accounting change, net of tax</b> | <b>\$ 71,120</b>                      | <b>230,672</b>                  | <b>\$ 0.31</b>              |

## 5. Notes Payable and Revolving Credit Facility

Notes payable and long-term debt consist of the following:

|   | March 31,<br>2004  | December 31,<br>2003 |
|---|--------------------|----------------------|
|   | (\$ in thousands)  |                      |
| 8.375% Senior Notes due 2008                  | \$ 209,815         | \$ 209,815           |
| 8.125% Senior Notes due 2011                  | 245,407            | 728,255              |
| 9.0% Senior Notes due 2012                    | 300,000            | 300,000              |
| 7.5% Senior Notes due 2013                    | 363,823            | 363,823              |
| 7.75% Senior Notes due 2015                   | 300,408            | 236,691              |
| 6.875% Senior Notes due 2016                  | 670,487            | 200,000              |
| 7.875% Senior Notes due 2004                  | —                  | 42,137               |
| 8.5% Senior Notes due 2012                    | —                  | 4,290                |
| Discount on senior notes                      | (77,793)           | (26,959)             |
| Discount for interest rate swap and swaption  | —                  | (339)                |
| <b>Total notes payable and long-term debt</b> | <b>\$2,012,147</b> | <b>\$2,057,713</b>   |

On January 14, 2004, we completed a public exchange offer in which we retired \$458.5 million of our 8.125% Senior Notes due 2011 and \$10.8 million of accrued interest and issued \$72.8 million of our 7.75% Senior Notes due 2015 and \$2.8 million of accrued interest and \$433.5 million of our 6.875% Senior Notes due 2016 and \$4.1 million of accrued interest. In connection with this exchange, we recorded a pre-tax charge of \$6.0 million, consisting of a \$5.7 million underwriters fee and \$0.3 million in other transaction costs.

In January and February of 2004, we issued an additional \$37.0 million of our 6.875% Senior Notes due 2016 and \$0.5 million of accrued interest in exchange for \$24.3 million of our 8.125% Senior Notes due 2011 and \$0.7 million of accrued interest and \$9.1 million of our 7.75% Senior Notes due 2015 and \$0.1 million of accrued interest in four private exchange transactions.

On November 12, 2003, we commenced a tender offer to purchase for cash our \$110.7 million aggregate principal amount of 8.5% Senior Notes due 2012 and concurrently conducted a consent solicitation to amend the indenture governing the 8.5% Senior Notes. On December 10, 2003, we purchased \$106.4 million principal amount of 8.5% Senior Notes tendered, which represented approximately 96% of the outstanding aggregate principal amount of the 8.5% Senior Notes, and we amended the indentures eliminating substantially all of the restrictive covenants. We redeemed the remaining \$4.3 million of 8.5% Senior Notes on March 15, 2004. In connection with the redemption, we recorded a pre-tax loss of \$0.9 million, consisting of \$0.2 million of redemption premium, \$0.1 million of unamortized debt issue costs and discount on senior notes and \$0.6 million carried as a discount on the 8.5% Senior Notes based on the hedging relationship between the notes and the swaption.

We paid \$42.1 million representing the balance outstanding on our 7.875% Senior Notes that matured on March 15, 2004.

As of March 31, 2004, we had a \$350 million revolving bank credit facility (with a committed borrowing base of \$350 million) which was scheduled to mature in May 2007. As of March 31, 2004, we had no outstanding borrowings under this facility and utilized \$76.9 million of the facility for various letters of credit. On May 7, 2004, we amended and restated our bank credit facility, increasing the borrowing base to \$600 million, with commitments of \$500 million, and extending the maturity to June 30, 2008. Borrowings under the facility are collateralized by certain producing oil and gas properties and bear interest at either (i) the greater of the reference rate of Union Bank of California, N.A. or the federal funds effective rate plus 0.50% or (ii) London Interbank Offered Rate (LIBOR), at our option, plus a margin that varies according to our senior unsecured long-term debt ratings. The collateral value and borrowing base are redetermined periodically. The unused portion of the facility is subject to an annual commitment fee that also varies according to our senior unsecured long-term debt ratings. Currently the annual commitment fee rate is 0.375%. Interest is payable quarterly or, if LIBOR applies, it may be payable at more frequent intervals.

The amended and restated credit facility agreement contains various covenants and restrictive provisions which govern our ability to incur additional indebtedness, sell properties, pay dividends, purchase or redeem our capital stock, make investments or loans, and create liens. The credit facility agreement requires us to maintain a current ratio (as defined) of at least 1 to 1 and a fixed charge coverage ratio (as defined) of at least 2.5 to 1. As of March 31, 2004, our current ratio was 1.56 to 1 and our fixed charge coverage ratio was 5.03 to 1. If we should fail to perform our obligations under these and other covenants, the revolving credit commitment could be terminated and any outstanding borrowings under the facility could be declared immediately due and payable. Such acceleration, if involving a principal amount of \$10 million or more, would constitute an event of default under our

---

## [Table of Contents](#)

senior note indentures, which could in turn result in the acceleration of our senior note indebtedness. The credit facility agreement also has cross default provisions that apply to other indebtedness we may have with an outstanding principal amount in excess of \$35.0 million.

Chesapeake is a holding company and owns no operating assets and has no significant operations independent of its subsidiaries. Our obligations under our outstanding senior notes have been fully and unconditionally guaranteed, on a joint and several basis, by each of our “restricted subsidiaries” (as defined in the respective indentures governing these notes) (collectively, the “guarantor subsidiaries”). Each guarantor subsidiary is a direct or indirect wholly-owned subsidiary.

The senior note indentures permit us to redeem the senior notes at any time at specified make-whole or redemption prices. The indentures contain covenants limiting us and the guarantor subsidiaries with respect to asset sales; the incurrence of additional indebtedness and the issuance of preferred stock; liens; sale and leaseback transactions; lines of business; dividend and other payment restrictions; mergers or consolidations; and transactions with affiliates.

Set forth below are condensed consolidating financial statements of the parent, guarantor subsidiaries and the non-guarantors. Chesapeake Energy Marketing, Inc., Mayfield Processing, L.L.C. and MidCon Compression, L.P. are wholly owned subsidiaries which are not guarantors of the senior notes. Chesapeake Energy Marketing, Inc. was a non-guarantor subsidiary for all quarters presented. Mayfield Processing, L.L.C. and MidCon Compression, L.P. were established as non-guarantor subsidiaries during the third quarter of 2003. All of our other wholly-owned subsidiaries were guarantor subsidiaries during all periods presented.



**CONDENSED CONSOLIDATING BALANCE SHEET**  
**AS OF MARCH 31, 2004**  
**(\$ in thousands)**  
**(Unaudited)**

|  | <u>Guarantor<br/>Subsidiaries</u> | <u>Non-Guarantor<br/>Subsidiaries</u> | <u>Parent</u>       | <u>Eliminations</u>   | <u>Consolidated</u> |
|--|-----------------------------------|---------------------------------------|---------------------|-----------------------|---------------------|
| <b>ASSETS</b>  |                                   |                                       |                     |                       |                     |
| <b>CURRENT ASSETS:</b>                                     |                                   |                                       |                     |                       |                     |
| Cash and cash equivalents                                  | \$ 404                            | \$ 46,323                             | \$ 142,698          | \$ —                  | \$ 189,425          |
| Accounts receivable  | 225,088                           | 149,282                               | 3,413               | (93,621)              | 284,162             |
| Deferred income tax asset                                  | —                                 | —                                     | 76,671              | —                     | 76,671              |
| Inventory and other  | 19,978                            | 1,217                                 | 15                  | —                     | 21,210              |
|  | <u>245,470</u>                    | <u>196,822</u>                        | <u>222,797</u>      | <u>(93,621)</u>       | <u>571,468</u>      |
| <b>PROPERTY AND EQUIPMENT:</b>                             |                                   |                                       |                     |                       |                     |
| Evaluated oil and gas properties                           | 7,012,420                         | —                                     | —                   | —                     | 7,012,420           |
| Unevaluated leasehold                                      | 301,657                           | —                                     | —                   | —                     | 301,657             |
| Other property and equipment                               | 88,075                            | 61,375                                | 90,928              | —                     | 240,378             |
| Less: accumulated depreciation, depletion and amortization | (2,632,872)                       | (25,467)                              | (7,193)             | —                     | (2,665,532)         |
|  | <u>4,769,280</u>                  | <u>35,908</u>                         | <u>83,735</u>       | <u>—</u>              | <u>4,888,923</u>    |
| <b>OTHER ASSETS:</b>                                       |                                   |                                       |                     |                       |                     |
| Investments in subsidiaries and intercompany advances      | —                                 | —                                     | 1,539,977           | (1,539,977)           | —                   |
| Long-term derivative instruments                           | 15,385                            | —                                     | —                   | —                     | 15,385              |
| Other assets   | 21,025                            | 10                                    | 60,661              | (10)                  | 81,686              |
|  | <u>36,410</u>                     | <u>10</u>                             | <u>1,600,638</u>    | <u>(1,539,987)</u>    | <u>97,071</u>       |
| <b>TOTAL ASSETS</b>  | <b>\$ 5,051,160</b>               | <b>\$ 232,740</b>                     | <b>\$ 1,907,170</b> | <b>\$ (1,633,608)</b> | <b>\$ 5,557,462</b> |
| <b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>                |                                   |                                       |                     |                       |                     |
| <b>CURRENT LIABILITIES:</b>                                |                                   |                                       |                     |                       |                     |
| Accounts payable   | \$ 243,626                        | \$ 144,095                            | \$ —                | \$ (140,829)          | \$ 246,892          |
| Accrued interest   | —                                 | —                                     | 42,677              | —                     | 42,677              |
| Short-term derivative instruments                          | 161,948                           | —                                     | 40,658              | —                     | 202,606             |
| Other accrued liabilities                                  | 93,736                            | 7,247                                 | 16,646              | 222                   | 117,851             |
| Revenues and royalties due others                          | 85,338                            | —                                     | —                   | 47,208                | 132,546             |
|  | <u>584,648</u>                    | <u>151,342</u>                        | <u>99,981</u>       | <u>(93,399)</u>       | <u>742,572</u>      |
| <b>OTHER LIABILITIES:</b>                                  |                                   |                                       |                     |                       |                     |
| Long-term debt, net  | —                                 | —                                     | 2,012,147           | —                     | 2,012,147           |
| Revenues and royalties due others                          | 14,829                            | —                                     | —                   | —                     | 14,829              |
| Asset retirement obligation                                | 57,476                            | —                                     | —                   | —                     | 57,476              |
| Long-term derivative instruments                           | 19,623                            | —                                     | —                   | —                     | 19,623              |
| Deferred income tax liability                              | 223,084                           | 4,122                                 | 141,602             | —                     | 368,808             |
| Other liabilities  | 11,828                            | —                                     | —                   | —                     | 11,828              |
| Intercompany payables (receivables)                        | 2,678,136                         | (1,165)                               | (2,676,739)         | (232)                 | —                   |
|  | <u>3,004,976</u>                  | <u>2,957</u>                          | <u>(522,990)</u>    | <u>(232)</u>          | <u>2,484,711</u>    |
| <b>STOCKHOLDERS' EQUITY:</b>                               |                                   |                                       |                     |                       |                     |
| Common stock   | 56                                | 1                                     | 2,470               | (57)                  | 2,470               |
| Preferred stock  | —                                 | —                                     | 827,390             | —                     | 827,390             |
| Other  | 1,461,480                         | 78,440                                | 1,500,319           | (1,539,920)           | 1,500,319           |
|  | <u>1,461,536</u>                  | <u>78,441</u>                         | <u>2,330,179</u>    | <u>(1,539,977)</u>    | <u>2,330,179</u>    |
| <b>TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY</b>          | <b>\$ 5,051,160</b>               | <b>\$ 232,740</b>                     | <b>\$ 1,907,170</b> | <b>\$ (1,633,608)</b> | <b>\$ 5,557,462</b> |

**CONDENSED CONSOLIDATING BALANCE SHEET**  
**AS OF DECEMBER 31, 2003**  
(\$ in thousands)  
(Unaudited)

|   | Guarantor<br>Subsidiaries | Non-Guarantor<br>Subsidiaries | Parent              | Eliminations        | Consolidated        |
|---|---------------------------|-------------------------------|---------------------|---------------------|---------------------|
| <b>ASSETS</b>   |                           |                               |                     |                     |                     |
| <b>CURRENT ASSETS:</b>  |                           |                               |                     |                     |                     |
| Cash and cash equivalents                                     | \$ 248                    | \$ 32,131                     | \$ 8,202            | \$ —                | \$ 40,581           |
| Accounts receivable   | 181,538                   | 127,717                       | 11,000              | (78,861)            | 241,394             |
| Short-term derivative receivable                              | 1,777                     | —                             | —                   | —                   | 1,777               |
| Short-term derivative instruments                             | —                         | —                             | 2,690               | —                   | 2,690               |
| Deferred income tax asset                                     | —                         | —                             | 36,705              | —                   | 36,705              |
| Inventory and other   | 17,368                    | 1,770                         | 119                 | —                   | 19,257              |
| <b>Total Current Assets</b>                                   | <b>200,931</b>            | <b>161,618</b>                | <b>58,716</b>       | <b>(78,861)</b>     | <b>342,404</b>      |
| <b>PROPERTY AND EQUIPMENT:</b>                                |                           |                               |                     |                     |                     |
| Evaluated oil and gas properties                              | 6,221,576                 | —                             | —                   | —                   | 6,221,576           |
| Unevaluated leasehold   | 227,331                   | —                             | —                   | —                   | 227,331             |
| Other property and equipment                                  | 82,230                    | 58,083                        | 85,578              | —                   | 225,891             |
| Less: accumulated depreciation, depletion and<br>Amortization | (2,511,382)               | (23,982)                      | (6,317)             | —                   | (2,541,681)         |
| <b>Net Property and Equipment</b>                             | <b>4,019,755</b>          | <b>34,101</b>                 | <b>79,261</b>       | <b>—</b>            | <b>4,133,117</b>    |
| <b>OTHER ASSETS:</b>  |                           |                               |                     |                     |                     |
| Investments in subsidiaries and intercompany<br>advances      | —                         | —                             | 853,184             | (853,184)           | —                   |
| Long-term derivative instruments                              | 17,493                    | —                             | —                   | —                   | 17,493              |
| Long-term investments   | 5,000                     | —                             | 26,544              | —                   | 31,544              |
| Other assets  | 23,641                    | 14                            | 24,092              | (14)                | 47,733              |
| <b>Total Other Assets</b>                                     | <b>46,134</b>             | <b>14</b>                     | <b>903,820</b>      | <b>(853,198)</b>    | <b>96,770</b>       |
| <b>TOTAL ASSETS</b>   | <b>\$ 4,266,820</b>       | <b>\$ 195,733</b>             | <b>\$ 1,041,797</b> | <b>\$ (932,059)</b> | <b>\$ 4,572,291</b> |
| <b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>                   |                           |                               |                     |                     |                     |
| <b>CURRENT LIABILITIES:</b>                                   |                           |                               |                     |                     |                     |
| Accounts payable  | \$ 160,422                | \$ 120,369                    | \$ —                | \$ (116,527)        | \$ 164,264          |
| Accrued interest  | —                         | —                             | 46,648              | —                   | 46,648              |
| Short-term derivative instruments                             | 60,050                    | —                             | 32,601              | —                   | 92,651              |
| Other accrued liabilities                                     | 86,759                    | 5,553                         | 15,751              | (43)                | 108,020             |
| Revenues and royalties due others                             | 63,907                    | —                             | —                   | 37,666              | 101,573             |
| <b>Total Current Liabilities</b>                              | <b>371,138</b>            | <b>125,922</b>                | <b>95,000</b>       | <b>(78,904)</b>     | <b>513,156</b>      |
| <b>OTHER LIABILITIES:</b>                                     |                           |                               |                     |                     |                     |
| Long-term debt, net   | —                         | —                             | 2,057,713           | —                   | 2,057,713           |
| Revenues and royalties due others                             | 13,921                    | —                             | —                   | —                   | 13,921              |
| Asset retirement obligation                                   | 48,812                    | —                             | —                   | —                   | 48,812              |
| Long-term derivative instruments                              | 4,209                     | —                             | 527                 | —                   | 4,736               |
| Deferred income tax liability (asset)                         | 278,914                   | 3,772                         | (91,660)            | —                   | 191,026             |
| Other liabilities   | 10,117                    | —                             | —                   | —                   | 10,117              |
| Intercompany payables (receivables)                           | 2,753,590                 | (1,026)                       | (2,752,593)         | 29                  | —                   |
| <b>Total Other Liabilities</b>                                | <b>3,109,563</b>          | <b>2,746</b>                  | <b>(786,013)</b>    | <b>29</b>           | <b>2,326,325</b>    |
| <b>STOCKHOLDERS' EQUITY:</b>                                  |                           |                               |                     |                     |                     |
| Common stock  | 56                        | 1                             | 2,218               | (57)                | 2,218               |
| Preferred stock   | —                         | —                             | 552,400             | —                   | 552,400             |
| Other   | 786,063                   | 67,064                        | 1,178,192           | (853,127)           | 1,178,192           |
| <b>Total Stockholders' Equity</b>                             | <b>786,119</b>            | <b>67,065</b>                 | <b>1,732,810</b>    | <b>(853,184)</b>    | <b>1,732,810</b>    |
| <b>TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY</b>             | <b>\$ 4,266,820</b>       | <b>\$ 195,733</b>             | <b>\$ 1,041,797</b> | <b>\$ (932,059)</b> | <b>\$ 4,572,291</b> |

**CONDENSED CONSOLIDATING STATEMENTS OF OPERATIONS**  
**(\$ in thousands)**  
**(Unaudited)**

|  | <u>Guarantor<br/>Subsidiaries</u> | <u>Non-Guarantor<br/>Subsidiaries</u> | <u>Parent</u>     | <u>Eliminations</u> | <u>Consolidated</u> |
|--|-----------------------------------|---------------------------------------|-------------------|---------------------|---------------------|
| <b>For the Three Months Ended March 31, 2004:</b>                            |                                   |                                       |                   |                     |                     |
| <b>REVENUES:</b>   |                                   |                                       |                   |                     |                     |
| Oil and gas sales  | \$ 419,793                        | \$ —                                  | \$ —              | \$ —                | \$ 419,793          |
| Oil and gas marketing sales  | —                                 | 415,391                               | —                 | (272,055)           | 143,336             |
| <b>Total Revenues</b>  | <b>419,793</b>                    | <b>415,391</b>                        | <b>—</b>          | <b>(272,055)</b>    | <b>563,129</b>      |
| <b>OPERATING COSTS:</b>  |                                   |                                       |                   |                     |                     |
| Production expenses  | 44,803                            | —                                     | —                 | —                   | 44,803              |
| Production taxes   | 14,936                            | —                                     | —                 | —                   | 14,936              |
| General and administrative expenses:   |                                   |                                       |                   |                     |                     |
| General and administrative (excluding stock-based compensation)              | 6,656                             | 1,434                                 | 76                | —                   | 8,166               |
| Stock based compensation   | —                                 | —                                     | 1,869             | —                   | 1,869               |
| Oil and gas marketing expenses   | —                                 | 411,719                               | —                 | (272,055)           | 139,664             |
| Oil and gas depreciation, depletion and amortization                         | 119,908                           | —                                     | —                 | —                   | 119,908             |
| Depreciation and amortization of other assets                                | 2,658                             | 1,468                                 | 1,613             | —                   | 5,739               |
| <b>Total Operating Costs</b>   | <b>188,961</b>                    | <b>414,621</b>                        | <b>3,558</b>      | <b>(272,055)</b>    | <b>335,085</b>      |
| <b>INCOME (LOSS) FROM OPERATIONS</b>   | <b>230,832</b>                    | <b>770</b>                            | <b>(3,558)</b>    | <b>—</b>            | <b>228,044</b>      |
| <b>OTHER INCOME (EXPENSE):</b>   |                                   |                                       |                   |                     |                     |
| Interest and other income  | 548                               | 200                                   | 42,015            | (41,420)            | 1,343               |
| Interest expense   | (38,234)                          | —                                     | (49,731)          | 41,420              | (46,545)            |
| Loss on repurchase or exchanges of Chesapeake debt                           | —                                 | —                                     | (6,925)           | —                   | (6,925)             |
| Equity in net earnings of subsidiaries                                       | —                                 | —                                     | 124,237           | (124,237)           | —                   |
| <b>Total Other Income (Expense)</b>  | <b>(37,686)</b>                   | <b>200</b>                            | <b>109,596</b>    | <b>(124,237)</b>    | <b>(52,127)</b>     |
| <b>INCOME BEFORE INCOME TAXES AND CUMULATIVE EFFECT OF ACCOUNTING CHANGE</b> |                                   |                                       |                   |                     |                     |
|  | 193,146                           | 970                                   | 106,038           | (124,237)           | 175,917             |
| Income tax expense (benefit)   | 69,530                            | 349                                   | (6,552)           | —                   | 63,327              |
| <b>NET INCOME</b>  | <b>\$ 123,616</b>                 | <b>\$ 621</b>                         | <b>\$ 112,590</b> | <b>\$ (124,237)</b> | <b>\$ 112,590</b>   |
|  | <u>Guarantor<br/>Subsidiaries</u> | <u>Non-Guarantor<br/>Subsidiary</u>   | <u>Parent</u>     | <u>Eliminations</u> | <u>Consolidated</u> |
| <b>For the Three Months Ended March 31, 2003:</b>                            |                                   |                                       |                   |                     |                     |
| <b>REVENUES:</b>   |                                   |                                       |                   |                     |                     |
| Oil and gas sales  | \$ 286,019                        | \$ —                                  | \$ —              | \$ —                | \$ 286,019          |
| Oil and gas marketing sales  | —                                 | 294,151                               | —                 | (203,843)           | 90,308              |
| <b>Total Revenues</b>  | <b>286,019</b>                    | <b>294,151</b>                        | <b>—</b>          | <b>(203,843)</b>    | <b>376,327</b>      |
| <b>OPERATING COSTS:</b>  |                                   |                                       |                   |                     |                     |
| Production expenses  | 31,457                            | —                                     | —                 | —                   | 31,457              |
| Production taxes   | 18,597                            | —                                     | —                 | —                   | 18,597              |
| General and administrative   | 4,661                             | 583                                   | 135               | —                   | 5,379               |
| Oil and gas marketing expenses   | —                                 | 293,201                               | —                 | (203,843)           | 89,358              |
| Oil and gas depreciation, depletion and amortization                         | 76,614                            | —                                     | —                 | —                   | 76,614              |
| Depreciation and amortization of other assets                                | 2,298                             | 525                                   | 861               | —                   | 3,684               |
| Provision for legal settlements  | 286                               | —                                     | —                 | —                   | 286                 |
| <b>Total Operating Costs</b>   | <b>133,913</b>                    | <b>294,309</b>                        | <b>996</b>        | <b>(203,843)</b>    | <b>225,375</b>      |
| <b>INCOME (LOSS) FROM OPERATIONS</b>   | <b>152,106</b>                    | <b>(158)</b>                          | <b>(996)</b>      | <b>—</b>            | <b>150,952</b>      |
| <b>OTHER INCOME (EXPENSE):</b>   |                                   |                                       |                   |                     |                     |
| Interest and other income  | 18                                | 94                                    | 35,665            | (35,014)            | 763                 |
| Interest expense   | (33,834)                          | —                                     | (38,184)          | 35,014              | (37,004)            |
| Equity in net earnings of subsidiaries                                       | —                                 | —                                     | 75,688            | (75,688)            | —                   |

|   |                  |                |                  |                    |                  |
|---|------------------|----------------|------------------|--------------------|------------------|
| Total Other Income (Expense)  | (33,816)         | 94             | 73,169           | (75,688)           | (36,241)         |
| <b>INCOME (LOSS) BEFORE INCOME TAXES AND CUMULATIVE EFFECT OF ACCOUNTING CHANGE</b> | 118,290          | (64)           | 72,173           | (75,688)           | 114,711          |
| Income tax expense (benefit)  | 44,951           | (24)           | (1,336)          | —                  | 43,591           |
| <b>INCOME (LOSS) BEFORE CUMULATIVE EFFECT OF ACCOUNTING CHANGE</b>                  | 73,339           | (40)           | 73,509           | (75,688)           | 71,120           |
| Cumulative effect of accounting change, net of tax                                  | 2,389            | —              | —                | —                  | 2,389            |
| <b>NET INCOME (LOSS)</b>  | <b>\$ 75,728</b> | <b>\$ (40)</b> | <b>\$ 73,509</b> | <b>\$ (75,688)</b> | <b>\$ 73,509</b> |

**CONDENSED CONSOLIDATING STATEMENTS OF CASH FLOWS**  
**(\$ in thousands)**  
**(Unaudited)**

|  | <u>Guarantor<br/>Subsidiaries</u> | <u>Non-Guarantor<br/>Subsidiaries</u> | <u>Parent</u>     | <u>Eliminations</u> | <u>Consolidated</u> |
|--|-----------------------------------|---------------------------------------|-------------------|---------------------|---------------------|
| <b>For the Three Months Ended March 31, 2004:</b>                  |                                   |                                       |                   |                     |                     |
| <b>CASH FLOWS FROM OPERATING ACTIVITIES</b>                        | \$ 365,221                        | \$ (19,984)                           | \$ 120,770        | \$ (124,237)        | \$ 341,770          |
| <b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>                       |                                   |                                       |                   |                     |                     |
| Oil and gas properties, net  | (302,000)                         | —                                     | (415,784)         | —                   | (717,784)           |
| Additions to buildings and other fixed assets                      | (6,554)                           | (3,184)                               | (4,162)           | —                   | (13,900)            |
| Deposit on pending acquisition of Permian Resources                | (3,750)                           | —                                     | —                 | —                   | (3,750)             |
| Cash (used in) provided by investing activities                    | (312,304)                         | (3,184)                               | (419,946)         | —                   | (735,434)           |
| <b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>                       |                                   |                                       |                   |                     |                     |
| Proceeds from long-term borrowings                                 | 381,000                           | —                                     | —                 | —                   | 381,000             |
| Payments on long-term borrowings                                   | (381,000)                         | —                                     | —                 | —                   | (381,000)           |
| Proceeds from issuance of preferred stock, net of issuance costs   | —                                 | —                                     | 267,737           | —                   | 267,737             |
| Proceeds from issuance of common stock, net of issuance costs      | —                                 | —                                     | 298,107           | —                   | 298,107             |
| Cash paid to repurchase senior notes, including redemption premium | —                                 | —                                     | (57,271)          | —                   | (57,271)            |
| Cash paid for common and preferred stock dividends                 | —                                 | —                                     | (15,651)          | —                   | (15,651)            |
| Other financing costs  | (41)                              | —                                     | (138)             | —                   | (179)               |
| Net increase in outstanding payments in excess of cash balances    | 46,809                            | —                                     | 250               | —                   | 47,059              |
| Cash received from exercise of stock options                       | —                                 | —                                     | 2,706             | —                   | 2,706               |
| Intercompany advances, net   | (99,529)                          | 37,360                                | (62,068)          | 124,237             | —                   |
| Cash provided by (used in) financing activities                    | (52,761)                          | 37,360                                | 433,672           | 124,237             | 542,508             |
| <b>NET INCREASE IN CASH AND CASH EQUIVALENTS</b>                   | 156                               | 14,192                                | 134,496           | —                   | 148,844             |
| <b>CASH, BEGINNING OF PERIOD</b>                                   | 248                               | 32,131                                | 8,202             | —                   | 40,581              |
| <b>CASH, END OF PERIOD</b>   | <b>\$ 404</b>                     | <b>\$ 46,323</b>                      | <b>\$ 142,698</b> | <b>\$ —</b>         | <b>\$ 189,425</b>   |
|  | <u>Guarantor<br/>Subsidiaries</u> | <u>Non-Guarantor<br/>Subsidiary</u>   | <u>Parent</u>     | <u>Eliminations</u> | <u>Consolidated</u> |
| <b>For the Three Months Ended March 31, 2003:</b>                  |                                   |                                       |                   |                     |                     |
| <b>CASH FLOWS FROM OPERATING ACTIVITIES</b>                        | \$ 236,904                        | \$ (150,974)                          | \$ 88,810         | \$ (75,688)         | \$ 99,052           |
| <b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>                       |                                   |                                       |                   |                     |                     |
| Oil and gas properties, net  | (192,369)                         | —                                     | (780,669)         | —                   | (973,038)           |
| Investment in Pioneer Drilling Company                             | —                                 | —                                     | (20,000)          | —                   | (20,000)            |
| Additions to buildings and other fixed assets and other            | (1,633)                           | (1,338)                               | (6,280)           | —                   | (9,251)             |
| Cash (used in) provided by investing activities                    | (194,002)                         | (1,338)                               | (806,949)         | —                   | (1,002,289)         |
| <b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>                       |                                   |                                       |                   |                     |                     |
| Proceeds from revolving bank credit facility                       | 139,000                           | —                                     | —                 | —                   | 139,000             |
| Payments on revolving bank credit facility                         | (139,000)                         | —                                     | —                 | —                   | (139,000)           |
| Net increase in outstanding payments in excess of cash balances    | 11,676                            | —                                     | —                 | —                   | 11,676              |
| Cash received from issuance of senior notes, net of costs          | —                                 | —                                     | 290,920           | —                   | 290,920             |
| Proceeds from issuance of common stock, net of issuance costs      | —                                 | —                                     | 177,526           | —                   | 177,526             |
| Proceeds from issuance of preferred stock, net of issuance costs   | —                                 | —                                     | 222,907           | —                   | 222,907             |
| Cash paid for treasury stock                                       | —                                 | —                                     | (2,109)           | —                   | (2,109)             |
| Cash dividends paid on preferred stock and common stock            | —                                 | —                                     | (8,235)           | —                   | (8,235)             |
| Exercise of stock options  | —                                 | —                                     | 1,514             | —                   | 1,514               |
| Other  | (373)                             | —                                     | (222)             | —                   | (595)               |
| Intercompany advances, net   | (21,233)                          | 164,772                               | (219,227)         | 75,688              | —                   |
| Cash provided by (used in) financing activities                    | (9,930)                           | 164,772                               | 463,074           | 75,688              | 693,604             |

|   |               |                  |              |             |                  |
|---|---------------|------------------|--------------|-------------|------------------|
| <b>NET INCREASE (DECREASE) IN CASH AND CASH<br/>EQUIVALENTS</b> | 32,972        | 12,460           | (255,065)    | —           | (209,633)        |
| <b>CASH, BEGINNING OF PERIOD</b>                                | (31,975)      | 24,448           | 255,164      | —           | 247,637          |
| <b>CASH, END OF PERIOD</b>                                      | <u>\$ 997</u> | <u>\$ 36,908</u> | <u>\$ 99</u> | <u>\$ —</u> | <u>\$ 38,004</u> |

**CONDENSED CONSOLIDATING STATEMENTS OF COMPREHENSIVE INCOME (LOSS)**  
**(\$ in thousands)**  
**(Unaudited)**

|   | <u>Guarantor<br/>Subsidiaries</u> | <u>Non-Guarantor<br/>Subsidiaries</u> | <u>Parent</u>    | <u>Eliminations</u> | <u>Consolidated</u> |
|---|-----------------------------------|---------------------------------------|------------------|---------------------|---------------------|
| <b>For the Three Months Ended March 31, 2004:</b>                               |                                   |                                       |                  |                     |                     |
| Net Income  | \$ 123,616                        | \$ 621                                | \$ 112,590       | \$ (124,237)        | \$ 112,590          |
| Other comprehensive income (loss) - net of<br>income tax:                       |                                   |                                       |                  |                     |                     |
| Change in fair value of derivative instruments                                  | (65,430)                          | —                                     | —                | —                   | (65,430)            |
| Reclassification of gain on settled contracts                                   | (11,699)                          | —                                     | —                | —                   | (11,699)            |
| Ineffective portion of derivatives qualifying for<br>cash flow hedge accounting | 4,607                             | —                                     | —                | —                   | 4,607               |
| Equity in net other comprehensive income (loss)<br>of subsidiaries              | —                                 | —                                     | (72,522)         | 72,522              | —                   |
| <b>Comprehensive income</b>   | <b>\$ 51,094</b>                  | <b>\$ 621</b>                         | <b>\$ 40,068</b> | <b>\$ (51,715)</b>  | <b>\$ 40,068</b>    |
|   | <u>Guarantor<br/>Subsidiaries</u> | <u>Non-Guarantor<br/>Subsidiary</u>   | <u>Parent</u>    | <u>Eliminations</u> | <u>Consolidated</u> |
| <b>For the Three Months Ended March 31, 2003:</b>                               |                                   |                                       |                  |                     |                     |
| Net Income  | \$ 75,728                         | \$ (40)                               | \$ 73,509        | \$ (75,688)         | \$ 73,509           |
| Other comprehensive income (loss), net of<br>income tax:                        |                                   |                                       |                  |                     |                     |
| Change in fair value of derivative instruments                                  | (48,555)                          | —                                     | —                | —                   | (48,555)            |
| Reclassification of loss on settled contracts                                   | 50,891                            | —                                     | —                | —                   | 50,891              |
| Ineffective portion of derivatives qualifying for<br>cash flow hedge accounting | (30)                              | —                                     | —                | —                   | (30)                |
| Equity in net other comprehensive income (loss)<br>of subsidiaries              | —                                 | —                                     | 2,306            | (2,306)             | —                   |
| <b>Comprehensive income (loss)</b>  | <b>\$ 78,034</b>                  | <b>\$ (40)</b>                        | <b>\$ 75,815</b> | <b>\$ (77,994)</b>  | <b>\$ 75,815</b>    |

## 6. Segment Information

Chesapeake has two reportable segments under SFAS No. 131, *Disclosures about Segments of an Enterprise and Related Information*, consisting of exploration and production and marketing. The reportable segment information can be derived from Note 5 as Chesapeake Energy Marketing, Inc., Mayfield Processing, L.L.C. and MidCon Compression, L.P., which are our marketing subsidiaries, are the only non-guarantor subsidiaries. Chesapeake Energy Marketing, Inc. was a non-guarantor subsidiary for all quarters presented. Mayfield Processing, L.L.C. and MidCon Compression, L.P. were established as non-guarantor subsidiaries during the third quarter of 2003.

## 7. Acquisitions and Related Financing

We completed the acquisition of Concho Resources Inc. in January 2004 to acquire oil and gas interests primarily in the Permian Basin and the Mid-Continent. We paid \$420 million in cash for these assets, \$10 million of which was paid in 2003. We also paid \$12 million in employee severance and other transaction costs at closing. We recorded a \$117 million deferred tax liability to reflect the cost in excess of tax basis acquired. We also completed an acquisition of Texas Gulf Coast properties in January 2004. We paid \$65 million for these assets, \$3.3 million of which was paid in 2003.

On January 14, 2004, we issued 23,000,000 shares of common stock at a price to the public of \$13.51 per share. We used the net proceeds of this offering of approximately \$298.1 million to finance a portion of the acquisitions completed in January 2004.

On March 30, 2004, we issued 275,000 shares of 4.125% convertible preferred stock having a liquidation preference of \$1,000 per share in a private placement. We used the net proceeds of this offering of approximately \$267.7 million to pay the outstanding borrowings under our bank credit facility which were incurred to finance acquisitions completed in the Current Quarter. As of March 31, 2004, 16.5 million shares of common stock were reserved for issuance upon conversion of the 4.125% convertible preferred stock. In April 2004, the original purchasers exercised their option to purchase an additional 38,250 shares of 4.125% convertible preferred stock on the same terms and conditions for net proceeds of \$37.2 million.

## 8. Subsequent Events

We completed an acquisition of oil and gas assets located in the Permian Basin from Permian Resources Holdings, Inc. in April 2004. We paid approximately \$69 million for these assets.

In April 2004, the original purchasers of our 4.125% convertible preferred stock exercised their option to purchase an additional 38,250 shares at the original purchase price resulting in net proceeds of \$37.2 million to Chesapeake.

On May 7, 2004, we entered into an agreement to acquire a privately-held oil and natural gas company for \$425 million in cash. The acquisition is expected to close on June 1, 2004, and is subject to customary closing conditions. We intend to finance the transaction using our bank credit facility and using proceeds from a potential issuance of senior unsecured notes.



PART I. FINANCIAL INFORMATION

ITEM 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

Overview

The following table sets forth certain information regarding the production volumes, oil and gas sales, average sales prices received and expenses for the periods indicated:

|  | Three Months Ended<br>March 31, |                   |
|--|---------------------------------|-------------------|
|  | 2004                            | 2003              |
| <b>Net Production:</b>   |                                 |                   |
| Oil (m bbl)  | 1,465                           | 1,060             |
| Gas (mmcf)   | 70,098                          | 50,392            |
| Gas equivalent (mmcfe)   | 78,888                          | 56,752            |
| <b>Oil and Gas Sales (\$ in thousands):</b>                                      |                                 |                   |
| Oil sales  | \$ 48,031                       | \$ 35,140         |
| Oil derivatives – realized gains (losses)  | (8,330)                         | (6,238)           |
| Oil derivatives – unrealized gains (losses)                                      | (6,019)                         | (77)              |
| <b>Total oil sales</b>   | <b>33,682</b>                   | <b>28,825</b>     |
| Gas sales  | 360,101                         | 314,050           |
| Gas derivatives – realized gains (losses)  | 33,991                          | (86,620)          |
| Gas derivatives – unrealized gains (losses)                                      | (7,981)                         | 29,764            |
| <b>Total gas sales</b>   | <b>386,111</b>                  | <b>257,194</b>    |
| <b>Total oil and gas sales</b>   | <b>\$ 419,793</b>               | <b>\$ 286,019</b> |
| <b>Average Sales Price (excluding all gains (losses) on derivatives):</b>        |                                 |                   |
| Oil (\$ per bbl)   | \$ 32.79                        | \$ 33.15          |
| Gas (\$ per mcf)   | \$ 5.14                         | \$ 6.23           |
| Gas equivalent (\$ per mcfe)   | \$ 5.17                         | \$ 6.15           |
| <b>Average Sales Price (excluding unrealized gains (losses) on derivatives):</b> |                                 |                   |
| Oil (\$ per bbl)   | \$ 27.10                        | \$ 27.27          |
| Gas (\$ per mcf)   | \$ 5.62                         | \$ 4.51           |
| Gas equivalent (\$ per mcfe)   | \$ 5.50                         | \$ 4.52           |
| <b>Expenses (\$ per mcfe):</b>   |                                 |                   |
| Production expenses  | \$ 0.57                         | \$ 0.55           |
| Production taxes (a)   | \$ 0.19                         | \$ 0.33           |
| General and administrative expenses (excluding stock based compensation)         | \$ 0.10                         | \$ 0.09           |
| Depreciation, depletion and amortization   | \$ 1.52                         | \$ 1.35           |
| Interest expense (b)   | \$ 0.48                         | \$ 0.62           |
| <b>Interest Expense (\$ in thousands):</b>                                       |                                 |                   |
| Interest expense   | \$ 38,564                       | \$ 35,704         |
| Interest derivatives – realized (gains) losses                                   | (758)                           | (674)             |
| Interest derivatives – unrealized (gains) losses                                 | 8,739                           | 1,974             |
| <b>Total interest expense</b>  | <b>\$ 46,545</b>                | <b>\$ 37,004</b>  |
| <b>Net Wells Drilled</b>   | <b>109</b>                      | <b>94</b>         |
| <b>Net Producing Wells as of the End of Period</b>                               | <b>6,661</b>                    | <b>5,326</b>      |

(a) Includes a pre-tax benefit of \$6.8 million, or \$0.09 per mcfe, from prior period severance tax credits.

(b) Includes the effects of realized gains or (losses) from hedging, but does not include the effects of unrealized gains or (losses) from hedging.

Chesapeake is the largest producer of natural gas in the Mid-Continent and is among the six largest independent producers of natural gas in the U.S. As of March 31, 2004, we owned interests in approximately 17,000 (6,661 net) producing oil and gas wells. Our primary operating area is the Mid-Continent region of the United States, which includes Oklahoma, western Arkansas, southwestern Kansas and the Texas Panhandle, and we are building secondary operating areas in the Permian Basin of western Texas and eastern New Mexico and in the South Texas and Texas Gulf Coast regions.

Oil and natural gas production for the first quarter of 2004 was 78.9 bcfe, an increase of 22.1 bcfe, or 39%, over the 56.8 bcfe produced in the first quarter of 2003. Half of this year-over-year production growth was a result of organic drillbit growth and half was generated from acquisitions. We estimate our organic growth rate during the 12 months ended March 31, 2004 was 20%.

## [Table of Contents](#)

We have increased our production annually for 14 consecutive years, and the 2004 first quarter was Chesapeake's eleventh consecutive quarter of sequential production growth. During these eleven quarters, Chesapeake's production has increased 102%, for an average sequential quarterly growth rate of 6.6% and an average annualized growth rate of 29%.

In addition to increased oil and natural gas production, the prices we received were higher in the 2004 first quarter than in the 2003 first quarter. On a natural gas equivalent basis, weighted average prices (excluding the effect of unrealized gains or losses on derivatives) were \$5.50 per mcf in 2004 compared to \$4.52 per mcf in 2003. The increase in prices resulted in an increase in revenue of \$77.4 million and increased production resulted in an increase in revenue of \$100.1 million, for a total increase in revenue of \$177.5 million (excluding the effect of unrealized gains or losses on derivatives).

During the 2004 first quarter, the company replaced its 78.9 bcfe of production by 473%, or 372.8 bcfe, at a drilling and acquisition cost of \$1.66 per mcf. Drillbit replacement was 146% and acquisition replacement was 327%. As of March 31, 2004, our estimated proved reserves were 3.5 tcfe.

Chesapeake drilled 118 (88 net) operated wells and participated in another 137 (21 net) wells operated by other companies during the 2004 first quarter. Chesapeake's drilling costs were \$129 million for operated wells and \$47 million for non-operated wells. The company's success rate was 92% for operated wells and 99% for non-operated wells. Our acquisition expenditures totaled \$482 million during the quarter (primarily in two transactions involving payments of \$410 million and \$62 million).

Our revenues, operating results, profitability and future growth depend on our ability to find, develop and acquire oil and gas reserves that are economically recoverable based on prevailing prices for natural gas and oil. The company favors gas over oil, strives to establish regional dominance in our operating areas, has grown through a combination of drilling and acquisitions and manages price risk through opportunistic commodities hedging.

To date in 2004, we have raised \$298 million of common equity and \$305 million of preferred equity (4.125% convertible preferred stock). As of March 31, 2004, the company's total debt as a percentage of total capitalization (total capitalization is the sum of total debt and stockholders' equity) was 46%, compared to 65% as of January 1, 2003. Additionally, through debt repurchases and exchanges completed in the second half of 2003 and the first quarter of 2004, we have extended the average maturity of our long-term debt to over nine years and have lowered our average interest rate to 7.7%.

We intend to continue to focus on improving the strength of our balance sheet. The company's secured credit facility is currently rated as investment grade by at least two rating agencies. We believe our business strategy and operational performance will lead to an investment grade credit rating for our unsecured debt in the future.

### **Recent Developments**

On May 7, 2004, we entered into an agreement to acquire a privately-held oil and natural gas company for \$425 million in cash. The acquisition is expected to close on June 1, 2004, and is subject to customary closing conditions. We intend to finance the transaction using our bank credit facility and using proceeds from a potential issuance of senior unsecured notes.

### **Liquidity and Capital Resources**

#### *Sources of Liquidity*

Our primary source of liquidity to meet operating expenses and fund capital expenditures (other than for large acquisitions) is cash flow from operations. Based on our current production, price and expense assumptions, we expect cash flow from operations will exceed our drilling capital expenditures in 2004. Our budget for drilling, land and seismic activities for 2004 is currently between \$850 million and \$900 million. While we believe this level of exploration and development will be sufficient to increase our reserves in 2004 and achieve our target of a 20% increase in production over 2003 production (inclusive of acquisitions completed through April 2004), higher drilling and field operating costs, drilling results that alter planned development schedules, acquisitions or other factors could cause us to revise our drilling program, which is largely discretionary. Any cash flow from operations not needed to fund our drilling program will be available for acquisitions, debt repayment or other general corporate purposes in 2004.

Cash flows from operating activities (exclusive of changes in assets and liabilities) were \$333.6 million in the Current Quarter, compared to \$167.7 million in the Prior Quarter. The \$165.9 million increase in the Current Quarter was primarily due to higher realized prices and higher volumes of oil and gas production. We expect that

## [Table of Contents](#)

2004 production volumes will be higher than in 2003 and that cash flows from operating activities in 2004 will exceed 2003 levels. While a precipitous decline in gas prices in 2004 would significantly affect the amount of cash flow that would be generated from operations, we have 97% of our expected oil production remaining in 2004 hedged at an average NYMEX price of \$30.14 per barrel of oil and 63% of our expected natural gas production remaining in 2004 hedged at an average NYMEX price of \$5.09 per mcf. This level of hedging provides certainty of the cash flow we will receive for a substantial portion of our remaining 2004 production. Depending on changes in oil and gas futures markets and management's view of underlying oil and natural gas supply and demand trends, however, we may increase or decrease our current hedging positions.

Another source of liquidity is our \$350 million revolving bank credit facility (with a committed borrowing base of \$350 million) which matures in May 2007. As of March 31, 2004, we had no indebtedness under the bank credit facility. We use the facility to fund daily operating activities and acquisitions as needed. We borrowed and repaid \$381.0 million in the Current Quarter and \$139.0 million in Prior Quarter under the facility.

We believe that our available cash, cash flows from operating activities and funds available under our bank credit facility will be sufficient to fund our operating, interest and general and administrative expenses, our capital expenditure budget, our short-term contractual obligations and dividend payments at current levels for the foreseeable future.

The public markets have been our principal source of capital to finance large acquisitions. We have sold debt and equity in both public and private offerings in the past, and we expect that these sources of capital will continue to be available to us in the future for acquisitions. Nevertheless, we caution you that ready access to capital on reasonable terms and the availability of desirable acquisition targets at attractive prices are subject to many uncertainties, as explained under "Risk Factors" in Item 1—Business of our Form 10-K for the year ended December 31, 2003. The following table reflects the proceeds from sales of securities we issued in the Current Quarter and the Prior Quarter (\$ in millions):

|   | For the Three Months Ended March 31, |                 |                 |                 |
|---|--------------------------------------|-----------------|-----------------|-----------------|
|   | 2004                                 |                 | 2003            |                 |
|   | Total Proceeds                       | Net Proceeds    | Total Proceeds  | Net Proceeds    |
| Convertible preferred stock                       | \$ 275.0                             | \$ 267.7        | \$ 230.0        | \$ 222.9        |
| Common stock                                      | 310.7                                | 298.1           | 186.3           | 177.5           |
| Unsecured senior notes guaranteed by subsidiaries | —                                    | —               | 300.0           | 290.9           |
| <b>Total</b>                                      | <b>\$ 585.7</b>                      | <b>\$ 565.8</b> | <b>\$ 716.3</b> | <b>\$ 691.3</b> |

We filed a \$600 million "universal shelf" registration statement with the Securities and Exchange Commission on April 27, 2004. Securities issued under this shelf may be in the form of common stock, preferred stock, depository shares representing fractional shares of preferred stock or debt securities of Chesapeake, which will be guaranteed by certain Chesapeake subsidiaries. The net proceeds from a sale of securities from this shelf, which is expected to occur from time to time over the next two years, would be used for future business acquisitions and other general corporate purposes, including the retirement of existing debt. A prospectus supplement will be prepared at the time of a debt or equity offering and will contain specific information about the security issued and the use of proceeds.

We paid common stock dividends of \$7.6 million and \$5.7 million in the Current Quarter and in the Prior Quarter, respectively, and we paid dividends of \$8.1 million and \$2.5 million on our preferred stock in the Current Quarter and in the Prior Quarter, respectively. We received \$2.7 million and \$1.5 million from the exercise of employee and director stock options in the Current Quarter and in the Prior Quarter, respectively. We used \$2.1 million to purchase treasury stock in the Prior Quarter to fund our matching contributions to the 401(k) Make-Up Plan.

Historically, we have used significant amounts of funds to purchase and retire our obligations under outstanding Senior Notes. In March 2004, we retired \$42.1 million of our 7.875% Senior Notes at maturity and we redeemed the remaining \$4.3 million of our 8.5% Senior Notes for \$4.5 million, including redemption premium of \$0.2 million. We paid \$4.6 million for cash in lieu of issuing fractional notes on our exchange of \$458.5 million of 8.125% Senior Notes for \$72.8 million of 7.75% Senior Notes and \$433.5 million of 6.875% Senior Notes in January 2004 and paid \$6.0 million in transaction costs related to this exchange. In the fourth quarter of 2003, we purchased and subsequently retired \$106.4 million of our 8.5% Senior Notes for \$113.1 million, including redemption premium of \$6.7 million.

## [Table of Contents](#)

Cash used in investing activities decreased to \$735.4 million during the Current Quarter, compared to \$1,002.3 million during the Prior Quarter. The following table shows our capital expenditures during these quarters (\$ in millions):

|  | Three Months Ended<br>March 31, |                  |
|--|---------------------------------|------------------|
|  | 2004                            | 2003             |
| Acquisitions of oil and gas properties and companies | \$ 482.2                        | \$ 819.1         |
| Exploration and development drilling                 | 235.9                           | 154.6            |
| Deposit on pending acquisition of Permian Resources  | 3.8                             | —                |
| Investment in securities of other companies          | —                               | 20.0             |
| Drilling rigs, plants and gathering systems          | 3.4                             | 1.2              |
| Office buildings and other administrative            | 10.5                            | 8.2              |
| Divestitures of oil and gas properties and other     | (0.4)                           | (0.8)            |
| <b>Total</b>   | <b>\$735.4</b>                  | <b>\$1,002.3</b> |

Our accounts receivable are primarily from purchasers of oil and natural gas (\$205.8 million as of March 31, 2004) and exploration and production companies which own interests in properties we operate (\$40.4 million as of March 31, 2004). This industry concentration has the potential to impact our overall exposure to credit risk, either positively or negatively, in that our customers may be similarly affected by changes in economic, industry or other conditions. We generally require letters of credit for receivables from customers which are judged to have sub-standard credit, unless the credit risk can otherwise be mitigated.

Our liquidity is not dependent on the use of off-balance sheet financing arrangements, such as the securitization of receivables or obtaining access to assets through special purpose entities. We have not relied on off-balance sheet financing arrangements in the past and we do not intend to rely on such arrangements in the future as a source of liquidity. We are not a commercial paper issuer.

### *Investing and Financing Transactions*

The following describes significant investing and financing transactions that we completed in the Current Quarter and through the filing date:

#### *Investing Transactions:*

##### April 2004

- Acquired Permian Resources Holdings, Inc. - Permian Basin oil and gas assets for cash consideration of approximately \$69 million

##### First Quarter 2004

- Acquired Concho Resources Inc. - Permian Basin and Mid-Continent oil and gas assets for cash consideration of approximately \$420 million, of which \$10 million was paid in 2003. We also paid \$12 million in employee severance and other transactional costs at closing.
- Acquired Texas Gulf Coast properties for cash consideration of approximately \$65 million, of which \$3.3 million was paid in 2003

#### *Financing Transactions:*

##### April 2004

- Issued an additional 38,250 shares of 4.125% convertible preferred stock upon exercise of an option we granted to the original purchasers in a private placement of such stock completed in March 2004 for net proceeds of \$37.2 million

##### First Quarter 2004

- Completed a public offering of 23 million shares of common stock at \$13.51 per share. We used the net proceeds of this offering of approximately \$298.1 million to finance a portion of the acquisitions completed in January 2004

## Table of Contents

- Issued 275,000 shares of 4.125% convertible preferred stock at \$1,000 per share. We used the net proceeds of this offering of approximately \$267.7 million to pay outstanding borrowings under our credit facility which were incurred as a result of acquisitions completed in the Current Quarter
- Completed a public exchange offer in which we retired \$458.5 million of our 8.125% Senior Notes due 2011 and \$10.8 million of accrued interest and issued \$72.8 million of our 7.75% Senior Notes due 2015 and \$2.8 million of accrued interest and \$433.5 million of our 6.875% Senior Notes due 2016 and \$4.1 million of accrued interest
- Issued an additional \$37.0 million of our 6.875% Senior Notes due 2016 and \$0.5 million of accrued interest in exchange for \$24.3 million of our 8.125% Senior Notes due 2011 and \$0.7 million of accrued interest and \$9.1 million of our 7.75% Senior Notes due 2015 and \$0.1 million of accrued interest in four private exchange transactions
- Paid \$4.5 million (including a premium of \$0.2 million) to redeem \$4.3 million of 8.5% Senior Notes due 2012 representing all outstanding notes which were not tendered pursuant to a cash tender offer completed in December 2003
- Paid \$42.1 million representing the balance outstanding on our 7.875% Senior Notes that matured on March 15, 2004

### *Contractual Obligations*

As of March 31, 2004, we had a \$350 million revolving bank credit facility (with a committed borrowing base of \$350 million) which was scheduled to mature in May 2007. As of March 31, 2004, we had no outstanding borrowings under this facility and had utilized \$76.9 million of the facility for various letters of credit. On May 7, 2004, we amended and restated our bank credit facility, increasing the borrowing base to \$600 million, with commitments of \$500 million, and extending the maturity to June 30, 2008. Borrowings under the facility are collateralized by certain producing oil and gas properties and bear interest at either (i) the greater of the reference rate of Union Bank of California, N.A., or the federal funds effective rate plus 0.50% or (ii) London Interbank Offered Rate (LIBOR), at our option, plus a margin that varies according to our senior unsecured long-term debt ratings. The collateral value and borrowing base are redetermined periodically. The unused portion of the facility is subject to an annual commitment fee that also varies according to our senior unsecured long-term debt ratings. Currently the annual commitment fee rate is 0.375%. Interest is payable quarterly or, if LIBOR applies, it may be payable at more frequent intervals.

The credit facility agreement contains various covenants and restrictive provisions which govern our ability to incur additional indebtedness, sell properties, pay dividends, purchase or redeem our capital stock, make investments or loans, and create liens. In addition, the agreement requires us to maintain a current ratio (as defined) of at least 1 to 1 and a fixed charge coverage ratio (as defined) of at least 2.5 to 1. As of March 31, 2004, our current ratio was 1.56 to 1 and our fixed charge coverage ratio was 5.03 to 1. If we should fail to perform our obligations under these and other covenants, the revolving credit commitment could be terminated and any outstanding borrowings under the facility could be declared immediately due and payable. Such acceleration, if involving a principal amount of \$10 million or more, would constitute an event of default under our senior note indentures, which could in turn result in the acceleration of our senior note indebtedness. The credit facility agreement also has cross default provisions that apply to other indebtedness we may have with an outstanding principal amount in excess of \$35.0 million.

## [Table of Contents](#)

As of March 31, 2004, senior notes of approximately \$2.0 billion represented all of our long-term debt and consisted of the following (\$ in thousands):

|                              |             |
|------------------------------|-------------|
| 8.375% senior notes due 2008 | \$ 209,815  |
| 8.125% senior notes due 2011 | 245,407     |
| 9.0% senior notes due 2012   | 300,000     |
| 7.5% senior notes due 2013   | 363,823     |
| 7.75% senior notes due 2015  | 300,408     |
| 6.875% senior notes due 2016 | 670,487     |
| Discount on senior notes     | (77,793)    |
|                              | <hr/>       |
|                              | \$2,012,147 |

No scheduled principal payments are required on any of the senior notes until 2008, when \$209.8 million is due. Debt ratings for the senior notes are Ba3 by Moody's Investor Service, BB- by Standard & Poor's Ratings Services and BB by Fitch Ratings. Debt ratings for our secured bank credit facility are Ba2 by Moody's Investor Service, BBB- by Standard & Poor's Ratings Services and BBB- by Fitch Ratings.

Our senior notes are unsecured senior obligations of Chesapeake and rank equally with all of our other unsecured indebtedness. All of our wholly owned subsidiaries except Chesapeake Energy Marketing, Inc., Mayfield Processing, L.L.C. and MidCon Compression, L.P. guarantee the notes. The indentures permit us to redeem the senior notes at any time at specified make-whole or redemption prices. The indentures contain covenants limiting our ability and our restricted subsidiaries' ability to incur additional indebtedness; pay dividends on our capital stock or redeem, repurchase or retire our capital stock or subordinated indebtedness; make investments and other restricted payments; create restrictions on the payment of dividends or other amounts to us from our restricted subsidiaries; incur liens; engage in transactions with affiliates; sell assets; and consolidate, merge or transfer assets. The debt incurrence covenants do not affect our ability to borrow under or expand our secured credit facility. As of March 31, 2004, we estimate that secured commercial bank indebtedness of approximately \$1,385.6 million could have been incurred under the most restrictive indenture covenant. The indenture covenants do not apply to our non-guarantor subsidiaries.

Some of our commodity price and financial risk management arrangements require us to deliver cash collateral or other assurances of performance to the counterparties in the event that our payment obligations exceed certain levels. As of March 31, 2004, we were required to post \$75.0 million of collateral and as of May 5, 2004 we were required to post \$86.0 million of collateral with respect to these commodity price and financial risk management transactions. Future collateral requirements are uncertain and will depend on arrangements with our counterparties, highly volatile natural gas and oil prices, and fluctuations in interest rates.

### **Results of Operations — Three Months Ended March 31, 2004 (“Current Quarter”) vs. March 31, 2003 (“Prior Quarter”)**

*General.* For the Current Quarter, Chesapeake had net income of \$112.6 million, or \$0.38 per diluted common share, on total revenues of \$563.1 million. This compares to net income of \$73.5 million, or \$0.32 per diluted common share, on total revenues of \$376.3 million during the Prior Quarter. The Current Quarter net income includes, on a pre-tax basis, a \$6.9 million loss on repurchases or exchanges of debt and \$22.7 million in net unrealized losses on oil and gas and interest rate derivatives. The Prior Quarter net income included, on a pre-tax basis, \$27.7 million in net unrealized gains on oil and gas and interest rate derivatives.

*Oil and Gas Sales.* During the Current Quarter, oil and gas sales were \$419.8 million compared to \$286.0 million in the Prior Quarter. In the Current Quarter, Chesapeake produced 78.9 bcfe at a weighted average price of \$5.50 per mcf, compared to 56.8 bcfe produced in the Prior Quarter at a weighted average price of \$4.52 per mcf (weighted average prices for both quarters discussed exclude the effect of unrealized gains or losses on derivatives). The increase in prices in the Current Quarter resulted in an increase in revenue of \$77.4 million and increased production resulted in a \$100.1 million increase, for a total increase in revenues of \$177.5 million (excluding unrealized gains or losses on oil and gas derivatives). The increase in production from the Prior Quarter to the Current Quarter is due to the combination of production growth generated from drilling as well as acquisitions completed in 2003 and the Current Quarter.

The change in oil and gas prices has a significant impact on our oil and gas revenues and cash flows. Assuming the Current Quarter production levels, a change of \$0.10 per mcf of gas produced would result in an increase or decrease in revenues and cash flow of approximately \$7.0 million and \$6.7 million, respectively, and a change of \$1.00 per barrel of oil produced would result in an increase or decrease in revenues and cash flows of approximately \$1.5 million and \$1.4 million, respectively, without considering the effect of derivative activities.

## [Table of Contents](#)

For the Current Quarter, we realized an average price per barrel of oil of \$27.10, compared to \$27.27 in the Prior Quarter (weighted average prices for both quarters discussed exclude the effect of unrealized gains or losses on derivatives). Natural gas prices realized per mcf (excluding unrealized gains or losses on derivatives) were \$5.62 and \$4.51 in the Current Quarter and Prior Quarter, respectively. Realized gains or losses from our oil and gas derivatives resulted in a net increase in oil and gas revenues of \$25.7 million or \$0.33 per mcfe in the Current Quarter and a net decrease of \$92.9 million or \$1.64 per mcfe in the Prior Quarter.

Oil and gas sales were also affected by unrealized gains or losses on oil and gas derivatives. The unrealized amounts included in oil and gas sales were a loss of \$14.0 million in the Current Quarter and a gain of \$29.7 million in the Prior Quarter.

The following table shows our production by region for the Current Quarter and the Prior Quarter:

|                                  | For the Three Months Ended March 31, |             |               |             |
|----------------------------------|--------------------------------------|-------------|---------------|-------------|
|                                  | 2004                                 |             | 2003          |             |
|                                  | Mmcfe                                | Percent     | Mmcfe         | Percent     |
| Mid-Continent                    | 62,704                               | 79%         | 48,781        | 86%         |
| South Texas and Texas Gulf Coast | 10,208                               | 13          | 5,348         | 9           |
| Permian Basin                    | 5,298                                | 7           | 1,849         | 3           |
| Williston Basin and Other        | 678                                  | 1           | 774           | 2           |
| <b>Total Production</b>          | <b>78,888</b>                        | <b>100%</b> | <b>56,752</b> | <b>100%</b> |

Natural gas production represented approximately 89% of our total production volume on an equivalent basis in the Current Quarter and in the Prior Quarter.

*Oil and Gas Marketing Sales.* Chesapeake realized \$143.3 million in oil and gas marketing sales for third parties in the Current Quarter, with corresponding oil and gas marketing expenses of \$139.7 million, for a net margin of \$3.6 million. Marketing activities are substantially for third parties that are owners in Chesapeake operated wells. This compares to sales of \$90.3 million, expenses of \$89.4 million and a net margin of \$0.9 million in the Prior Quarter. In the Current Quarter, Chesapeake realized an increase in volumes of oil and gas marketing sales which was partially offset by a decrease in oil and gas prices.

*Production Expenses.* Production expenses, which include lifting costs and ad valorem taxes, were \$44.8 million in the Current Quarter compared to \$31.5 million in the Prior Quarter. On a unit-of-production basis, production expenses were \$0.57 per mcfe in the Current Quarter compared to \$0.55 per mcfe in the Prior Quarter. The increase in the Current Quarter was primarily due to higher field service costs. We expect that production expenses per mcfe during the remainder of 2004 will range from \$0.55 to \$0.60.

*Production Taxes.* Production taxes were \$14.9 million and \$18.6 million in the Current Quarter and the Prior Quarter, respectively. On a unit-of-production basis, production taxes were \$0.19 per mcfe in the Current Quarter compared to \$0.33 per mcfe in the Prior Quarter. Included in the Current Quarter is a credit of \$6.8 million related to certain Oklahoma severance tax abatements for the period July 2003 through December 2003, and a \$4.8 million credit for the period January 2004 through March 2004. In April 2004, the Oklahoma Tax Commission concluded that a pre-determined oil and gas price cap for 2003 sales had not been exceeded (on a statewide basis) and notified the company that it was eligible to receive certain severance tax abatements for the period from July 1, 2003 through June 30, 2004. The company had previously estimated that the average oil and gas sales prices in Oklahoma (on a statewide basis) could exceed the price cap, and did not reflect the benefit from these potential severance tax abatements until the Current Quarter. The decrease in production taxes in the Current Quarter is partially offset by an increase of approximately \$7.9 million due to increased production. In general, production taxes are calculated using value-based formulas that produce higher per unit costs when oil and gas prices are higher. We expect production taxes per mcfe to range from \$0.28 to \$0.32 during the remainder of 2004 based on an assumption that oil and natural gas wellhead prices range from \$4.50 to \$5.00 per mcfe.

*General and Administrative Expenses (excluding stock based compensation).* General and administrative expenses, which are net of internal payroll and non-payroll costs capitalized in our oil and gas properties, were \$8.2 million in the Current Quarter and \$5.4 million in the Prior Quarter. The increase in the Current Quarter of \$2.8 is the result of additional costs associated with the company's growth through various acquisitions in 2003 and the Current Quarter. This growth has resulted in a substantial increase in employees and related costs. We anticipate that general and administrative expenses for 2004 will be between \$0.10 and \$0.11 per mcfe produced, which is approximately the same level as the Current Quarter.

## [Table of Contents](#)

Chesapeake follows the full-cost method of accounting under which all costs associated with property acquisition, exploration and development activities are capitalized. We capitalize internal costs that can be directly identified with our acquisition, exploration and development activities and do not include any costs related to production, general corporate overhead or similar activities. We capitalized \$10.9 million and \$7.3 million of internal costs in the Current Quarter and the Prior Quarter, respectively, directly related to our oil and gas exploration and development efforts.

*Stock Based Compensation.* During the Current Quarter, 1.1 million shares of restricted stock were issued to employees as a result of Chesapeake's normal compensation review process. The cost of these shares is amortized over a four-year period which resulted in the recognition of \$1.9 million of stock based compensation expense in the Current Quarter. There was no such cost in the Prior Quarter. We anticipate that stock based compensation expense for 2004 will be between \$0.02 and \$0.03 per mcfe produced, which is approximately the same level as the Current Quarter.

*Provision for Legal Settlements.* We entered into a settlement agreement, effective December 31, 2003, to resolve a legal proceeding brought against us by certain royalty owners. Under the terms of the settlement, we will refund Oklahoma royalty owners \$10.5 million, including interest. The refund amount includes \$3.6 million relating to marketing fees which we have previously paid into the court (\$0.3 million in the Prior Quarter and \$3.3 million in 2002). In the third and fourth quarter 2003, we accrued an aggregate \$6.9 million related to the settlement.

*Oil and Gas Depreciation, Depletion and Amortization.* Depreciation, depletion and amortization of oil and gas properties was \$119.9 million and \$76.6 million during the Current Quarter and the Prior Quarter, respectively. The average DD&A rate per mcfe, which is a function of capitalized costs, future development costs, and the related underlying reserves in the periods presented, was \$1.52 and \$1.35 in the Current Quarter and in the Prior Quarter, respectively. We expect the DD&A rate for the remainder of 2004 to be between \$1.52 and \$1.60 per mcfe produced. The increase in the average rate from \$1.35 to \$1.52 is primarily the result of higher drilling costs and higher costs associated with acquisitions.

*Depreciation and Amortization of Other Assets.* Depreciation and amortization of other assets was \$5.7 million in the Current Quarter, compared to \$3.7 million in the Prior Quarter. The increase in the Current Quarter was primarily the result of higher depreciation costs resulting from the acquisition of a processing plant, various gathering facilities, construction of new buildings at our corporate headquarters and the purchase of additional information technology equipment and software. Other property and equipment costs are depreciated on a straight-line basis. Buildings are depreciated over 39 years, drilling rigs are depreciated over 15 years and all other property and equipment are depreciated over the estimated useful lives of the assets, which range from two to fifteen years. To the extent drilling rigs are used to drill our wells, a substantial portion of the depreciation is capitalized in oil and gas properties as exploration or development costs. We expect depreciation and amortization of other assets to be between \$0.07 and \$0.09 per mcfe produced for the remainder of 2004.

*Interest and Other Income.* Interest and other income was \$1.3 million and \$0.8 million in the Current Quarter and the Prior Quarter, respectively. The Current Quarter income consisted of \$0.4 million of interest income, \$0.4 million related to earnings of equity investees, and \$0.5 million of miscellaneous income. The Prior Quarter income consisted of \$0.5 million of interest income and \$0.3 million of miscellaneous income.

*Interest Expense.* Interest expense increased to \$46.5 million in the Current Quarter, compared to \$37.0 million in the Prior Quarter. The increase in the Current Quarter is due to a \$351.8 million increase in average long-term borrowings in the Current Quarter compared to the Prior Quarter. In addition to the interest expense reported, we capitalized \$5.3 million of interest during the Current Quarter compared to \$1.9 million capitalized in the Prior Quarter on significant investments in unproved properties that were not being currently depreciated, depleted or amortized and on which exploration activities were in progress. Interest is capitalized using the weighted average effective interest rate on our outstanding borrowings. We expect 2004 interest expense to be between \$0.45 and \$0.50 per mcfe produced.

From time to time, we enter into derivative instruments designed to mitigate our exposure to the volatility in interest rates. For interest rate derivative instruments designated as fair value hedges (in accordance with SFAS 133), changes in fair value of interest rate derivatives are recorded on the consolidated balance sheets as assets (liabilities) and the debt's carrying value amount is adjusted by the change in the fair value of the debt subsequent to the initiation of the derivative. Any resulting differences are recorded currently as ineffectiveness in the consolidated statements of operations as an adjustment to interest expense. Included in interest expense in the Current Quarter are a realized gain of \$0.8 million related to interest rate derivatives and an unrealized loss on interest rate derivatives of \$8.7 million. Included in interest expense in the Prior Quarter are a realized gain of \$0.7 million related to interest rate derivatives and an unrealized loss on interest rate derivatives of \$2.0 million. A detailed explanation of our interest rate hedging appears below in Item 3. Quantitative and Qualitative Disclosures About Market Risk.



## [Table of Contents](#)

*Loss on Repurchases or Exchanges of Debt.* In the Current Quarter, we completed a public exchange offer in which we retired \$458.5 million of our 8.125% Senior Notes due 2011 and \$10.8 million of accrued interest and issued \$72.8 million of our 7.75% Senior Notes due 2015 and \$2.8 million of accrued interest and \$433.5 million of our 6.875% Senior Notes due 2016 and \$4.1 million of accrued interest. In connection with this exchange, we recorded a pre-tax loss of \$6.0 million, consisting of \$5.7 million of underwriting fees and \$0.3 million in other transaction costs. During the Current Quarter, we redeemed \$4.3 million of our 8.5% Senior Notes due 2012 for a total consideration of \$4.5 million. In connection with this transaction, we recorded a pre-tax loss of \$0.9 million, consisting of \$0.2 million of redemption premium, \$0.1 million of unamortized debt issue costs and discount on senior notes and \$0.6 million carried as a discount on the 8.5% Senior Notes based on the hedging relationship between the notes and the swaption.

*Provision (Benefit) for Income Taxes.* Chesapeake recorded income tax expense of \$63.3 million in the Current Quarter, compared to income tax expense of \$43.6 million in the Prior Quarter. During the Current Quarter, our effective income tax rate decreased to 36% to reflect our assessment of the impact state income taxes have on our overall effective tax rate.

*Cumulative Effect of Accounting Change.* Effective January 1, 2003, Chesapeake adopted SFAS No. 143, *Accounting For Asset Retirement Obligations*. Upon adoption of SFAS 143 in the Prior Quarter, we recorded the discounted fair value of our expected future obligations of \$30.5 million, a cumulative effect of the change in accounting principle as an increase to earnings of \$2.4 million (net of income taxes) and an increase in net oil and gas properties of \$34.3 million.

### **Critical Accounting Policies**

We consider accounting policies related to stock options, hedging, oil and gas properties, income taxes and business combinations to be critical policies. These policies are summarized in Management's Discussion and Analysis of Financial Condition and Results of Operations in our annual report on Form 10-K for the year ended December 31, 2003, except for our accounting policy related to stock options which is summarized in Note 1 of the notes to the consolidated financial statements included in our annual report on Form 10-K.

Emerging Issues Task Force (EITF) Issue No. 03-S, *Application of SFAS No. 142, Goodwill and Other Intangible Assets to Oil and Gas Companies*, considers whether oil and gas drilling rights represent intangible assets subject to the classification and disclosure provisions of SFAS 142. Chesapeake classifies the cost of oil and gas mineral rights as property and equipment and believes that this is consistent with oil and gas accounting and industry practice. If the EITF determines that oil and gas mineral rights are intangible assets and are subject to the applicable classification and disclosure provisions of SFAS 142, we estimate that \$283.1 million and \$227.3 million would be classified on our condensed consolidated balance sheets as "intangible undeveloped leasehold" and \$1.9 billion and \$1.4 billion would be classified as "intangible developed leasehold" as of March 31, 2004 and December 31, 2003, respectively. These amounts are net of accumulated depreciation, depletion and amortization. There would be no effect on the condensed consolidated statements of operations or cash flows as the intangible assets related to oil and gas mineral rights would continue to be amortized under the full cost method of accounting.

We will continue to classify our oil and gas mineral rights held under lease and other contractual rights representing the right to extract such reserves as tangible oil and gas properties until further guidance is provided.

### **Forward-Looking Statements**

This report includes "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Forward-looking statements give our current expectations or forecasts of future events. They include statements regarding oil and gas reserve estimates, planned capital expenditures, the drilling of oil and gas wells and future acquisitions, expected oil and gas production, cash flow and anticipated liquidity, business strategy and other plans and objectives for future operations, expected future expenses and utilization of net operating loss carryforwards. Statements concerning the fair values of derivative contracts and their estimated contribution to our future results of operations are based upon market information as of a specific date. These market prices are subject to significant volatility.

## [Table of Contents](#)

Although we believe the expectations and forecasts reflected in these and other forward-looking statements are reasonable, we can give no assurance they will prove to have been correct. They can be affected by inaccurate assumptions or by known or unknown risks and uncertainties. Factors that could cause actual results to differ materially from expected results are described under “Risk Factors” in Item 1 in our 2003 Form 10-K and include:

- the volatility of oil and gas prices,
- our substantial indebtedness,
- the strength and financial resources of our competitors,
- the cost and availability of drilling and production services,
- our commodity price risk management activities, including counterparty contract performance risk,
- uncertainties inherent in estimating quantities of oil and gas reserves, projecting future rates of production and the timing of development expenditures,
- our ability to replace reserves,
- the availability of capital,
- uncertainties in evaluating oil and gas reserves of acquired properties and associated potential liabilities,
- declines in the values of our oil and gas properties resulting in ceiling test write-downs,
- drilling and operating risks,
- our ability to generate future taxable income sufficient to utilize our NOLs before expiration,
- future ownership changes which could result in additional limitations to our NOLs,
- adverse effects of governmental and environmental regulation,
- losses possible from pending or future litigation, and
- the loss of officers or key employees.

We caution you not to place undue reliance on these forward-looking statements, which speak only as of the date of this report, and we undertake no obligation to update this information. We urge you to carefully review and consider the disclosures made in this and our other reports filed with the Securities and Exchange Commission that attempt to advise interested parties of the risks and factors that may affect our business.

### **ITEM 3. Quantitative and Qualitative Disclosures About Market Risk**

#### *Oil and Gas Hedging Activities*

Our results of operations and operating cash flows are impacted by changes in market prices for oil and gas. To mitigate a portion of the exposure to adverse market changes, we have entered into various derivative instruments. As of March 31, 2004, our oil and gas derivative instruments were comprised of swaps, cap-swaps, basis protection swaps, call options and collars. These instruments allow us to predict with greater certainty the effective oil and gas prices to be received for our hedged production. Although derivatives often fail to achieve 100% effectiveness for accounting purposes, we believe our derivative instruments continue to be highly effective in achieving the risk management objectives for which they were intended.

- For swap instruments, Chesapeake receives a fixed price for the hedged commodity and pays a floating market price, as defined in each instrument, to the counterparty. The fixed-price payment and the floating-price payment are netted, resulting in a net amount due to or from the counterparty.
- For cap-swaps, Chesapeake receives a fixed price and pays a floating market price. The fixed price received by Chesapeake includes a premium in exchange for a “cap” limiting the counterparty’s exposure. In other words, there is no limit to Chesapeake’s exposure but there is a limit to the downside exposure of the counterparty. Because this derivative includes a written put option (i.e., the cap), cap-swaps

## [Table of Contents](#)

do not qualify for designation as cash flow hedges (in accordance with SFAS 133) since the combination of the hedged item and the written put option do not provide as much potential for favorable cash flows as exposure to unfavorable cash flows.

- Basis protection swaps are arrangements that guarantee a price differential of oil or gas from a specified delivery point. Chesapeake receives a payment from the counterparty if the price differential is greater than the stated terms of the contract and pays the counterparty if the price differential is less than the stated terms of the contract.
- For call options, Chesapeake receives a cash premium from the counterparty in exchange for the sale of a call option. If the market price exceeds the fixed price of the call option, then Chesapeake pays the counterparty such excess. If the market price settles below the fixed price of the call option, no payment is due from Chesapeake.
- Collars contain a fixed floor price (put) and ceiling price (call). If the market price exceeds the call strike price or falls below the put strike price, then Chesapeake receives the fixed price and pays the market price. If the market price is between the call and the put strike price, then no payments are due from either party.

Chesapeake enters into counter-swaps from time to time for the purpose of locking in the value of a swap. Under the counter-swap, Chesapeake receives a floating price for the hedged commodity and pays a fixed price to the counterparty. The counter-swap is 100% effective in locking in the value of a swap since subsequent changes in the market value of the swap are entirely offset by subsequent changes in the market value of the counter-swap. We refer to this locked-in value as a locked swap. At the time Chesapeake enters into a counter-swap, Chesapeake removes the original swap's designation as a cash flow hedge and classifies the original swap as a non-qualifying hedge under SFAS 133. The reason for this new designation is that collectively the swap and the counter-swap no longer hedge the exposure to variability in expected future cash flows. Instead, the swap and counter-swap effectively lock in a specific gain (or loss) that will be unaffected by subsequent variability in oil and gas prices. Any locked-in gain or loss is recorded in accumulated other comprehensive income and reclassified to oil and gas sales in the month of related production.

In accordance with FASB Interpretation No. 39, Chesapeake nets the value of its derivative arrangements with the same counterparty in the accompanying consolidated balance sheets, to the extent that a legal right of setoff exists.

Gains or losses from derivative transactions are reflected as adjustments to oil and gas sales on the consolidated statements of operations. Pursuant to SFAS 133, certain derivatives do not qualify for designation as cash flow hedges. Changes in the fair value of these non-qualifying derivatives that occur prior to their maturity (i.e., temporary fluctuations in value) are reported currently in the consolidated statements of operations as unrealized gains (losses) within oil and gas sales. Unrealized gains (losses) included in oil and gas sales in the Current Quarter and the Prior Quarter were (\$14.0) million and \$29.7 million, respectively.

Following provisions of SFAS 133, changes in the fair value of derivative instruments designated as cash flow hedges, to the extent they are effective in offsetting cash flows attributable to the hedged risk, are recorded in other comprehensive income until the hedged item is recognized in earnings. Any change in fair value resulting from ineffectiveness is recognized currently in oil and gas sales. We recorded a gain (loss) on ineffectiveness of (\$7.2) million and \$0.1 million in the Current Quarter and the Prior Quarter, respectively.

## Table of Contents

As of March 31, 2004, we had the following open oil and gas derivative instruments designed to hedge a portion of our oil and gas production for periods after March 2004:

|                                    | <u>Volume<br/>mmbtu/bbls</u> | <u>Weighted-<br/>Average<br/>Strike<br/>Price</u> | <u>Weighted-<br/>Average<br/>Put<br/>Strike<br/>Price</u> | <u>Weighted-<br/>Average<br/>Call<br/>Strike<br/>Price</u> | <u>Weighted<br/>Average<br/>Differential</u> | <u>SFAS<br/>133<br/>Hedge</u> | <u>Premiums<br/>Received</u> | <u>Fair<br/>Value at<br/>March 31,<br/>2004<br/>(in<br/>thousands)</u> |
|------------------------------------|------------------------------|---|---|--|--|-------------------------------|------------------------------|--|
| <b><u>Natural Gas (mmbtu):</u></b> |                              |   |   |  |  |                               |                              |  |
| Swaps:                             |                              |   |   |  |  |                               |                              |  |
| 2004                               | 99,790,000                   | 4.91  | —   | —  | —  | Yes                           | \$ —                         | \$(100,678)  |
| 2005                               | 42,850,000                   | 4.80  | —   | —  | —  | Yes                           | —                            | (36,654)   |
| 2006                               | 25,550,000                   | 4.74  | —   | —  | —  | Yes                           | —                            | (10,949)   |
| 2007                               | 25,550,000                   | 4.76  | —   | —  | —  | Yes                           | —                            | (4,830)  |
| Basis Protection Swaps:            |                              |   |   |  |  |                               |                              |  |
| 2004                               | 118,250,000                  | —   | —   | —  | (0.17)                                       | No                            | —                            | 19,160   |
| 2005                               | 109,500,000                  | —   | —   | —  | (0.16)                                       | No                            | —                            | 19,282   |
| 2006                               | 47,450,000                   | —   | —   | —  | (0.16)                                       | No                            | —                            | 7,793  |
| 2007                               | 63,875,000                   | —   | —   | —  | (0.17)                                       | No                            | —                            | 10,719   |
| 2008                               | 64,050,000                   | —   | —   | —  | (0.17)                                       | No                            | —                            | 9,844  |
| 2009                               | 36,500,000                   | —   | —   | —  | (0.16)                                       | No                            | —                            | 5,478  |
| Cap-Swaps:                         |                              |   |   |  |  |                               |                              |  |
| 2004                               | 27,055,000                   | 5.25  | 3.80  | —  | —  | No                            | —                            | (21,050)   |
| 2005                               | 38,325,000                   | 5.33  | 3.84  | —  | —  | No                            | —                            | (18,574)   |
| 2006                               | 7,300,000                    | 5.36  | 3.75  | —  | —  | No                            | —                            | (1,433)  |
| Call Options:                      |                              |   |   |  |  |                               |                              |  |
| 2004                               | 52,570,000                   | —   | —   | 6.24   | —  | No                            | 14,566                       | (19,206)   |
| Collars:                           |                              |   |   |  |  |                               |                              |  |
| 2004                               | 3,635,000                    | —   | 3.10  | 4.44   | —  | Yes                           | —                            | (3,618)  |
| 2005                               | 4,745,000                    | —   | 3.10  | 4.44   | —  | Yes                           | —                            | (2,756)  |
| Locked Swaps:                      |                              |   |   |  |  |                               |                              |  |
| 2004                               | —                            | 5.42  | —   | —  | —  | No                            | —                            | (2,485)  |
| 2005                               | —                            | 5.74  | —   | —  | —  | No                            | —                            | (1,444)  |
| <b>Total Gas</b>                   |                              |   |   |  |  |                               | <u>14,566</u>                | <u>(151,401)</u>   |
| <b><u>Oil (bbls):</u></b>          |                              |   |   |  |  |                               |                              |  |
| Cap-Swaps:                         |                              |   |   |  |  |                               |                              |  |
| 2004                               | 3,658,500                    | 29.44   | 22.30   | —  | —  | No                            | —                            | (17,467)   |
| 2005                               | 547,500                      | 31.56   | 26.00   | —  | —  | No                            | —                            | (244)  |
| <b>Total Oil</b>                   |                              |   |   |  |  |                               | <u>—</u>                     | <u>(17,711)</u>  |
| <b>Total Gas and Oil</b>           |                              |   |   |  |  |                               | <u>\$ 14,566</u>             | <u>\$ (169,112)</u>  |

We have established the fair value of all derivative instruments using estimates of fair value reported by our counterparties and subsequently evaluated internally using established index prices and other sources. The actual contribution to our future results of operations will be based on the market prices at the time of settlement and may be more or less than the fair value estimates used as of March 31, 2004.

Based upon the market prices as of March 31, 2004, we expect to transfer approximately \$72.0 million of the loss included in the balance in accumulated other comprehensive income (loss) to earnings during the next 12 months when the hedged transactions actually occur. All hedged transactions as of March 31, 2004 are expected to mature by December 31, 2007, with the exception of the basis protection swaps which extend through 2009.

## Table of Contents

Additional information concerning the fair value of our oil and gas derivative instruments is as follows:

|  | 2004                |
|--|---------------------|
|  | (\$ in thousands)   |
| Fair value of contracts outstanding as of January 1              | \$ (44,988)         |
| Change in fair value of contracts during the quarter             | (98,463)            |
| Contracts realized or otherwise settled during the quarter       | (25,661)            |
| Fair value of new contracts when entered into during the quarter | —                   |
| Fair value of contracts when closed during the quarter           | —                   |
| <b>Fair value of contracts outstanding as of March 31</b>        | <b>\$ (169,112)</b> |

The change in the fair value of our derivative instruments since January 1, 2004 resulted from an increase in market prices for natural gas and crude oil relative to the hedged price. Derivative instruments reflected as current in the consolidated balance sheet represent the estimated fair value of derivative instrument settlements scheduled to occur over the subsequent twelve-month period based on market prices for oil and gas as of the consolidated balance sheet date. The derivative settlement amounts are not due and payable until the month in which the related underlying hedged transaction occurs.

### Interest Rate Risk

The table below presents principal cash flows and related weighted average interest rates by expected maturity dates. The fair value of the fixed-rate long-term debt has been estimated based on quoted market prices.

|  | March 31, 2004    |      |      |      |          |            |                           | Fair Value |
|--|-------------------|------|------|------|----------|------------|---------------------------|------------|
|  | Years of Maturity |      |      |      |          |            |                           |            |
|  | 2004              | 2005 | 2006 | 2007 | 2008     | Thereafter | Total                     |            |
|  | (\$ in millions)  |      |      |      |          |            |                           |            |
| <b>Liabilities:</b>                                    |                   |      |      |      |          |            |                           |            |
| Long-term debt, including current portion — fixed rate | \$ —              | \$ — | \$ — | \$ — | \$ 209.8 | \$ 1,880.1 | \$ 2,089.9 <sup>(1)</sup> | \$ 2,236.8 |
| Average interest rate                                  | —                 | —    | —    | —    | 8.4%     | 7.6%       | 7.7%                      | 7.7%       |

(1) This amount does not include the discount included in long-term debt of (\$77.8) million.

Changes in interest rates affect the amount of interest we earn on our cash, cash equivalents and short-term investments and the interest rate we pay on borrowings under our revolving credit facility. All of our other long-term indebtedness is fixed rate and therefore does not expose us to the risk of earnings or cash flow loss due to changes in market interest rates. However, changes in interest rates do affect the fair value of our debt.

### Interest Rate Derivatives

We also utilize hedging strategies to manage our exposure to changes in interest rates. By entering into interest rate swaps, we convert a portion of our fixed rate debt to floating rate debt. To the extent the interest rate swaps have been designated as fair value hedges, changes in the fair value of the derivative instrument and the corresponding debt are reflected as adjustments to interest expense in the corresponding months covered by the derivative agreement.

In January 2004, Chesapeake acquired a \$50 million interest rate swap as part of the purchase of Concho Resources Inc. Under the terms of the interest rate swap, the counterparty pays a floating three month LIBOR rate and Chesapeake pays a fixed rate of 2.875%. Payments are made quarterly and the interest rate extends through September 2005. An initial liability of \$0.6 million was recorded based on the fair value of the interest rate swap at the time of acquisition. As of March 31, 2004, the interest rate swap had a fair value of (\$1.0) million. Because this instrument is not designated as a fair value hedge, an unrealized loss of \$0.4 million was recognized in the Current Quarter.

In April 2002, Chesapeake entered into a “swaption” with an unrelated counterparty with respect to its 8.5% senior notes due 2012. The notional amount of the swaption was \$142.7 million. Under the swaption, the counterparty received the option to elect whether or not to enter into an interest rate swap with Chesapeake in March 2004, and Chesapeake received a \$7.8 million cash payment. The interest rate swap, if executed by the counterparty, required Chesapeake to pay a fixed rate of 8.5% while the counterparty would pay Chesapeake a floating rate of 6 month LIBOR plus 0.75%. Additionally, if the counterparty were to elect to enter into the interest rate swap, it could also elect to force Chesapeake to settle the transaction at the then current estimated fair value of the interest rate swap.

---

## [Table of Contents](#)

On March 10, 2004, the counterparty exercised its option to enter into the interest rate swap effective March 15, 2004 and immediately cash settle at the estimated fair value of the interest rate swap. On March 16, 2004, Chesapeake and the counterparty agreed to increase the fixed rate payable by Chesapeake to 8.68% in exchange for the counterparty agreeing to not force settle the swap prior to March 15, 2005. The counterparty may elect to terminate the swap and cause it to be settled at the then current estimated fair value of the interest rate swap on March 15, 2005 and annually thereafter through March 15, 2011. The interest rate swap expires on March 15, 2012. Chesapeake may elect to terminate the swap and cause it to be settled at the then current estimated fair value of the interest rate swap at any time during the term of the swap. Changes in the value of the interest rate swap will be recorded as adjustments to interest expense.

As of March 31, 2004, the fair value of the interest rate swap which resulted from the exercise of the swaption was a liability of \$40.7 million. Because the interest rate swap is not designated as a fair value hedge, changes in the fair value of the swap are recorded as adjustments to interest expense. The Current Quarter includes \$7.7 million of unrealized interest expense and \$0.2 million of realized interest expense.

### **ITEM4. Controls and Procedures**

Our Chief Executive Officer and Chief Financial Officer, after evaluating the effectiveness of the company's disclosure controls and procedures (as defined in Rule 13a-15(e) under the Exchange Act) as of March 31, 2004, have concluded the company's disclosure controls and procedures are effective. No changes in the company's internal control over financial reporting occurred during the Current Quarter that have materially affected, or are reasonably likely to materially affect, the company's internal control over financial reporting.

## PART II. OTHER INFORMATION

### Item 1. *Legal Proceedings*

Chesapeake is currently involved in various disputes incidental to its business operations. Management is of the opinion that the final resolution of all such currently pending or threatened litigation is not likely to have a material adverse effect on our consolidated financial position or results of operations.

### Item 2. *Changes in Securities and Use of Proceeds*

(a) On November 12, 2003, we commenced a tender offer to purchase for cash our \$110,669,000 aggregate principal amount of 8.5% Senior Notes due 2012 and concurrently conducted a consent solicitation to amend the indenture governing the 8.5% Senior Notes. We purchased all of the \$106,379,000 8.5% Senior Notes tendered on or prior to December 10, 2003, the expiration date, which represented approximately 96% of the outstanding aggregate principal amount of the 8.5% Senior Notes, and amended the indenture eliminating substantially all of the restrictive covenants. We redeemed all remaining 8.5% Senior Notes that were not tendered pursuant to the tender offer on March 15, 2004.

(c) On March 30, 2004, we completed a private sale of 255,000 shares of 4.125% Cumulative Convertible Preferred Stock (liquidation preference \$1,000 per share) to Lehman Brothers Inc., Banc of America Securities LLC, Bear, Stearns & Co. Inc., Credit Suisse First Boston LLC and the several other investment banking firms named as purchasers in the Purchase Agreement for the transaction. On April 5, 2004, we sold an additional 38,250 shares of preferred stock to these purchasers pursuant to an option we had granted to them. The purchasers resold the shares pursuant to Rule 144A under the Securities Act of 1933, as amended, at the liquidation preference. The aggregate offering price was \$293.3 million, the aggregate discount to the initial purchasers was \$8.1 million, and net proceeds to us, after expenses, were \$284.9 million. On March 30, 2004, Aubrey K. McClendon, our chief executive officer, and Tom L. Ward, our chief operating officer, each purchased an additional 10,000 shares of preferred stock directly from us in a separate concurrent private placement at the same price offered to investors in the Rule 144A offering, resulting in additional proceeds to us of \$20 million.

The preferred stock was sold in transactions exempt from registration pursuant to Section 4(2) of the Securities Act. Each of the purchasers represented that it or he is an accredited investor within the meaning of Regulation D under the Securities Act. No public solicitation was made in connection with the offerings of the preferred stock.

Each share of preferred stock is convertible initially into 60.0555 shares of common stock (which is calculated using an initial conversion price of \$16.6513 per share of common stock), subject to adjustment upon the occurrence of certain events. A holder's right to convert will arise only when the closing sale price of our common stock reaches, or the trading price of the preferred stock falls below, specified thresholds or upon the occurrence of specified corporate transactions.

At any time on or after March 15, 2009, we may, at our option, cause each share of preferred stock to be automatically converted into that number of shares of common stock equal to \$1,000 divided by the then prevailing conversion price. We may exercise this right only if the closing price of our common stock equals or exceeds 130% of the then prevailing conversion price for at least 20 trading days in any consecutive 30-day trading period. In addition, if there are less than 25,000 shares of preferred stock outstanding, we may, at any time on or after March 15, 2009, at our option, cause each share of preferred stock to be automatically converted into that number of shares of common stock equal to \$1,000 divided by the lesser of (i) the then prevailing conversion price and (ii) the market value at the time.

Upon a change of control (as defined in the certificate of designation for the preferred stock), holders of preferred stock will, if the market value of our common stock at such time is less than the conversion price, have a one-time option to convert all of their shares of preferred stock into shares of common stock at an adjusted conversion price equal to the greater of (i) the market value of the common stock as of the change of control date and (ii) \$8.0733. In lieu of issuing the shares of common stock issuable upon conversion in the event of a change of control, we may, at our option, make a cash payment equal to the market value of such common stock otherwise issuable.

## [Table of Contents](#)

(e) The following table presents information about repurchases of our common stock during the three months ended March 31, 2004:

| <u>Period</u>                              | <u>Total Number of Shares Purchased <sup>(1)</sup></u> | <u>Average Price Paid Per Share</u> | <u>Total Expended</u> | <u>Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs</u> | <u>Maximum Number of Shares that May Yet Be Purchased Under the Plans or Programs <sup>(2)</sup></u> |
|--|--|-------------------------------------|-----------------------|---|--|
| January 1, 2004 through January 31, 2004   | 65,008   | \$ 13.37                            | \$ 869,157            | —   | —  |
| February 1, 2004 through February 29, 2004 | 36,580   | \$ 12.54                            | 458,713               | —   | —  |
| March 1, 2004 through March 31, 2004       | 33,251   | \$ 13.22                            | 439,578               | —   | —  |
| <b>Total</b>                               | <b>134,839</b>   | <b>\$ 13.11</b>                     | <b>\$ 1,767,448</b>   | <b>—</b>  | <b>—</b>   |

(1) Shares purchased on the open market for our matching contribution to the company's 401(k) plan.

(2) We make matching contributions to our 401(k) plan and 401(k) make-up plan using Chesapeake common stock which is purchased by the respective plan trustees on the open market in accordance with the plans. The plans contain no limitation on the number of shares that may be purchased for purposes of company contributions. There are no other repurchase plans or programs currently authorized by the Board of Directors.

### **Item 3. Defaults Upon Senior Securities**

Not applicable.

### **Item 4. Submission of Matters to a Vote of Security Holders**

Not applicable.

### **Item 5. Other Information**

Not applicable.

### **Item 6. Exhibits and Reports on Form 8-K**

#### **(a) Exhibits**

The following exhibits are filed as a part of this report:

| <u>Exhibit Number</u> | <u>Description</u>   |
|-----------------------|--|
| 3.1                   | Chesapeake's Restated Certificate of Incorporation, together with the Certificates of Designation for the Series A Junior Participating Preferred Stock, 6.75% Cumulative Convertible Preferred Stock, 6.0% Cumulative Convertible Preferred Stock, 5.0% Cumulative Convertible Preferred Stock and 4.125% Cumulative Convertible Preferred Stock.   |
| 4.8                   | Fourth Amended and Restated Credit Agreement, dated as of May 7, 2004, among Chesapeake Energy Corporation, Chesapeake Exploration Limited Partnership, as Borrower, Union Bank of California, N.A., as Administrative Agent and Collateral Agent, BNP Paribas and SunTrust Bank, as Co-Syndication Agents, Calyon New York Branch and Comerica Bank, as Co-Documentation Agents, Bank of Scotland, Washington Mutual Bank and Bank of America, as Co-Agents, and the several lenders from time to time parties thereto. |
| 12                    | Computation of Ratios of Earnings to Combined Fixed Charges and Preferred Stock Dividends.   |
| 21                    | Subsidiaries of Chesapeake.  |
| 31.1                  | Aubrey K. McClendon, Chairman and Chief Executive Officer, Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.  |
| 31.2                  | Marcus C. Rowland, Executive Vice President and Chief Financial Officer, Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.  |
| 32.1*                 | Aubrey K. McClendon Chairman and Chief Executive Officer, Certification pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.   |
| 32.2*                 | Marcus C. Rowland, Executive Vice President and Chief Financial Officer, Certification pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.  |

\* Furnished as provided in Item 601 of Regulation S-K.



## [Table of Contents](#)

### *(b) Reports on Form 8-K*

During the quarter ended March 31, 2004, we filed the following current reports on Form 8-K:

On January 7, 2004, we filed a current report on Form 8-K, furnishing under Items 9 and 12 a press release we issued on January 7, 2004 announcing a public offering of our common stock. We also furnished the preliminary prospectus supplement dated January 7, 2004 for the offering and related prospectus dated October 23, 2003 and noted information contained in the preliminary prospectus regarding fourth quarter 2003 charges. In addition, we filed the press release and preliminary prospectus supplement and prospectus under Item 7.

On January 9, 2004, we filed a current report on Form 8-K, reporting under Item 5 that we issued a press release on January 8, 2004 announcing the pricing of our public offering of 20 million shares of common stock.

On January 12, 2004, we filed a current report on Form 8-K, reporting under Item 5 that we entered into an underwriting agreement on January 8, 2004 with Lehman Brothers Inc., Banc of America Securities LLC, Morgan Stanley & Co. Incorporated, and others in connection with the issuance and sale of 20,000,000 shares of our common stock. In addition, we filed the underwriting agreement under Item 7.

On January 12, 2004, we filed a current report on Form 8-K, reporting under Item 5 that we issued a press release on January 12, 2004 announcing the receipt of valid tenders of approximately \$457.1 million principal amount of our 8.125% senior notes due 2011 pursuant to our previously announced exchange offer.

On January 14, 2004, we filed a current report on Form 8-K, reporting under Item 5 that we issued a press release on January 13, 2004 announcing the expiration of our exchange offer for our 8.125% senior notes due 2011 and receipt of tenders of a total of approximately \$458.5 million principal amount of such notes.

On January 16, 2004, we filed a current report on Form 8-K, reporting under Item 5 that we issued a press release on January 15, 2004 announcing the closing of our public offering of common stock and our exchange offer for our 8.125% senior notes due 2011.

On January 29, 2004, we filed a current report on Form 8-K, reporting under Item 5 that we issued a press release on January 28, 2004 announcing our fourth quarter and full year 2003 earnings release and conference call dates.

On February 3, 2004, we filed a current report on Form 8-K, reporting under Item 5 that we issued a press release on February 2, 2004 announcing the completion of acquisitions of \$510 million of Mid-Continent, Permian Basin, South Texas and onshore Gulf Coast natural gas reserves.

On February 24, 2004, we filed a current report on Form 8-K, furnishing under Item 9 and Item 12 a press release we issued on February 23, 2004 announcing financial and operating results for the fourth quarter and full year 2003 and updated 2004 guidance.

On March 9, 2004, we filed a current report on Form 8-K, reporting under Item 5 that we issued a press release on March 8, 2004 announcing the declaration of quarterly common and preferred stock dividends.

On March 25, 2004, we filed a current report on Form 8-K, reporting under Item 5 that we issued two press releases on March 23, 2004 announcing a private offering of \$255 million of cumulative convertible preferred stock, agreements to acquire \$100 million of producing properties and updated hedging positions. In addition, we furnished under Item 9 additional information concerning the proposed acquisitions and our hedging positions and updated 2004 guidance. We filed both press releases under Item 7.

On March 25, 2004, we filed a current report on Form 8-K, reporting under Item 5 that we issued a press release on March 24, 2004 announcing the pricing of our private offering of 4.125% Cumulative Convertible Preferred Stock.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

CHESAPEAKE ENERGY CORPORATION  
(Registrant)

By:           /s/ AUBREY K. MCCLENDON          

*Aubrey K. McClendon  
Chairman and Chief Executive Officer*

By:           /s/ MARCUS C. ROWLAND          

*Marcus C. Rowland  
Executive Vice President and  
Chief Financial Officer*

Date: May 10, 2004

**INDEX TO EXHIBITS**

| <b>Exhibit<br/>Number</b> | <b>Description</b>   |
|---------------------------|--|
| 3.1                       | Chesapeake's Restated Certificate of Incorporation, together with the Certificates of Designation for the Series A Junior Participating Preferred Stock, 6.75% Cumulative Convertible Preferred Stock, 6.0% Cumulative Convertible Preferred Stock, 5.0% Cumulative Convertible Preferred Stock and 4.125% Cumulative Convertible Preferred Stock.   |
| 4.8                       | Fourth Amended and Restated Credit Agreement, dated as of May 7, 2004, among Chesapeake Energy Corporation, Chesapeake Exploration Limited Partnership, as Borrower, Union Bank of California, N.A., as Administrative Agent and Collateral Agent, BNP Paribas and SunTrust Bank, as Co-Syndication Agents, Calyon New York Branch and Comerica Bank, as Co-Documentation Agents, Bank of Scotland, Washington Mutual Bank and Bank of America, as Co-Agents, and the several lenders from time to time parties thereto. |
| 12                        | Computation of Ratios of Earnings to Combined Fixed Charges and Preferred Stock Dividends.   |
| 21                        | Subsidiaries of Chesapeake.  |
| 31.1                      | Aubrey K. McClendon, Chairman and Chief Executive Officer, Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.  |
| 31.2                      | Marcus C. Rowland, Executive Vice President and Chief Financial Officer, Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.  |
| 32.1*                     | Aubrey K. McClendon Chairman and Chief Executive Officer, Certification pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.   |
| 32.2*                     | Marcus C. Rowland, Executive Vice President and Chief Financial Officer, Certification pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.  |

\* Furnished as provided in Item 601 of Regulation S-K.

RESTATED CERTIFICATE OF INCORPORATION  
OF  
CHESAPEAKE ENERGY CORPORATION

TO THE SECRETARY OF STATE OF THE STATE OF OKLAHOMA:

Chesapeake Energy Corporation (the "Corporation"), a corporation organized and existing under and by virtue of the Oklahoma General Corporation Act (the "Act"), for the purpose of restating its certificate of incorporation, does hereby submit the following:

- A. The name of the Corporation is Chesapeake Energy Corporation. The name under which the Corporation was originally incorporated was Chesapeake Oklahoma Corporation.
- B. The original Certificate of Incorporation of the Corporation was filed with the Secretary of State of Oklahoma on November 19, 1996 (as amended from time to time, the "Certificate of Incorporation").
- C. This Restated Certificate of Incorporation was duly adopted in accordance with the provisions of Section 1080 of the Act after being adopted by the directors and only restates and integrates, but does not further amend, the provisions of the Certificate of Incorporation as amended and supplemented as of this date, there being no discrepancy between those provisions and the provisions hereof.
- D. The Certificate of Designations of Series A Junior Participating Preferred Stock of the Corporation, filed with the Secretary of State of Oklahoma on July 17, 1998, and attached hereto as Exhibit "A," will remain in full force and effect.
- E. The Certificate of Incorporation is hereby restated to read in its entirety as follows:

ARTICLE I

Name

The name of the Corporation is:

CHESAPEAKE ENERGY CORPORATION

ARTICLE II

Registered Office and Agent

The address of the Corporation's registered office in the State of Oklahoma is 735 First National Building, 120 North Robinson, Oklahoma City, Oklahoma 73102. The Corporation's registered agent at such address is The Corporation Company.

ARTICLE III

Purposes

The nature of the business and the purpose of the Corporation shall be to engage in any lawful act or activity and to pursue any lawful purpose for which a corporation may be formed under the Oklahoma General Corporation Act (the "Act"). The Corporation is authorized to exercise and enjoy all powers, rights and privileges which corporations organized under the Act may have as in force from time to time, including, without limitation, all powers, rights and privileges necessary or convenient to carry out the purposes of the Corporation.

ARTICLE IV

Capital Stock

The total number of shares of capital stock which the Corporation shall have authority to issue is Three Hundred Sixty Million (360,000,000) shares, consisting of Ten Million (10,000,000) shares of Preferred Stock, par value \$0.01 per share, and Three Hundred Fifty

Million (350,000,000) shares of Common Stock, par value \$0.01 per share. The preferences, qualifications, limitations, restrictions and the special or relative rights in respect of the shares of each class are as follows:

Section 1. Preferred Stock. The Preferred Stock may be issued from time to time in one or more series. All shares of Preferred Stock shall be of equal rank and shall be identical, except in respect of the matters that may be fixed and determined by the Board of Directors as hereinafter provided, and each share of each series shall be identical with all other shares of such series, except as to the date from which dividends are cumulative. The Board of Directors hereby is authorized to cause such shares to be issued in one or more series and with respect to each such series prior to the issuance thereof to fix and determine the designation, powers, preferences and rights of the shares of each such series and the qualifications, limitations or restrictions thereof.

The authority of the Board of Directors with respect to each series shall include, but not be limited to, determination of the following:

- A. The number of shares constituting a series, the distinctive designation of a series and the stated value of the series, if different from the par value;
- B. Whether the shares of a series are entitled to any fixed or determinable dividends, the dividend rate (if any) on the shares, whether the dividends are cumulative and the relative rights of priority of dividends on shares of that series;
- C. Whether a series has voting rights in addition to the voting rights provided by law and the terms and conditions of such voting rights;
- D. Whether a series will have or receive conversion or exchange privileges and the terms and conditions of such conversion or exchange privileges;

Dividends on outstanding shares of Preferred Stock shall be paid or set apart for payment before any dividends shall be paid or declared or set apart for payment on the common shares with respect to the same dividend period.

If upon any voluntary or involuntary liquidation, dissolution or winding up of the Corporation the assets available for distribution to holders of shares of Preferred Stock of all series shall be insufficient to pay such holders the full preferential amount to which they are entitled, then such assets shall be distributed ratably among the shares of all series in accordance with the respective preferential amounts (including unpaid cumulative dividends, if any) payable with respect thereto.

Section 2. Common Stock. The Common Stock shall be subject to the express terms of the Preferred Stock and any series thereof. Each share of Common Stock shall be equal to every other share of Common Stock. The holders of shares of Common Stock shall be entitled to one vote for each share of such stock upon all matters presented to the shareholders. Shares of Common Stock authorized hereby shall not be subject to preemptive rights. The holders of shares of Common Stock now or hereafter outstanding shall have no preemptive right to purchase or have offered to them for purchase any of such authorized but unissued shares. The holders of shares of Common Stock now or hereafter outstanding shall have no preemptive right to purchase or have offered to them for purchase any shares of Preferred Stock, Common Stock or other equity securities issued or to be issued by the Corporation.

Subject to the preferential and other dividend rights applicable to the Preferred Stock, the holders of shares of Common Stock shall be entitled to receive such dividends (payable in cash, stock or otherwise) as may be declared on the Common Stock by the Board of Directors at any time or from time to time out of any funds legally available therefor.

In the event of any voluntary or involuntary liquidation, distribution or winding up of the Corporation, after distribution in full of the preferential and/or other amounts to be distributed to the holders of shares of Preferred Stock, the holders of shares of Common Stock shall be entitled to receive all of the remaining assets of the Corporation available for distribution to its shareholders, ratably in proportion to the number of shares of Common Stock held by them.

#### ARTICLE V

#### Limitation of Director Liability

A director of the Corporation shall not be personally liable to the Corporation or its shareholders for damages for breach of fiduciary duty as a director, except for personal liability for: (i) acts or omissions by such director not in good faith or which involve intentional misconduct or a knowing violation of law; (ii) the payment of dividends or the redemption or purchase of stock in violation of Section 1053 of the Act; (iii) any breach of such director's duty of loyalty to the Corporation or its shareholders; or (iv) any transaction from which such director derived an improper personal benefit.

## ARTICLE VI

### Certain Stock Purchases

Section 1. Certain Definitions. For the purposes of this Article VI:

"Continuing Director" means any member of the Board of Directors of the Corporation (the "Board") who is unaffiliated with the Interested Shareholder and was a member of the Board prior to the time that the Interested Shareholder became an Interested Shareholder, and any successor of a Continuing Director who is unaffiliated with the Interested Shareholder and is recommended to succeed a Continuing Director by a majority of Continuing Directors then on the Board.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

"Fair Market Value" means in the case of stock, the highest closing sale price during the 30-day period ending on the date in question of a share of such stock on a principal United States securities exchange registered under the Exchange Act on which such stock is listed or in the national market system maintained by the National Association of Securities Dealers, Inc., or, if the stock is not listed on any such exchange or designated as a national market system security, the highest closing bid quotation with respect to a share of such stock during the 30-day period ending on the date in question on the National Association of Securities Dealers, Inc. Automated Quotations system or any system then in use, or if no such quotations are available, the fair market value on the date in question of a share of such stock as determined by the Board in good faith.

"Interested Shareholder" shall have the meaning ascribed to such term under Section 1090.3 of the Act.

Section 2. Vote Required for Certain Stock Purchases.

A. Any direct or indirect purchase by the Corporation, or any subsidiary of the Corporation, of any capital stock from a person or persons known by a majority of the Continuing Directors of the Corporation to be an Interested Shareholder who has beneficially owned such capital stock for less than three years prior to the date of such purchase, or any agreement in respect thereof, at a price in excess of the Fair Market Value shall require the affirmative vote of no less than 66 2/3% of the votes cast by the holders, voting together as a single class, of all then outstanding shares of capital stock, excluding for this purpose the votes by the Interested Shareholder, unless a greater vote shall be required by law.

B. Such affirmative vote shall not be required for a purchase or other acquisition of securities of the same class made on substantially the same terms to all holders of such securities and complying with the applicable requirements of the Exchange Act, and the rules and regulations thereunder (or any subsequent provisions replacing the Exchange Act, rules or regulations). Furthermore, such affirmative vote shall not be required for any purchase effected on the open market and not the result of a privately-negotiated transaction.

Section 3. Powers of Continuing Directors. The Continuing Directors of the Corporation shall have the power and duty to determine for the purposes of this Article VI, on the basis of information known to them after reasonable inquiry, whether a person is an Interested Shareholder, and the number of shares of capital stock owned beneficially by any person.

## ARTICLE VII

### Board of Directors

Section 1. Management by Board of Directors. The business and affairs of the Corporation shall be under the direction of the Board of Directors.

Section 2. Number of Directors. Subject to the addition of any directors elected by a class of preferred stock as provided in Section 3 of this Article VII, the number of directors which shall constitute the whole board shall not be less than three nor more than nine, and shall be determined by resolution adopted by a vote of two-thirds (2/3) of the entire board, or at an annual or special meeting of shareholders by the affirmative vote of sixty-six and two-thirds percent (66 2/3%) of the outstanding stock entitled to vote. No reduction in number shall have the effect of removing any director prior to the expiration of his term.

Section 3. Classes of Directors; Election by Shareholders; Vacancies. The directors shall be divided into three classes, designated Class I, Class II and Class III. Each class shall consist, as nearly as may be possible, of one-third

of the total number of directors constituting the entire Board of Directors. The term of the initial Class I directors shall terminate on the date of the 1997 annual meeting of shareholders, the term of the initial Class II directors shall terminate on the date of the 1998 annual meeting of shareholders and the term of the initial Class III directors shall terminate on the date of the 1999 annual meeting of shareholders. At each annual meeting of shareholders beginning in 1997, successors to the class of directors whose term expires at that annual meeting shall be elected for a three-year term. If the number of directors is changed, any increase or decrease shall be apportioned among the



classes so as to maintain the number of directors in each class as nearly equal as possible, and any additional directors of any class elected to fill a vacancy resulting from an increase in such class shall hold office for a term that shall coincide with the remaining term of that class, but in no case will a decrease in the number of directors shorten the term of any incumbent director. A director shall hold office until the annual meeting for the year in which his term expires and until his successor shall be elected and shall qualify, subject, however, to prior death, resignation, retirement, disqualification or removal from office. Any vacancy on the Board of Directors, however resulting, may be filled by a majority of the directors then in office, even if less than a quorum, or by a sole remaining director. Any director elected to fill a vacancy shall hold office for a term that shall coincide with the term of the class to which such director shall have been elected. No election of directors need be by written ballot.

Notwithstanding the foregoing, whenever the holders of any one or more classes or series of Preferred Stock issued by the Corporation shall have the right, voting separately by class or series, to elect directors at an annual or special meeting of shareholders, the election, term of office, filling of vacancies and other features of such directorships shall be governed by the terms of the Certificate of Designation attributable to such Preferred Stock or the resolution or resolutions adopted by the Board of Directors pursuant to Section 2 of this Article VII applicable thereto, and such directors so elected shall not be divided into classes pursuant to this Article VII unless expressly provided by such terms.

## ARTICLE VIII

### Indemnity

Section 1. Third Party Claims. The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture or other enterprise against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the Corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not of itself create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interest of the Corporation and with respect to any criminal action or proceeding had reasonable cause to believe that his conduct was unlawful.

Section 2. Derivative Claims. The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the Corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the court in which such action or suit was brought shall determine, upon application, that despite the adjudication of liability, but in the view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

Section 3. Expenses. Expenses, including fees and expenses of counsel, incurred in defending a civil, criminal, administrative or investigative action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation as authorized herein.

Section 4. Insurance. The Corporation may purchase (upon resolution duly adopted by the Board of Directors) and maintain insurance on behalf of any

person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation

would have the power to indemnify him against such liability.

Section 5. Reimbursement. To the extent that a director, officer, employee or agent of, or any other person entitled to indemnity hereunder by, the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to herein or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

Section 6. Enforcement. Every such person shall be entitled, without demand by him upon the Corporation or any action by the Corporation, to enforce his right to such indemnity in an action at law against the Corporation. The right of indemnification and advancement of expenses hereinabove provided shall not be deemed exclusive of any rights to which any such person may now or hereafter be otherwise entitled and specifically, without limiting the generality of the foregoing, shall not be deemed exclusive of any rights pursuant to statute or otherwise, of any such person in any such action, suit or proceeding to have assessed or allowed in his favor against the Corporation or otherwise, his costs and expenses incurred therein or in connection therewith or any part hereof.

ARTICLE IX

Amendments; Bylaws; Control Shares Act; Written Consent

Section 1. Amendments to Certificate of Incorporation. Notwithstanding anything contained in this Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the issued and outstanding stock having voting power, voting together as a single class, shall be required to amend, repeal or adopt any provision inconsistent with Articles V, VI, VII, VIII and this Article IX of this Certificate of Incorporation.

Section 2. Bylaws. Prior to the receipt of any payment for any of the Corporation's stock, the Bylaws of the Corporation shall be adopted, amended or repealed by the Incorporator. Thereafter, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to adopt, repeal, alter, amend or rescind the Bylaws of the Corporation. In addition, the Bylaws of the Corporation may be adopted, repealed, altered, amended or rescinded by the affirmative vote of the holders of sixty-six and two-thirds percent (66 2/3%) of the outstanding stock of the Corporation entitled to vote thereon.

Section 3. Control Shares Act. The Corporation shall not be subject to the Oklahoma Control Shares Act as codified at Sections 1145-1155 of the Act. This election shall be effective on the date of filing this Certificate.

Section 4. Action By Written Consent. Any action required or permitted to be taken at a meeting of the shareholders may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes which would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of corporate action without a meeting by less than unanimous written consent shall be given to those shareholders who have not consented in writing.

IN WITNESS WHEREOF, the Corporation has caused this Certificate to be signed by its Chairman of the Board and Chief Executive Officer and attested to by its Secretary this 13th day of August, 2001.

CHESAPEAKE ENERGY CORPORATION,  
an Oklahoma corporation

By /s/ Aubrey K. McClendon

-----  
Aubrey K. McClendon  
Chairman of the Board and Chief  
Executive Officer

ATTEST:

/s/ Patricia J. Murano

-----  
Patricia J. Murano,  
Assistant Secretary



CERTIFICATE OF DESIGNATIONS OF

SERIES A JUNIOR PARTICIPATING PREFERRED STOCK OF  
CHESAPEAKE ENERGY CORPORATION

(PURSUANT TO SECTION 1032 OF THE GENERAL  
CORPORATION ACT OF THE STATE OF OKLAHOMA)

-----

Chesapeake Energy Corporation, a corporation organized and existing under the General Corporation Law of the State of Oklahoma (hereinafter called the "Company"), hereby certifies that the following resolution was duly adopted by the Board of Directors of the Company as required by Section 1032 of the General Corporation Act of the State of Oklahoma and in accordance with Article IV of the Company's Certificate of Incorporation, as amended, at a meeting duly called and held on July 7, 1998:

WHEREAS, pursuant to the Company's Certificate of Incorporation, as amended to date (hereinafter called the "Certificate of Incorporation"), the Company is authorized to issue up to 10,000,000 shares of preferred stock, par value \$0.01 per share (the "Preferred Stock") from time to time, of which 4,600,000 shares have been designated as the 7% Cumulative Convertible Preferred Stock and are currently outstanding; and

WHEREAS, pursuant to the authority vested in the Board of Directors of the Company in accordance with the General Corporation Act of the State of Oklahoma and the Company's Certificate of Incorporation, the Board of Directors is authorized by resolution duly adopted, to designate shares of Preferred Stock to be issued, in one or more series, to provide for the designation thereof of the powers, designations, preferences and relative, participating, optional or other special rights of the shares of such series, and the qualifications, limitations or restrictions thereof;

RESOLVED, that pursuant to the authority granted to and vested in the Board of Directors of the Company (hereinafter called the "Board of Directors" or the "Board") in accordance with the provisions of the Company's Certificate of Incorporation, the Board of Directors on July 7, 1998 adopted the following resolutions to create a new series of Preferred Stock; and be it further

RESOLVED, that pursuant to the authority vested in the Board of Directors of the Corporation in accordance with the provisions of the Oklahoma General Corporation Act and the

Certificate of Incorporation, a Series A Junior Participating Preferred Stock of the Corporation is hereby created, and 250,000 shares of Preferred Stock shall be reserved for issuance as Series A Junior Participating Preferred Stock in accordance with this Certificate of Designation with the designations thereof and the powers, designations, preferences and relative, participating, optional or other special rights of the shares of such series, and the qualifications, limitations or restrictions thereof as set forth below:

Section 1. Designation and Amount. The shares of such series shall be designated as "Series A Junior Participating Preferred Stock" (the "Series A Preferred Stock") and the number of shares constituting the Series A Preferred Stock shall be 250,000. Such number of shares may be increased or decreased by resolution of the Board of Directors; provided, that no decrease shall reduce the number of shares of Series A Preferred Stock to a number less than the number of shares then outstanding plus the number of shares reserved for issuance upon the exercise of outstanding options, rights or warrants or upon the conversion of any outstanding securities issued by the Company convertible into Series A Preferred Stock.

Section 2. Dividends and Distributions.

(A) Subject to the rights of the holders of any shares of any series of Preferred Stock of the Company (the "Preferred Stock") (or any similar stock) ranking prior and superior to the Series A Preferred Stock with respect to dividends, the holders of shares of Series A Preferred Stock, in preference to the holders of Common Stock, par value \$0.01 per share, of the Company (the "Common Stock") and of any other stock of the Company ranking junior to the Series A Preferred Stock, shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available therefor, quarterly dividends payable in cash on the last day of January, April, July, and October in each year (each such date being referred to herein as a "Dividend Payment Date"), commencing on the first Dividend Payment Date after the first issuance of a share or fraction of a share of Series A Preferred Stock, in an amount per share (rounded to the nearest cent) equal to the greater of (a) \$10.00 and (b) subject to the provision for adjustment hereinafter set forth, 1,000 times the aggregate per share amount of all cash dividends, and 1,000 times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions other than a dividend payable in shares of Common Stock, declared on the Common Stock since the immediately preceding Dividend Payment Date or, with respect to the first Dividend Payment Date, since the first issuance of any share or fraction of a share of Series A Preferred Stock. In the event that the Company shall at any time after July 27, 1998 declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the amount to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event under clause (b) of the preceding sentence shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) The Company shall declare a dividend or distribution on the Series A Preferred Stock as provided in paragraph (A) of this Section immediately after it declares a dividend or distribution on the Common Stock (other than a dividend payable in shares of Common Stock); provided that, in the event no dividend or distribution shall have been declared on the Common Stock during the period between any Dividend Payment Date and the next subsequent Dividend Payment Date, a dividend of \$10.00 per share on the Series A Preferred Stock shall nevertheless be payable, when, as and if declared, on such subsequent Dividend Payment Date.

(C) Dividends shall begin to accrue and be cumulative, whether or not earned or declared, on outstanding shares of Series A Preferred Stock from the Dividend Payment Date next preceding the date of issue of such shares, unless the date of issue of such shares is prior to the record date for the first Dividend Payment Date, in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series A Preferred Stock entitled to receive a quarterly dividend and before such Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the shares of Series A Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board of Directors may fix a record date for the determination of holders of shares of Series A Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be not more than 60 days prior to the date fixed for the payment thereof.

Section 3. Voting Rights. The holders of shares of Series A Preferred Stock shall have the following voting rights:

(A) Subject to the provision for adjustment hereinafter set forth and except as otherwise provided in the Certificate of Incorporation or required by law, each share of Series A Preferred Stock shall entitle the holder thereof to 1,000 votes on all matters upon which the holders of the Common Stock of the Company are entitled to vote. In the event the Company shall at any time after July 27, 1998 declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the number of votes per share to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event shall be adjusted by multiplying such number by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) Except as otherwise provided herein, in the Certificate of Incorporation or in any other Certificate of Designations creating a series of Preferred Stock or any similar stock, and except

as otherwise required by law, the holders of shares of Series A Preferred Stock and the holders of shares of Common Stock and any other capital stock of the Company having general voting rights shall vote together as one class on all matters submitted to a vote of stockholders of the Company.

(C) Except as set forth herein, or as otherwise provided by law or the Certificate of Incorporation, holders of Series A Preferred Stock shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Common Stock as set forth herein) for taking any corporate action.

#### Section 4. Certain Restrictions.

(A) Whenever quarterly dividends or other dividends or distributions payable on the Series A Preferred Stock as provided in Section 2 are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not earned or declared, on shares of Series A Preferred Stock outstanding shall have been paid in full, the Company shall not:

(i) declare or pay dividends, or make any other distributions, on any shares of stock ranking junior (as to dividends) to the Series A Preferred Stock;

(ii) declare or pay dividends, or make any other distributions, on any shares of stock ranking on a parity (as to dividends) with the Series A Preferred Stock, except dividends paid ratably on the Series A Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled;

(iii) redeem or purchase or otherwise acquire for consideration shares of any stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock, provided that the Company may at any time redeem, purchase or otherwise acquire shares of any such junior stock in exchange for shares of any stock of the Company ranking junior (as to dividends and upon dissolution, liquidation or winding up) to the Series A Preferred Stock or rights, warrants or options to acquire such junior stock;

(iv) redeem or purchase or otherwise acquire for consideration any shares of Series A Preferred Stock, or any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board of Directors) to all holders of such shares upon such terms as the Board of Directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(B) The Company shall not permit any subsidiary of the Company to purchase or otherwise acquire for consideration any shares of stock of the Company unless the Company could,



under paragraph (A) of this Section 4, purchase or otherwise acquire such shares at such time and in such manner.

Section 5. Reacquired Shares. Any shares of Series A Preferred Stock purchased or otherwise acquired by the Company in any manner whatsoever shall be retired and canceled promptly after the acquisition thereof. All such shares shall upon their retirement become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock to be created by resolution or resolutions of the Board of Directors, subject to any conditions and restrictions on issuance set forth herein.

Section 6. Liquidation, Dissolution or Winding Up. Upon any liquidation, dissolution or winding up of the Company, no distribution shall be made (A) to the holders of the Common Stock or of shares of any other stock of the Company ranking junior, upon liquidation, dissolution or winding up, to the Series A Preferred Stock unless, prior thereto, the holders of shares of Series A Preferred Stock shall have received \$10.00 per share, plus an amount equal to accrued and unpaid dividend distributions thereon, whether or not earned or declared, to the date of such payment, provided that the holders of shares of Series A Preferred Stock shall be entitled to receive an aggregate amount per share, subject to the provision for adjustment hereinafter set forth, equal to 1,000 times the aggregate amount to be distributed per share to holders of shares of Common Stock, or (B) to the holders of shares of stock ranking on a parity upon liquidation, dissolution or winding up with the Series A Preferred Stock, except distributions made ratably on the Series A Preferred Stock and all such parity stock in proportion to the total amounts to which the holders of all such shares are entitled upon such liquidation, dissolution or winding up. In the event, however, that there are not sufficient assets available to permit payment in full of the Series A Preferred Stock liquidation preference and the liquidation preferences of all other classes and series of stock of the Company, if any, that rank on a parity with the Series A Preferred Stock in respect thereof, then the assets available for such distribution shall be distributed ratably to the holders of the Series A Preferred Stock and the holders of such parity shares in the proportion to their respective liquidation preferences. In the event the Company shall at any time after July 27, 1998 declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the aggregate amount to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event under the proviso in clause (A) of the preceding sentence shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 7. Consolidation, Merger, etc. In the case the Company shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are converted into, exchanged for or changed into other stock or securities, cash and/or any property, then in any such case each share of Series A Preferred Stock shall at the same time be similarly

converted into, exchanged for or changed into an amount per share (subject to the provision for adjustment hereinafter set forth) equal to 1,000 times the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock is converted, exchanged or converted. In the event the Company shall at any time after July 27, 1998 declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the amount set forth in the preceding sentence with respect to the conversion, exchange or change of shares of Series A Preferred Stock shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 8. No Redemption. The shares of Series A Preferred Stock shall not be redeemable from any holder.

Section 9. Rank. The Series A Preferred Stock shall rank, with respect to the payment of dividends and the distribution of assets upon liquidation, dissolution or winding up of the Company, junior to all other series of Preferred Stock and senior to the Common Stock.

Section 10. Amendment. If any proposed amendment to the Certificate of Incorporation (including this Certificate of Designations) would alter, change or repeal any of the preferences, powers or special rights given to the Series A Preferred Stock so as to affect the Series A Preferred Stock adversely, then the holders of the Series A Preferred Stock shall be entitled to vote separately as a class upon such amendment, and the affirmative vote of two-thirds of the outstanding shares of the Series A Preferred Stock, voting separately as a class, shall be necessary for the adoption thereof, in addition to such other vote as may be required by the General Corporation Act of the State of Oklahoma.

Section 11. Fractional Shares. Series A Preferred Stock may be issued in fractions of a share that shall entitle the holder, in proportion to such holder's fractional shares, to exercise voting rights, receive dividends, participate in distributions and to have the benefit of all other rights of holders of Series A Preferred Stock.

IN WITNESS WHEREOF, this Certificate of Designations is executed on behalf of the Company by its Chairman of the Board and Chief Executive Officer and attested by its Secretary this 7th day of July, 1998.

/s/ Aubrey K. McClendon

-----  
Aubrey K. McClendon Chairman of the Board  
and Chief Executive Officer

Attest: /s/ Janice A. Dobbs

-----  
Janice A. Dobbs  
Corporate Secretary

FIRST AMENDMENT TO  
CERTIFICATE OF DESIGNATIONS OF  
SERIES A JUNIOR PARTICIPATING PREFERRED STOCK OF  
CHESAPEAKE ENERGY CORPORATION

(Pursuant to Section 1032 of the General  
Corporation Act of the State of Oklahoma)

---

Chesapeake Energy Corporation, a corporation organized and existing under the General Corporation Act of the State of Oklahoma (hereinafter called the "Company"), hereby certifies that the following resolution was duly adopted by the Board of Directors of the Company as required by Section 1032 of the General Corporation Act of the State of Oklahoma (hereinafter called the "Act") and in accordance with Article IV of the Company's Certificate of Incorporation, as amended (hereinafter called the "Certificate of Incorporation"), at a meeting duly called and held on April 23, 2004:

WHEREAS, pursuant to the authority vested in the Board of Directors of the Company in accordance with the Act and the Certificate of Incorporation, the Board of Directors is authorized by resolution duly adopted, to designate shares of preferred stock to be issued, in one or more series, to provide for the designation thereof of the powers, designations, preferences and relative, participating, optional or other special rights of the shares of such series, and the qualifications, limitations or restrictions thereof;

WHEREAS, pursuant to the Certificate of Incorporation, the Company is authorized to issue up to 10,000,000 shares of preferred stock, par value \$0.01 per share (the "Preferred Stock") from time to time, of which 250,000 shares have been designated as the Series A Junior Participating Preferred Stock, 313,250 shares have been designated as the 4.125% Cumulative Convertible Preferred Stock, 1,725,000 shares have been designated as the 5.0% Cumulative Convertible Preferred Stock, 4,600,000 shares have been designated as the 6.0% Cumulative Convertible Preferred Stock and 2,997,800 shares have been designated as the 6.75% Cumulative Convertible Preferred Stock; and

WHEREAS, on July 7, 1998, the Board of Directors approved and on July 17, 1998, the Company filed with the Oklahoma Secretary of State the Certificate of Designations of Series A Junior Participating Preferred Stock (the "Initial Certificate") and as a result of an increase in the authorized shares of the Company's common stock, par value \$0.01 per share, the Board of Directors

desires to increase the number of shares of Series A Junior Participating Preferred Stock designated by the Initial Certificate.

NOW THEREFORE BE IT RESOLVED, that pursuant to the authority vested in the Board of Directors of the Company in accordance with the provisions of the Act and the Certificate of Incorporation, the Initial Certificate is amended as follows:

1. Increase in Shares. In order to increase the number of shares of Series A Junior Participating Preferred Stock, Section 1 of the Initial Certificate is deleted in its entirety and the following is substituted therefore:

Section 1. Designation and Amount. The shares of such series shall be designated as "Series A Junior Participating Preferred Stock" (the "Series A Preferred Stock") and the number of shares constituting the Series A Preferred Stock shall be 350,000. Such number of shares may be increased or decreased by resolution of the Board of Directors; provided, that no decrease shall reduce the number of shares of Series A Preferred Stock to a number less than the number of shares then outstanding plus the number of shares reserved for issuance upon the exercise of outstanding options, rights or warrants or upon the conversion of any outstanding securities issued by the Company convertible into Series A Preferred Stock.

2. Full Force and Effect. Except as specifically amended herein, all other terms and provisions of the Initial Certificate remain in full force and effect.

IN WITNESS WHEREOF, this First Amendment to Certificate of Designations is executed on behalf of the Company by its Chairman of the Board and Chief Executive Officer and attested by its Secretary this 7th day of May, 2004.

/s/ Aubrey K. McClendon

\_\_\_\_\_  
Aubrey K. McClendon  
Chairman of the Board and  
Chief Executive Officer

Attest: /s/ Jennifer M. Grigsby

\_\_\_\_\_  
Jennifer M. Grigsby  
Corporate Secretary

CERTIFICATE OF DESIGNATION  
OF  
6.75% CUMULATIVE CONVERTIBLE PREFERRED STOCK  
OF  
CHESAPEAKE ENERGY CORPORATION

Pursuant to Section 1032(G) of the Oklahoma General Corporation Act

CHESAPEAKE ENERGY CORPORATION, an Oklahoma corporation (the "Company"), does hereby certify that the following resolution was duly adopted by action of the Board of Directors of the Company, with the provisions thereof fixing the number of shares of the series and the dividend rate being set by action of the Board of Directors of the Company:

RESOLVED that pursuant to the authority expressly granted to and vested in the Board of Directors of the Company by the provisions of Article IV, Section 1 of the Certificate of Incorporation of the Company, as amended from time to time (the "Certificate of Incorporation"), and pursuant to Section 1032(G) of the Oklahoma General Corporation Act, the Board of Directors hereby creates a series of preferred stock of the Company and hereby states that the voting powers, designations, preferences and relative, participating, optional or other special rights of which, and qualifications, limitations or restrictions thereof (in addition to the provisions set forth in the Certificate of Incorporation which are applicable to the preferred stock of all classes and series), shall be as follows:

1. Designation and Amount; Ranking. (a) There shall be created from the 10,000,000 shares of preferred stock, par value \$0.01 per share, of the Company authorized to be issued pursuant to the Certificate of Incorporation, a series of preferred stock, designated as the "6.75% Cumulative Convertible Preferred Stock," par value \$0.01 per share (the "Preferred Stock"), and the number of shares of such series shall be 3,000,000. Such number of shares may be decreased by resolution of the Board of Directors; provided that no decrease shall reduce the number of shares of Preferred Stock to a number less than that of the shares of Preferred Stock then outstanding plus the number of shares issuable upon exercise of options or rights then outstanding.

(b) The Preferred Stock will, with respect to dividend rights or rights upon the liquidation, winding-up or dissolution of the Company rank (i) senior to all Junior Stock, (ii) on a parity with all Parity Stock and (iii) junior to all Senior Stock.

2. Definitions. As used herein, the following terms shall have the following meanings:

(1) "Accrued Dividends" shall mean, with respect to any share of Preferred Stock, as of any date, the accrued and unpaid dividends on such share from and including the most recent Dividend Payment Date (or the Issue Date, if such date is prior to the first Dividend Payment Date) to but not including such date.

(2) "Accumulated Dividends" shall mean, with respect to any share of Preferred Stock, as of any date, the aggregate accumulated and unpaid dividends on such share from the Issue Date until the most recent Dividend Payment Date on or prior to such date. There shall be no Accumulated Dividends with respect to any share of Preferred Stock prior to the first Dividend Payment Date.

(3) "Affiliate" shall have the meaning ascribed to it, on the date hereof, under Rule 405 of the Securities Act of 1933, as amended.

(4) "Board of Directors" shall mean the Board of Directors of the Company or, with respect to any action to be taken by the Board of Directors, any committee of the Board of Directors duly authorized to take such action.

(5) "Business Day" shall mean any day other than a Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law or executive order to close.

(6) "Change of Control" shall mean any of the following events: (i) the sale, lease or transfer, in one or a series of related transactions, of all or substantially all of the Company's assets (determined on a consolidated basis) to any Person or group (as such term is used in Section 13(d)(3) of the Exchange Act), other than to Permitted Holders; (ii) the adoption of a plan the consummation of which would result in the liquidation or dissolution of the Company; (iii) the acquisition, directly or indirectly, by any Person or group (as such term is used in Section 13(d)(3) of the Exchange Act), other than Permitted Holders, of beneficial ownership (as defined in Rule 13d-3 under the Exchange Act) of more than 50% of the aggregate voting power of the Voting Stock of the Company; provided, however, that the Permitted Holders beneficially own (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), directly or indirectly, in the aggregate a lesser percentage of the total voting power of the Voting Stock of the Company than such other Person or group and do not have the right or ability by voting power, contract or otherwise to elect or designate for election a majority of the

Board of Directors (for the purposes of this definition, such other Person or group shall be deemed to beneficially own any Voting Stock of a specified corporation held by a parent corporation, if such other Person or group is the beneficial owner (as defined above), directly or indirectly, of more than 35% of the voting power of the Voting Stock of such parent corporation and the Permitted Holders beneficially own (as defined in this proviso), directly or indirectly, in the aggregate a lesser percentage of the voting power of the Voting Stock of such parent corporation and do not have the right or ability by voting power, contract or otherwise to elect or designate for election a majority of the Board of Directors of such parent corporation); or (iv) during any period of two consecutive years, individuals who at the beginning of such period composed the Board of Directors of the Company (together with any new directors whose election by such Board of Directors or whose nomination for election by the shareholders of the Company was approved by a vote of 66 2/3% of the directors of the Company then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the Board of Directors of the Company then in office. For purposes of this definition of "Change of Control," the term "Permitted Holders" means Aubrey K. McClendon and Tom L. Ward and their respective Affiliates.

(7) "Change of Control Date" shall mean the date on which the Change of Control event occurs.

(8) "Conversion Price" shall mean \$7.70, subject to adjustment as set forth in Section 7(c).

(9) "Common Stock" shall mean the common stock, par value \$0.01 per share, of the Company, or any other class of stock resulting from successive changes or reclassifications of such common stock consisting solely of changes in par value, or from par value to no par value, or as a result of a subdivision, combination, or merger, consolidation or similar transaction in which the Company is a constituent corporation.

(10) "DTC" or "Depository" means The Depository Trust Company.

(11) "Dividend Payment Date" shall mean February 15, May 15, August 15 and November 15 of each year, commencing February 15, 2002.

(12) "Dividend Record Date" shall mean February 1, May 1, August 1 and November 1 of each year.

(13) "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.



(14) "Holder" or "holder" shall mean a holder of record of the Preferred Stock.

(15) "Issue Date" shall mean November 13, 2001, the original date of issuance of the Preferred Stock.

(16) "Junior Stock" shall mean all classes of common stock of the Company and the Series A Junior Participating Convertible Preferred Stock and each other class of capital stock or series of preferred stock established after the Issue Date, by the Board of Directors, the terms of which do not expressly provide that such class or series ranks senior to or on parity with the Preferred Stock as to dividend rights or rights upon the liquidation, winding-up or dissolution of the Company.

(17) "Liquidation Preference" shall mean, with respect to each share of Preferred Stock, \$50.

(18) "Market Value" shall mean the average closing price of the Common Stock for a five consecutive trading day period on the NYSE (or such other national securities exchange or automated quotation system on which the Common Stock is then listed or authorized for quotation or, if the Common Stock is not so listed or authorized for quotation, an amount determined in good faith by the Board of Directors to be the fair value of the Common Stock).

(19) "NYSE" shall mean the New York Stock Exchange, Inc.

(20) "Officer" means the Chairman of the Board of Directors, the President, any Vice President, the Treasurer, the Secretary or any Assistant Secretary of the Company.

(21) "Officers' Certificate" means a certificate signed by two Officers.

(22) "Opinion of Counsel" means a written opinion from legal counsel who is acceptable to the Transfer Agent. The counsel may be an employee of or counsel to the Company or the Transfer Agent.

(23) "Parity Stock" shall mean any class of capital stock or series of preferred stock established after the Issue Date by the Board of Directors, the terms of which expressly provide that such class or series will rank on parity with the Preferred Stock as to dividend rights or rights upon the liquidation, winding-up or dissolution of the Company.

(24) "Person" shall mean any individual, corporation, general partnership, limited partnership, limited liability partnership, joint venture, association,

joint-stock company, trust, limited liability company, unincorporated organization or government or any agency or political subdivision thereof.

(25) "Purchase Agreement" shall mean that certain Purchase Agreement with respect to the Preferred Stock, dated as of November 6, 2001 among the Company, Credit Suisse First Boston Corporation, Bear, Stearns & Co. Inc., Lehman Brothers Inc. and Salomon Smith Barney Inc.

(26) "Registration Rights Agreement" means the Registration Rights Agreement dated November 6, 2001 among the Company, Credit Suisse First Boston Corporation, Bear, Stearns & Co. Inc., Lehman Brothers Inc. and Salomon Smith Barney Inc. with respect to the Preferred Stock.

(27) "SEC" or "Commission" shall mean the Securities and Exchange Commission.

(28) "Securities Act" means the Securities Act of 1933, as amended.

(29) "Senior Stock" shall mean each class of capital stock or series of preferred stock established after the Issue Date by the Board of Directors, the terms of which expressly provide that such class or series will rank senior to the Preferred Stock as to dividend rights or rights upon the liquidation, winding-up or dissolution of the Company.

(30) "Shelf Registration Statement" shall mean a shelf registration statement filed with the SEC to cover resales of Transfer Restricted Securities by holders thereof, as required by the Registration Rights Agreement.

(31) "Transfer Agent" shall mean UMB Bank, N.A., the Company's duly appointed transfer agent, registrar and conversion and dividend disbursing agent for the Preferred Stock. The Company may, in its sole discretion, remove the Transfer Agent with 10 days' prior notice to the Transfer Agent; provided, that the Company shall appoint a successor Transfer Agent who shall accept such appointment prior to the effectiveness or such removal.

(32) "Transfer Restricted Securities" shall mean each share of Preferred Stock (or the shares of Common Stock into which such share of Preferred Stock is convertible) until (i) the date on which such security or its predecessor has been effectively registered under the Securities Act and disposed of in accordance with the Shelf Registration Statement or (ii) the date on which such security or predecessor is distributed to the public pursuant to Rule 144 under the Securities Act or is saleable pursuant to Rule 144(k) under the Securities Act.

(33) "Voting Rights Triggering Event" shall mean the failure of the Company to pay dividends on the Preferred Stock with respect to six or more quarterly periods (whether or not consecutive).

(34) "Voting Stock" shall mean, with respect to any Person, securities of any class or classes of Capital Stock in such Person entitling the holders thereof (whether at all times or only so long as no senior class of stock has voting power by reason of contingency) to vote in the election of members of the Board of Directors or other governing body of such Person. For purposes of this definition, "Capital Stock" shall mean, with respect to any Person, any and all shares, interests, participations or other equivalents (however designated) of corporate stock or partnership interests and any and all warrants, options and rights with respect thereto (whether or not currently exercisable), including each class of common stock and preferred stock of such Person.

### 3. Dividends.

(1) The holders of shares of the outstanding Preferred Stock shall be entitled, when, as and if declared by the Board of Directors out of funds of the Company legally available therefor, to receive cumulative cash dividends at the rate per annum of 6.75% per share on the Liquidation Preference (equivalent to \$3.375 per annum per share, payable quarterly in arrears (the "Dividend Rate"). The Dividend Rate may be increased in the circumstances described in Section 3(b) below. Dividends payable for each full dividend period will be computed by dividing the Dividend Rate by four and shall be payable in arrears on each Dividend Payment Date (commencing February 15, 2002) for the quarterly period ending immediately prior to such Dividend Payment Date, to the holders of record of Preferred Stock at the close of business on the Dividend Record Date applicable to such Dividend Payment Date. Such dividends shall be cumulative from the most recent date as to which dividends shall have been paid or, if no dividends have been paid, from the Issue Date (whether or not in any dividend period or periods there shall be funds of the Company legally available for the payment of such dividends) and shall accrue on a day-to-day basis, whether or not earned or declared, from and after the Issue Date. Dividends payable for any partial dividend period shall be computed on the basis of actual days elapsed over a 360-day year consisting of twelve 30-day months. Accumulations of dividends on shares of Preferred Stock shall not bear interest.

(2) If (i) by January 12, 2002, the Shelf Registration Statement has not been filed with the Commission, (ii) by May 12, 2002, the Shelf Registration Statement has not been declared effective by the Commission or (iii) after the Shelf Registration Statement has been declared effective, (A) the Shelf Registration Statement thereafter ceases to be effective or (B) the Shelf Registration Statement or the related prospectus ceases to be usable (in each case, subject to the exceptions described below) in connection with resale of Transfer Restricted Securities during the period that any Transfer Restricted Securities remain outstanding (each such event referred to in clauses

(i), (ii) and (iii), a "Registration Default"), additional dividends shall accrue on the Preferred Stock at the rate of .50% per annum (resulting in a Dividend Rate of 7.25% per annum during the continuance of a Registration Default), from and including the date on which any such Registration Default shall occur to but excluding the date on which all Registration Defaults have been cured. At all other times, dividends shall accumulate on the Preferred Stock at the Dividend Rate as described in Section 3(a).

A Registration Default referred to in clause (iii) of Section 3(b) shall be deemed not to have occurred and be continuing in relation to the Shelf Registration Statement or the related prospectus if (i) such Registration Default has occurred solely as a result of (x) the filing of a post-effective amendment to the Shelf Registration Statement to incorporate annual audited financial information with respect to the Company where such post-effective amendment is not yet effective and needs to be declared effective to permit Holders to use the related prospectus or (y) other material events, with respect to the Company that would need to be described in the Shelf Registration Statement or the related prospectus and (ii) in the case of clause (y), the Company is proceeding promptly and in good faith to amend or supplement such Shelf Registration Statement and related prospectus to describe such events; provided, however, that in any case if such Registration Default referred to in clause (iii) of Section 3(b) occurs for a continuous period in excess of 30 days, additional dividends as described in Section 3(b) shall be payable in accordance therewith from the day such Registration Default occurs until such Registration Default is cured.

(3) No dividend will be declared or paid upon, or any sum set apart for the payment of dividends upon, any outstanding share of the Preferred Stock with respect to any dividend period unless all dividends for all preceding dividend periods have been declared and paid or declared and a sufficient sum set apart for the payment of such dividend, upon all outstanding shares of Preferred Stock.

(4) No dividends or other distributions (other than a dividend or distribution payable solely in shares of Parity Stock or Junior Stock (in the case of Parity Stock) or Junior Stock (in the case of Junior Stock) and other than cash paid in lieu of fractional shares) may be declared, made or paid, or set apart for payment upon, any Parity Stock or Junior Stock, nor may any Parity Stock or Junior Stock be redeemed, purchased or otherwise acquired for any consideration (or any money paid to or made available for a sinking fund for the redemption of any Parity Stock or Junior Stock) by or on behalf of the Company (except by conversion into or exchange for shares of Parity Stock or Junior Stock (in the case of Parity Stock) or Junior Stock (in the case of Junior Stock)), unless full Accumulated Dividends shall have been or contemporaneously are declared and paid, or are declared and a sum sufficient for the payment thereof is set apart for such payment, on the Preferred Stock and any Parity Stock for all dividend payment periods terminating on or prior to the date of such declaration, payment, redemption, purchase or acquisition. Notwithstanding the foregoing, if full dividends have not been

paid on the Preferred Stock and any Parity Stock, dividends may be declared and paid on the Preferred Stock and such Parity Stock so long as the dividends are declared and paid pro rata so that the amounts of dividends declared per share on the Preferred Stock and such Parity Stock will in all cases bear to each other the same ratio that accumulated and unpaid dividends on the shares of Preferred Stock and such other Parity Stock bear to each other.

(5) Holders of shares of Preferred Stock shall not be entitled to any dividends on the Preferred Stock, whether payable in cash, property or stock, in excess of full cumulative dividends. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on the Preferred Stock which may be in arrears.

(6) The holders of shares of Preferred Stock at the close of business on a Dividend Record Date will be entitled to receive the dividend payment on those shares on the corresponding Dividend Payment Date notwithstanding the subsequent conversion thereof or the Company's default in payment of the dividend due on that Dividend Payment Date. However, shares of Preferred Stock surrendered for conversion during the period between the close of business on any Dividend Record Date and the close of business on the day immediately preceding the applicable Dividend Payment Date must be accompanied by payment of an amount equal to the dividend payable on the shares on that Dividend Payment Date. A holder of shares of Preferred Stock on a Dividend Record Date who (or whose transferee) tenders any shares for conversion on the corresponding Dividend Payment Date will receive the dividend payable by the Company on the Preferred Stock on that date, and the converting holder need not include payment in the amount of such dividend upon surrender of shares of Preferred Stock for conversion. Except as provided above with respect to a voluntary conversion pursuant to Section 7, the Company shall make no payment or allowance for unpaid dividends, whether or not in arrears, on converted shares or for dividends on the shares of Common Stock issued upon conversion.

#### 4. Change of Control.

(1) Upon the occurrence of a Change of Control, each holder of Preferred Stock shall, in the event that the Market Value for the period ending on the Change of Control Date is less than the Conversion Price, have a one-time option (the "Change of Control Option") to convert all of such holder's outstanding shares of Preferred Stock into fully paid and nonassessable shares of Common Stock at an adjusted Conversion Price equal to the greater of (i) the Market Value for the period ending on the Change of Control Date and (ii) \$4.0733. The Change of Control Option must be exercised, if at all, during the period of not less than 30 days nor more than 60 days commencing on the third Business Day after notice of a Change in Control has been given by the Company in accordance with Section 4(b). In lieu of issuing the shares of Common Stock issuable upon conversion in the event of a Change of Control, the Company may, at its option, make a cash payment equal to the Market Value for each share of such Common Stock otherwise issuable determined for the period ending on the Change of Control Date. Notwithstanding the foregoing, upon the occurrence of a Change of Control in which (i) each holder of Common Stock receives consideration consisting solely of common stock of the successor, acquiror or other third party (and cash paid in lieu of fractional shares) that is listed on a national securities exchange or quoted on the NASDAQ National Market and (ii) all the Common Stock has been exchanged for, converted into or acquired for common stock of the successor, acquiror or other third party (and cash in lieu of fractional shares), and the Preferred Stock becomes convertible solely into such common stock, the Conversion Price will not be adjusted as described in this Section 4(a).

(2) In the event of a Change of Control (other than a Change of Control described in the last sentence of Section 4(a)), notice of such Change of Control shall be given, within five Business Days of the Change of Control Date, by the Company by first-class mail to each record holder of shares of Preferred Stock, at such holder's address as the same appears on the books of the Company. Each such notice shall state (i) that a Change of Control has occurred; (ii) the last day on which the Change of Control Option may be exercised (the "Expiration Date") pursuant to the terms hereof; (iii) the name and address of the Transfer Agent; and (iv) the procedures that holders must follow to exercise the Change of Control Option.

(3) On or before the Expiration Date, each holder of shares of Preferred Stock wishing to exercise the Change of Control Option shall surrender the certificate or certificates representing the shares of Preferred Stock to be converted, in the manner and at the place designated in the notice described in Section 4(b), and on such date the cash or shares of Common Stock due to such holder shall be delivered to the Person whose name appears on such certificate or certificates as the owner thereof and the shares represented by each surrendered certificate shall be returned to authorized but unissued shares. Upon surrender (in accordance with the notice described in Section 4(b))

of the certificate or certificates representing any shares to be so converted (properly endorsed or assigned for transfer, if the Company shall so require and the notice shall so state), such shares shall be converted by the Company at the adjusted Conversion Price, if applicable, as described in Section 4(a).

(4) The rights of holders of Preferred Stock pursuant to this Section 4 are in addition to, and not in lieu of, the rights of holders of Preferred Stock provided for in Section 7 hereof.

#### 5. Voting.

(1) The shares of Preferred Stock shall have no voting rights except as set forth below or as otherwise required by Oklahoma law from time to time:

(i) If and whenever at any time or times a Voting Rights Triggering Event occurs, then the holders of shares of Preferred Stock, voting as a single class with any other preferred stock or preference securities having similar voting rights that are exercisable (the "Voting Rights Class"), will be entitled at the next regular or special meeting of stockholders of the Company to elect two additional directors of the Company, unless the Board of Directors is comprised of fewer than six directors at such time, in which case the Voting Rights Class shall be entitled to elect one additional director. Upon the election of any such additional directors, the number of directors that compose the Board of Directors shall be increased by such number of additional directors.

(ii) Such voting rights may be exercised at a special meeting of the holders of the shares of the Voting Rights Class, called as hereinafter provided, or at any annual meeting of stockholders held for the purpose of electing directors, and thereafter at each such annual meeting until such time as all dividends in arrears on the shares of Preferred Stock shall have been paid in full, at which time or times such voting rights and the term of the directors elected pursuant to Section 5(a)(i) shall terminate.

(iii) At any time when such voting rights shall have vested in holders of shares of the Voting Rights Class, an Officer of the Company may call, and, upon written request of the record holders of shares representing at least twenty-five percent (25%) of the voting power of the shares then outstanding of the Voting Rights Class, addressed to the Secretary of the Company, shall call a special meeting of the holders of shares of the Voting Rights Class. Such meeting shall be held at the earliest practicable date upon the notice required for annual meetings of stockholders at the place for holding annual meetings of stockholders of the Company, or, if none, at a place designated by the Board of Directors. Notwithstanding the provisions of this Section 5(a)(iii), no such special meeting shall be called during a period within the 60 days immediately preceding the date fixed for the next annual meeting of stockholders in which such case, the election of directors pursuant to Section 5(a)(i) shall be held at such annual meeting of stockholders.

(iv) At any meeting held for the purpose of electing directors at which the holders of the Voting Rights Class shall have the right to elect directors as provided herein, the presence in person or by proxy of the holders of shares representing more than fifty percent (50%) in voting power of the then outstanding shares of the Voting Rights Class shall be required and shall be sufficient to constitute a quorum of such class for the election of directors by such class. The affirmative vote of the holders of shares of Preferred Stock constituting a majority of the shares of Preferred Stock present at such meeting, in person or by proxy, shall be sufficient to elect any such director.

(v) Any director elected pursuant to the voting rights created under this Section 5(a) shall hold office until the next annual meeting of stockholders (unless such term has previously terminated pursuant to Section 5(a)(ii)) and any vacancy in respect of any such director shall be filled only by vote of the remaining director so elected by holders of the Voting Rights Class, or if there be no such remaining director, by the holders of shares of the Voting Rights Class at a special meeting called in accordance with the procedures set forth in this Section 5, or, if no such special meeting is called, at the next annual meeting of stockholders. Upon any termination of such voting rights, the term of office of all directors elected pursuant to this Section 5 shall terminate.

(vi) So long as any shares of Preferred Stock remain outstanding, unless a greater percentage shall then be required by law, the Company shall not, without the affirmative vote or consent of the holders of at least 66 2/3% of the outstanding Preferred Stock voting or consenting, as the case may be, separately as one class, (i) create, authorize or issue any class or series of Senior Stock (or any security convertible into Senior Stock) or (ii) amend the Certificate of Incorporation so as to affect adversely the specified rights, preferences, privileges or voting rights of holders of shares of Preferred Stock.

(vii) In exercising the voting rights set forth in this Section 5(a), each share of Preferred Stock shall be entitled to one vote.

(2) The Company may authorize, increase the authorized amount of, or issue any shares of Parity Stock or Junior Stock, without the consent of the holders of Preferred Stock, and in taking such actions the Company shall not be deemed to have affected adversely the rights, preferences, privileges or voting rights of holders of shares of Preferred Stock.

## 6. Liquidation Rights.



(1) In the event of any liquidation, winding-up or dissolution of the Company, whether voluntary or involuntary, each holder of shares of Preferred Stock shall be entitled to receive and to be paid out of the assets of the Company available for distribution to its stockholders the Liquidation Preference plus Accumulated Dividends and Accrued Dividends thereon in preference to the holders of, and before any payment or distribution is made on, any Junior Stock, including, without limitation, on any Common Stock.

(2) Neither the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all the assets or business of the Company (other than in connection with the liquidation, winding-up or dissolution of its business) nor the merger or consolidation of the Company into or with any other Person shall be deemed to be a liquidation, winding-up or dissolution, voluntary or involuntary, for the purposes of this Section 6.

(3) After the payment to the holders of the shares of Preferred Stock of full preferential amounts provided for in this Section 6, the holders of Preferred Stock as such shall have no right or claim to any of the remaining assets of the Company.

(4) In the event the assets of the Company available for distribution to the holders of shares of Preferred Stock upon any liquidation, winding-up or dissolution of the Company, whether voluntary or involuntary, shall be insufficient to pay in full all amounts to which such holders are entitled pursuant to Section 6(a), no such distribution shall be made on account of any shares of Parity Stock upon such liquidation, dissolution or winding-up unless proportionate distributable amounts shall be paid on account of the shares of Preferred Stock, ratably, in proportion to the full distributable amounts for which holders of all Preferred Stock and of any Parity Stock are entitled upon such liquidation, winding-up or dissolution.

#### 7. Conversion.

(a) Each holder of Preferred Stock shall have the right, at its option, exercisable at any time and from time to time from the Issue Date to convert, subject to the terms and provisions of this Section 7, any or all of such holder's shares of Preferred Stock. In such case, the shares of Preferred Stock shall be converted into such whole number of fully paid and nonassessable shares of Common Stock as is equal, subject to Section 7(g), to the product of the number of shares of Preferred Stock being so converted multiplied by the quotient of (i) the Liquidation Preference divided by (ii) the Conversion Price (as defined below) then in effect. The Conversion Price initially shall be \$7.70, subject to adjustment as set forth in Section 7(c).

The conversion right of a holder of Preferred Stock shall be exercised by the holder by the surrender to the Company of the certificates representing shares to be

converted at any time during usual business hours at its principal place of business or the offices of its duly appointed Transfer Agent to be maintained by it, accompanied by written notice to the Company in the form of Exhibit B that the holder elects to convert all or a portion of the shares of Preferred Stock represented by such certificate and specifying the name or names (with address) in which a certificate or certificates for shares of Common Stock are to be issued and (if so required by the Company or its duly appointed Transfer Agent) by a written instrument or instruments of transfer in form reasonably satisfactory to the Company or its duly appointed Transfer Agent duly executed by the holder or its duly authorized legal representative and transfer tax stamps or funds therefor, if required pursuant to Section 7(i). Immediately prior to the close of business on the date of receipt by the Company or its duly appointed Transfer Agent of notice of conversion of shares of Preferred Stock, each converting holder of Preferred Stock shall be deemed to be the holder of record of Common Stock issuable upon conversion of such holder's Preferred Stock notwithstanding that the share register of the Company shall then be closed or that certificates representing such Common Stock shall not then be actually delivered to such holder. Upon notice from the Company, each holder of Preferred Stock so converted shall promptly surrender to the Company, at any place where the Company shall maintain a Transfer Agent, certificates representing the shares so converted, duly endorsed in blank or accompanied by proper instruments of transfer. On the date of any conversion, all rights with respect to the shares of Preferred Stock so converted, including the rights, if any, to receive notices, will terminate, except only the rights of holders thereof to (i) receive certificates for the number of whole shares of Common Stock into which such shares of Preferred Stock have been converted and cash, in lieu of any fractional shares as provided in Section 7(f); and (ii) exercise the rights to which they are entitled as holders of Common Stock.

(b) If the last day for the exercise of the conversion right shall not be a Business Day, then such conversion right may be exercised on the next preceding Business Day.

(c) The Conversion Price shall be subject to adjustment as follows:

(i) In case the Company shall at any time or from time to time

(A) pay a dividend (or other distribution) payable in shares of Common Stock on any class of capital stock (which, for purposes of this Section 7(c) shall include, without limitation, any dividends or distributions in the form of options, warrants or other rights to acquire capital stock) of the Company (other than the issuance of shares of Common Stock in connection with the payment of dividends on or the conversion of Preferred Stock); (B) subdivide the outstanding shares of Common Stock into a larger number of shares; (C) combine the outstanding shares of Common Stock into a smaller number of shares; (D) issue any shares of its capital stock in a reclassification of the Common Stock; or (E) pay a dividend or make a distribution to all holders of shares of Common Stock (other than a dividend or distribution subject to Section 7(c)(ii)) pursuant to a stockholder rights plan, "poison pill" or similar arrangement and excluding dividends payable on the Preferred Stock then, and in each such case, the Conversion Price in effect immediately prior to such event shall be adjusted (and any other appropriate actions shall be taken by the Company) so that the holder of any share of Preferred Stock thereafter surrendered for conversion shall be entitled to receive the number of shares of Common Stock that such holder would have owned or would have been entitled to receive upon or by reason of any of the events described above, had such share of Preferred Stock been converted into shares of Common Stock immediately prior to the occurrence of such event. An adjustment made pursuant to this Section 7(c)(i) shall become effective retroactively (x) in the case of any such dividend or distribution, to the day immediately following the close of business on the record date for the determination of holders of Common Stock entitled to receive such dividend or distribution or (y) in the case of any such subdivision, combination or reclassification, to the close of business on the day upon which such corporate action becomes effective.

(ii) In case the Company shall at any time or from time to time issue to all holders of its Common Stock rights, options or warrants entitling the holders thereof to subscribe for or purchase shares of Common Stock (or securities convertible into or exchangeable for shares of Common Stock) at a price per share less than the Market Value for the period ending on the date of issuance (treating the price per share of any security convertible, or exchangeable or exercisable into Common Stock as equal to (A) the sum of the price paid to acquire such security convertible, exchangeable or exercisable into Common Stock plus any additional consideration payable (without regard to any anti-dilution adjustments) upon the conversion, exchange or exercise of such security into Common Stock divided by (B) the number of shares of Common Stock into which such convertible, exchangeable or exercisable security is initially convertible, exchangeable or exercisable), other than (I) issuances of such rights, options or warrants if the holder of Preferred Stock would be entitled to receive such rights, options or warrants upon conversion at any time of shares of Preferred Stock into Common Stock and (II) issuances that are subject to certain triggering events (until such time as such triggering events

occur), then, and in each such case, the Conversion Price then in effect shall be adjusted by dividing the Conversion Price in effect on the day immediately prior to the record date of such issuance by a fraction (y) the numerator of which shall be the sum of the number of shares of Common Stock outstanding on such record date plus the number of additional shares of Common Stock issued or to be issued upon or as a result of the issuance of such rights, options or warrants (or the maximum number into or for which such convertible or exchangeable securities initially may convert or exchange or for which such options, warrants or other rights initially may be exercised) and (z) the denominator of which shall be the sum of the number of shares of Common Stock outstanding on such record date plus the number of shares of Common Stock which the aggregate consideration for the total number of such additional shares of Common Stock so issued (or into or for which such convertible or exchangeable securities may convert or exchange or for which such options, warrants or other rights may be exercised plus the aggregate amount of any additional consideration initially payable upon the conversion, exchange or exercise of such security) would purchase at the Market Value for the period ending on the date of conversion; provided, that if the Company distributes rights or warrants (other than those referred to above in this subparagraph (c)(ii)) pro rata to the holders of Common Stock, so long as such rights or warrants have not expired or been redeemed by the Company, (y) the holder of any Preferred Stock surrendered for conversion shall be entitled to receive upon such conversion, in addition to the shares of Common Stock then issuable upon such conversion (the "Conversion Shares"), a number of rights or warrants to be determined as follows: (i) if such conversion occurs on or prior to the date for the distribution to the holders of rights or warrants of separate certificates evidencing such rights or warrants (the "Distribution Date"), the same number of rights or warrants to which a holder of a number of shares of Common Stock equal to the number of Conversion Shares is entitled at the time of such conversion in accordance with the terms and provisions applicable to the rights or warrants and (ii) if such conversion occurs after the Distribution Date, the same number of rights or warrants to which a holder of the number of shares of Common Stock into which such Preferred Stock was convertible immediately prior to such Distribution Date would have been entitled on such Distribution Date had such Preferred Stock been converted immediately prior to such Distribution Date in accordance with the terms and provisions applicable to the rights and warrants, and (z) the Conversion Price shall not be subject to adjustment on account of any declaration, distribution or exercise of such rights or warrants.

(iii) In case the Company shall at any time or from time to time (A) make a pro rata distribution to all holders of shares of its Common Stock consisting exclusively of cash (excluding any cash portion of distributions referred to in clause (E) of paragraph (c)(i) above, or cash distributed upon a merger or consolidation to which paragraph (g) below applies), that, when combined together with (x) all other such all-cash distributions made within the then-preceding 12 months in respect of which no adjustment has been made and (y) any cash and the fair market value of other consideration paid or payable in respect of any tender offer by the Company or any of its subsidiaries for shares of

Common Stock concluded within the then-preceding 12 months in respect of which no adjustment pursuant to this Section 7(c) has been made, in the aggregate exceeds 15% of the Company's market capitalization (defined as the product of the Market Value for the period ending on the record date of such distribution times the number of shares of Common Stock outstanding on such record date) on the record date of such distribution; (B) complete a tender or exchange offer by the Company or any of its subsidiaries for shares of Common Stock that involves an aggregate consideration that, together with (I) any cash and other consideration payable in a tender or exchange offer by the Company or any of its subsidiaries for shares of Common Stock expiring within the then-preceding 12 months in respect of which no adjustment pursuant to this Section 7(c) has been made and (II) the aggregate amount of any such all-cash distributions referred to in clause (A) above to all holders of shares of Common Stock within the then-preceding 12 months in respect of which no adjustments have been made, exceeds 15% of the Company's market capitalization on the expiration of such tender offer; or (C) make a distribution to all holders of its Common Stock consisting of evidences of indebtedness, shares of its capital stock other than Common Stock or assets (including securities, but excluding those dividends, rights, options, warrants and distributions referred to in paragraphs (c)(i), (c)(ii) above or this (c)(iii)), then, and in each such case, the Conversion Price then in effect shall be adjusted by dividing the Conversion Price in effect immediately prior to the date of such distribution or completion of such tender or exchange offer, as the case may be, by a fraction (x) the numerator of which shall be the Market Value for the period ending on the record date referred to below, or, if such adjustment is made upon the completion of a tender or exchange offer, on the payment date for such offer, and (y) the denominator of which shall be such Market Value less the then fair market value (as determined by the Board of Directors of the Company) of the portion of the cash, evidences of indebtedness, securities or other assets so distributed or paid in such tender or exchange offer, applicable to one share of Common Stock (but such denominator shall not be less than one); provided, however, that no adjustment shall be made with respect to any distribution of rights to purchase securities of the Company if the holder of shares of Preferred Stock would otherwise be entitled to receive such rights upon conversion at any time of shares of Preferred Stock into shares of Common Stock unless such rights are subsequently redeemed by the Company, in which case such redemption shall be treated for purposes of this Section 7(c)(iii) as a dividend on the Common Stock. Such adjustment shall be made whenever any such distribution is made or tender or exchange offer is completed, as the case may be, and shall become effective retroactively to a date immediately following the close of business on the record date for the determination of stockholders entitled to receive such distribution.

(iv) In the case the Company at any time or from time to time shall take any action affecting its Common Stock (it being understood that the issuance or sale of shares of Common Stock (or securities convertible into or exchangeable for shares of Common Stock, or any options, warrants or other rights to acquire shares of Common Stock) to any Person at a price per share less than the Conversion Price then in effect shall not be

deemed such an action), other than an action described in any of Section 7(c)(i) through Section 7(c)(iii), inclusive, or Section 7(g), then the Conversion Price shall be adjusted in such manner and at such time as the Board of Directors of the Company in good faith determines to be equitable in the circumstances (such determination to be evidenced in a resolution, a certified copy of which shall be mailed to the holders of the Preferred Stock).

(v) Notwithstanding anything herein to the contrary, no adjustment under this Section 7(c) need be made to the Conversion Price unless such adjustment would require an increase or decrease of at least 1% of the Conversion Price then in effect. Any lesser adjustment shall be carried forward and shall be made at the time of and together with the next subsequent adjustment, if any, which, together with any adjustment or adjustments so carried forward, shall amount to an increase or decrease of at least 1% of such Conversion Price.

(vi) The Company reserves the right to make such reductions in the Conversion Price in addition to those required in the foregoing provisions as it considers advisable in order that any event treated for Federal income tax purposes as a dividend of stock or stock rights will not be taxable to the recipients. In the event the Company elects to make such a reduction in the Conversion Price, the Company will comply with the requirements of Rule 14e-1 under the Exchange Act, and any other securities laws and regulations thereunder if and to the extent that such laws and regulations are applicable in connection with the reduction of the Conversion Price.

(d) If the Company shall take a record of the holders of its Common Stock for the purpose of entitling them to receive a dividend or other distribution, and shall thereafter (and before the dividend or distribution has been paid or delivered to stockholders) legally abandon its plan to pay or deliver such dividend or distribution, then thereafter no adjustment in the Conversion Price then in effect shall be required by reason of the taking of such record.

(e) Upon any increase or decrease in the Conversion Price, then, and in each such case, the Company promptly shall deliver to each holder of Preferred Stock a certificate signed by an authorized officer of the Company, setting forth in reasonable detail the event requiring the adjustment and the method by which such adjustment was calculated and specifying the increased or decreased Conversion Price then in effect following such adjustment.

(f) No fractional shares or securities representing fractional shares of Common Stock shall be issued upon the conversion of any shares of Preferred Stock, whether voluntary or mandatory. If more than one share of Preferred Stock shall be surrendered for conversion at one time by the same holder, the number of full shares of Common Stock issuable upon conversion thereof shall be computed on the basis of the

aggregate Liquidation Preference of the shares of Preferred Stock so surrendered. If the conversion of any share or shares of Preferred Stock results in a fraction, an amount equal to such fraction multiplied by the last reported sale price of the Common Stock on the NYSE (or on such other national securities exchange or automated quotation system on which the Common Stock is then listed for trading or authorized for quotation or, if the Common Stock is not then so listed or authorized for quotation, an amount determined in good faith by the Board of Directors to be the fair value of the Common Stock) at the close of business on the trading day next preceding the day of conversion shall be paid to such holder in cash by the Company.

(g) In the event of any reclassification of outstanding shares of Common Stock (other than a change in par value, or from par value to no par value, or from no par value to par value), or in the event of any consolidation or merger of the Company with or into another Person or any merger of another Person with or into the Company (other than a consolidation or merger in which the Company is the resulting or surviving Person and which does not result in any reclassification or change of outstanding Common Stock), or in the event of any sale or other disposition to another Person of all or substantially all of the assets of the Company (computed on a consolidated basis) (any of the foregoing, a "Transaction"), each share of Preferred Stock then outstanding shall, without the consent of any holder of Preferred Stock, become convertible at any time, at the option of the holder thereof, only into the kind and amount of securities (of the Company or another issuer), cash and other property receivable upon such Transaction by a holder of the number of shares of Common Stock into which such share of Preferred Stock could have been converted immediately prior to such Transaction, after giving effect to any adjustment event. The provisions of this Section 7(g) and any equivalent thereof in any such securities similarly shall apply to successive Transactions. The provisions of this Section 7(g) shall be the sole right of holders of Preferred Stock in connection with any Transaction and such holders shall have no separate vote thereon.

(h) The Company shall at all times reserve and keep available for issuance upon the conversion of the Preferred Stock such number of its authorized but unissued shares of Common Stock as will from time to time be sufficient to permit the conversion of all outstanding shares of Preferred Stock, and shall take all action required to increase the authorized number of shares of Common Stock if at any time there shall be insufficient unissued shares of Common Stock to permit such reservation or to permit the conversion of all outstanding shares of Preferred Stock.

(i) The issuance or delivery of certificates for Common Stock upon the conversion of shares of Preferred Stock shall be made without charge to the converting holder of shares of Preferred Stock for such certificates or for any tax in respect of the issuance or delivery of such certificates or the securities represented thereby, and such certificates shall be issued or delivered in the respective names of, or in such names as may be directed by, the holders of the shares of Preferred Stock converted; provided,

however, that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any such certificate in a name other than that of the holder of the shares of Preferred Stock converted, and the Company shall not be required to issue or deliver such certificate unless or until the Person or Persons requesting the issuance or delivery thereof shall have paid to the Company the amount of such tax or shall have established to the reasonable satisfaction of the Company that such tax has been paid.

#### 8. Mandatory Conversion.

(a) At any time on or after November 20, 2004, the Company shall have the right, at its option, to cause the Preferred Stock, in whole but not in part, to be automatically converted into that number of whole shares of Common Stock for each share of Preferred Stock equal to the quotient of (i) the Liquidation Preference divided by (ii) the Conversion Price then in effect, with any resulting fractional shares of Common Stock to be settled in accordance with Section 7(f). The Company may exercise its right to cause a mandatory conversion pursuant to this Section 8(a) only if the closing price of the Common Stock equals or exceeds 130% of the Conversion Price then in effect for at least 20 trading days in any consecutive 30-day trading period on the NYSE (or such other national securities exchange or automated quotation system on which the Common Stock is then listed or authorized for quotation or, if the Common Stock is not so listed or authorized for quotation, an amount determined in good faith by the Board of Directors to be the fair value of the Common Stock), including the last trading day of such 30-day period, ending on the trading day prior to the Company's issuance of a press release announcing the mandatory conversion as described in Section 8(b).

(b) To exercise the mandatory conversion right described in Section 8(a), the Company must issue a press release for publication on the Dow Jones News Service prior to the opening of business on the first trading day following any date on which the conditions described in Section 8(a) are met, announcing such a mandatory conversion. The Company shall also give notice by mail or by publication (with subsequent prompt notice by mail) to the holders of Preferred Stock (not more than four Business Days after the date of the press release) of the mandatory conversion announcing the Company's intention to convert the Preferred Stock. The conversion date will be a date selected by the Company (the "Mandatory Conversion Date") and will be no more than five days after the date on which the Company issues the press release described in this Section 8(b).

(c) In addition to any information required by applicable law or regulation, the press release and notice of a mandatory conversion described in Section 8(b) shall state, as appropriate: (i) the Mandatory Conversion Date; (ii) the number of shares of Common Stock to be issued upon conversion of each share of Preferred Stock; (iii) the number of shares of Preferred Stock to be converted; and (iv) that dividends on



the Preferred Stock to be converted will cease to accrue on the Mandatory Conversion Date.

(d) On and after the Mandatory Conversion Date, dividends will cease to accrue on the Preferred Stock called for a mandatory conversion pursuant to Section 8(a) and all rights of holders of such Preferred Stock will terminate except for the right to receive the whole shares of Common Stock issuable upon conversion thereof and cash, in lieu of any fractional shares of Common Stock in accordance with Section 7(f). The dividend payment with respect to the Preferred Stock called for a mandatory conversion pursuant to Section 8(a) on a date during the period between the close of business on any Dividend Record Date to the close of business on the corresponding Dividend Payment Date will be payable on such Dividend Payment Date to the record holder of such share on such Dividend Record Date if such share has been converted after such Dividend Record Date and prior to such Dividend Payment Date. Except as provided in the immediately preceding sentence with respect to a mandatory conversion pursuant to Section 8(a), no payment or adjustment will be made upon conversion of Preferred Stock for Accrued Dividends or for dividends with respect to the Common Stock issued upon such conversion.

(e) The Company may not authorize, issue a press release or give notice of any mandatory conversion pursuant to Section 8(a) unless, prior to giving the conversion notice, all Accumulated Dividends on the Preferred Stock for periods ended prior to the date of such conversion notice shall have been paid in cash.

(f) In addition to the mandatory conversion right described in Section 8(a), if there are less than 250,000 shares of Preferred Stock outstanding, the Company shall have the right, at any time on or after November 20, 2006, at its option, to cause the Preferred Stock to be automatically converted into that number of whole shares of Common Stock equal to the quotient of (i) the Liquidation Preference divided by (ii) the lesser of (A) the Conversion Price then in effect and (B) the Market Value for the period ending on the second trading day immediately prior to the Mandatory Conversion Date, with any resulting fractional shares of Common Stock to be settled in cash in accordance with Section 7(f). The provisions of clauses (b), (c), (d) and (e) of this Section 8 shall apply to any mandatory conversion pursuant to this clause (f); provided that (i) the Mandatory Conversion Date described in Section 8(b) shall not be less than 15 days nor more than 30 days after the date on which the Company issues a press release pursuant to Section 8(b) announcing such mandatory conversion and (ii) the press release and notice of mandatory conversion described in Section 8(c) will not state the number of shares of Common Stock to be issued upon conversion of each share of Preferred Stock.

#### 9. Consolidation, Merger and Sale of Assets.

(a) The Company, without the consent of the holders of any of the outstanding Preferred Stock, may consolidate with or merge into any other Person or convey, transfer or lease all or substantially all its assets to any Person or may permit any Person to consolidate with or merge into, or transfer or lease all or substantially all its properties to, the Company; provided, however, that (a) the successor, transferee or lessee is organized under the laws of the United States or any political subdivision thereof; (b) the shares of Preferred Stock will become shares of such successor, transferee or lessee, having in respect of such successor, transferee or lessee the same powers, preferences and relative participating, optional or other special rights and the qualification, limitations or restrictions thereon, the Preferred Stock had immediately prior to such transaction; and (c) the Company delivers to the Transfer Agent an Officers' Certificate and an Opinion of Counsel stating that such transaction complies with this Certificate of Designation.

(b) Upon any consolidation by the Company with, or merger by the Company into, any other person or any conveyance, transfer or lease of all or substantially all the assets of the Company as described in Section 9(a), the successor resulting from such consolidation or into which the Company is merged or the transferee or lessee to which such conveyance, transfer or lease is made, will succeed to, and be substituted for, and may exercise every right and power of, the Company under the shares of Preferred Stock, and thereafter, except in the case of a lease, the predecessor (if still in existence) will be released from its obligations and covenants with respect to the Preferred Stock.

#### 10. SEC Reports.

Whether or not the Company is required to file reports with the Commission, if any shares of Preferred Stock are outstanding, the Company shall file with the Commission all such reports and other information as it would be required to file with the Commission by Sections 13(a) or 15(d) under the Exchange Act. The Company shall supply each holder of Preferred Stock, upon request, without cost to such holder, copies of such reports or other information.

#### 11. Certificates.

(a) Form and Dating. The Preferred Stock and the Transfer Agent's certificate of authentication shall be substantially in the form of Exhibit A, which is hereby incorporated in and expressly made a part of this Certificate of Designation. The Preferred Stock certificate may have notations, legends or endorsements required by law, stock exchange rule, agreements to which the Company is subject, if any, or usage (provided that any such notation, legend or endorsement is in a form acceptable to the Company). Each Preferred Stock certificate shall be dated the date of its authentication. The terms of the Preferred Stock certificate set forth in Exhibit A are part of the terms of this Certificate of Designation.

(i) Global Preferred Stock. The Preferred Stock shall be issued initially in the form of one or more fully registered global certificates with the global securities legend and restricted securities legend set forth in Exhibit A hereto (the "Global Preferred Stock"), which shall be deposited on behalf of the purchasers represented thereby with the Transfer Agent, as custodian for DTC (or with such other custodian as DTC may direct), and registered in the name of DTC or a nominee of DTC, duly executed by the Company and authenticated by the Transfer Agent as hereinafter provided. The number of shares of Preferred Stock represented by Global Preferred Stock may from time to time be increased or decreased by adjustments made on the records of the Transfer Agent and DTC or its nominee as hereinafter provided. With respect to shares of Preferred Stock that are not "restricted securities" as defined in Rule 144 on a conversion date, all shares of Common Stock distributed on such conversion date will be freely transferable without restriction under the Securities Act (other than by affiliates), and such shares will be eligible for receipt in global form through the facilities of DTC.

(ii) Book-Entry Provisions. In the event Global Preferred Stock is deposited with or on behalf of DTC, the Company shall execute and the Transfer Agent shall authenticate and deliver initially one or more Global Preferred Stock certificates that (a) shall be registered in the name of DTC for such Global Preferred Stock or the nominee of DTC and (b) shall be delivered by the Transfer Agent to DTC or pursuant to DTC's instructions or held by the Transfer Agent as custodian for DTC.

Members of, or participants in, DTC ("Agent Members") shall have no rights under this Certificate of Designation with respect to any Global Preferred Stock held on their behalf by DTC or by the Transfer Agent as the custodian of DTC or under such Global Preferred Stock, and DTC may be treated by the Company, the Transfer Agent and any agent of the Company or the Transfer Agent as the absolute owner of such Global Preferred Stock for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Transfer Agent or any agent of the Company or the Transfer Agent from giving effect to any written certification, proxy or other authorization furnished by DTC or impair, as between DTC and its Agent Members, the operation of customary practices of DTC governing the exercise of the rights of a holder of a beneficial interest in any Global Preferred Stock.

(iii) Certificated Preferred Stock; Certificated Common Stock. Except as provided in this paragraph 11(a) or in paragraph 11 (c), owners of beneficial interests in Global Preferred Stock will not be entitled to receive physical delivery of Preferred Stock in fully registered certificated form ("Certificated Preferred Stock"). With respect to shares of Preferred Stock that are "restricted securities" as defined in Rule 144 on a conversion date, all shares of Common Stock issuable on conversion of such shares on such conversion date will be issued in fully registered certificated form ("Certificated Common Stock"). Certificates of Certificated Common Stock will be mailed or made

available at the office of the Transfer Agent for the Preferred Stock on or as soon as reasonably practicable after the relevant conversion date to the converting holder.

After a transfer of any Preferred Stock or Certificated Common Stock during the period of the effectiveness of a Shelf Registration Statement with respect to such Preferred Stock or such Certificated Common Stock, all requirements pertaining to legends on such Preferred Stock (including Global Preferred Stock) or Certificated Common Stock will cease to apply, the requirements requiring that any such Certificated Common Stock issued to Holders be issued in certificated form, as the case may, will cease to apply, and Preferred Stock or Common Stock, as the case may be, in global or fully registered certificated form, in either case without legends, will be available to the transferee of the Holder of such Preferred Stock or Certificated Common Stock upon exchange of such transferring Holder's Preferred Stock or Common Stock or directions to transfer such Holder's interest in the Global Preferred Stock, as applicable.

(b) Execution and Authentication. One Officer shall sign the Preferred Stock certificate for the Company by manual or facsimile signature.

If an Officer whose signature is on a Preferred Stock certificate no longer holds that office at the time the Transfer Agent authenticates the Preferred Stock certificate, the Preferred Stock certificate shall be valid nevertheless.

A Preferred Stock certificate shall not be valid until an authorized signatory of the Transfer Agent manually signs the certificate of authentication on the Preferred Stock certificate. The signature shall be conclusive evidence that the Preferred Stock certificate has been authenticated under this Certificate of Designation.

The Transfer Agent shall authenticate and deliver certificates for up to 3,000,000 shares of Preferred Stock for original issue upon a written order of the Company signed by two Officers or by an Officer and an Assistant Treasurer of the Company. Such order shall specify the number of shares of Preferred Stock to be authenticated and the date on which the original issue of Preferred Stock is to be authenticated.

The Transfer Agent may appoint an authenticating agent reasonably acceptable to the Company to authenticate the certificates for Preferred Stock. Unless limited by the terms of such appointment, an authenticating agent may authenticate certificates for Preferred Stock whenever the Transfer Agent may do so. Each reference in this Certificate of Designation to authentication by the Transfer Agent includes authentication by such agent. An authenticating agent has the same rights as the Transfer Agent or agent for service of notices and demands.

(c) Transfer and Exchange. (i) Transfer and Exchange of Certificated Preferred Stock. When Certificated Preferred Stock is presented to the Transfer Agent with a request to register the transfer of such Certificated Preferred Stock or to exchange such Certificated Preferred Stock for an equal number of shares of Certificated Preferred Stock, the Transfer Agent shall register the transfer or make the exchange as requested if its reasonable requirements for such transaction are met; provided, however, that the Certificated Preferred Stock surrendered for transfer or exchange:

(1) shall be duly endorsed or accompanied by a written instrument of transfer in form reasonably satisfactory to the Company and the Transfer Agent, duly executed by the Holder thereof or its attorney duly authorized in writing; and

(2) is being transferred or exchanged pursuant to an effective registration statement under the Securities Act or pursuant to clause (I) or (II) below, and is accompanied by the following additional information and documents, as applicable:

(I) if such Certificated Preferred Stock is being delivered to the Transfer Agent by a Holder for registration in the name of such Holder, without transfer, a certification from such Holder to that effect in substantially the form of Exhibit C hereto; or

(II) if such Certificated Preferred Stock is being transferred to the Company or to a "qualified institutional buyer" ("QIB") in accordance with Rule 144A under the Securities Act or pursuant to an exemption from registration in accordance with Rule 144 under the Securities Act, (i) a certification to that effect (in substantially the form of Exhibit C hereto) and (ii) if the Company so requests, an Opinion of Counsel or other evidence reasonably satisfactory to it as to the compliance with the restrictions set forth in the legend set forth in paragraph 11 (c) (vii).

(ii) Restrictions on Transfer of Certificated Preferred Stock for a Beneficial Interest in Global Preferred Stock. Certificated Preferred Stock may not be exchanged for a beneficial interest in Global Preferred Stock except upon satisfaction of the requirements set forth below. Upon receipt by the Transfer Agent of Certificated Preferred Stock, duly endorsed or accompanied by appropriate instruments of transfer, in form reasonably satisfactory to the Company and the Transfer Agent, together with written instructions directing the Transfer Agent to make, or to direct DTC to make, an adjustment on its books and records with respect to such Global Preferred Stock to reflect an increase in the number of shares of Preferred Stock represented by the Global Preferred Stock, then the Transfer Agent shall cancel such Certificated Preferred Stock and cause, or direct DTC to cause, in accordance with the standing instructions and procedures existing between DTC and the Transfer Agent, the number of shares of Preferred Stock represented by the Global Preferred Stock to be increased accordingly. If no Global Preferred Stock is then outstanding, the Company shall issue and the Transfer Agent shall authenticate, upon written order of the Company in the form of an Officers' Certificate, a new Global Preferred Stock representing the appropriate number of shares.

(iii) Transfer and Exchange of Global Preferred Stock. The transfer and exchange of Global Preferred Stock or beneficial interests therein shall be effected through DTC, in accordance with this Certificate of Designation (including applicable restrictions on transfer set forth herein, if any) and the procedures of DTC therefor.

(iv) Transfer of a Beneficial Interest in Global Preferred Stock for a Certificated Preferred Stock.

(1) Any Person having a beneficial interest in Preferred Stock that is being transferred or exchanged pursuant to an effective registration statement under the Securities Act or pursuant to an exemption from registration in accordance with Rule 144 may upon request, but only with the consent of the Company, and if accompanied by a certification from such Person to that effect (in substantially the form of Exhibit C hereto), exchange such beneficial interest for Certificated Preferred Stock representing the same number of shares of Preferred Stock. Upon receipt by the Transfer Agent of written instructions or such other form of instructions as is customary for DTC from DTC or its nominee on behalf of any Person having a beneficial interest in Global Preferred Stock and upon receipt by the Transfer Agent of a written order or such other form of instructions as is customary for DTC or the Person designated by DTC as having such a beneficial interest in a Transfer Restricted Security only, then, the Transfer Agent or DTC, at the direction of the Transfer Agent, will cause, in accordance with the standing instructions and procedures existing between DTC and the Transfer Agent, the number of shares of Preferred Stock represented by Global Preferred Stock to be reduced on its books and records and, following such reduction, the Company will

execute and the Transfer Agent will authenticate and deliver to the transferee Certificated Preferred Stock.

(2) Certificated Preferred Stock issued in exchange for a beneficial interest in a Global Preferred Stock pursuant to this paragraph 11 (c) (iv) shall be registered in such names and in such authorized denominations as DTC, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Transfer Agent. The Transfer Agent shall deliver such Certificated Preferred Stock to the Persons in whose names such Preferred Stock are so registered in accordance with the instructions of DTC.

(v) Restrictions on Transfer and Exchange of Global Preferred Stock.

(1) Notwithstanding any other provisions of this Certificate of Designation (other than the provisions set forth in paragraph 11 (c) (vi)), Global Preferred Stock may not be transferred as a whole except by DTC to a nominee of DTC or by a nominee of DTC to DTC or another nominee of DTC or by DTC or any such nominee to a successor depository or a nominee of such successor depository.

(2) In the event that the Global Preferred Stock is exchanged for Preferred Stock in definitive registered form pursuant to paragraph 11 (c)(vi) prior to the effectiveness of a Shelf Registration Statement with respect to such securities, such Preferred Stock may be exchanged only in accordance with such procedures as are substantially consistent with the provisions of this paragraph 11 (c) (including the certification requirements set forth in the Exhibits to this Certificate of Designation intended to ensure that such transfers comply with Rule 144A or such other applicable exemption from registration under the Securities Act, as the case may be) and such other procedures as may from time to time be adopted by the Company.

(vi) Authentication of Certificated Preferred Stock. If at any time:

(1) DTC notifies the Company that DTC is unwilling or unable to continue as depository for the Global Preferred Stock and a successor depository for the Global Preferred Stock is not appointed by the Company within 90 days after delivery of such notice;

(2) DTC ceases to be a clearing agency registered under the Exchange Act;

(3) there shall have occurred and be continuing a Voting Rights Triggering Event; or

(4) the Company, in its sole discretion, notifies the Transfer Agent in writing that it elects to cause the issuance of Certificated Preferred Stock under this Certificate of Designation,

then the Company will execute, and the Transfer Agent, upon receipt of a written order of the Company signed by two Officers or by an Officer and an Assistant Treasurer of the Company requesting the authentication and delivery of Certificated Preferred Stock to the Persons designated by the Company, will authenticate and deliver Certificated Preferred Stock equal to the number of shares of Preferred Stock represented by the Global Preferred Stock, in exchange for such Global Preferred Stock.

(vii) Legend. (1) Except as permitted by the following paragraph (2) and in paragraph 11 (a) (iii), each certificate evidencing the Global Preferred Stock, the Certificated Preferred Stock and Certificated Common Stock shall bear a legend in substantially the following form:



"THE SECURITY EVIDENCED HEREBY (OR ITS PREDECESSOR) (AND THE COMMON STOCK INTO WHICH THIS SECURITY IS CONVERTIBLE) WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933 (THE "SECURITIES ACT") AND THIS SECURITY MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THE SECURITY EVIDENCED HEREBY (OR THE COMMON STOCK INTO WHICH THIS SECURITY IS CONVERTIBLE) IS HEREBY NOTIFIED THAT THE SELLER MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER. THE HOLDER OF THE SECURITY EVIDENCED HEREBY (AND OF THE COMMON STOCK INTO WHICH THIS SECURITY IS CONVERTIBLE ) AGREES FOR THE BENEFIT OF THE COMPANY THAT (A) SUCH SECURITY (AND THE COMMON STOCK INTO WHICH THIS SECURITY IS CONVERTIBLE) MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (1) TO A PERSON WHO THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (2) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE), (3) TO THE COMPANY OR (4) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH OF CASES (1) THROUGH (4) IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE STATES OF THE UNITED STATES AND (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER OF THIS SECURITY FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE."/1/

- - - - -  
/1/ Subject to removal upon registration under the Securities Act of 1933 or otherwise when the security shall no longer be a Transfer Restricted Security.

(2) Upon any sale or transfer of a Transfer Restricted Security (including any Transfer Restricted Security represented by Global Preferred Stock) pursuant to Rule 144 under the Securities Act or an effective registration statement under the Securities Act:

(I) in the case of any Transfer Restricted Security that is a Certificated Preferred Stock, the Transfer Agent shall permit the Holder thereof to exchange such Transfer Restricted Security for Certificated Preferred Stock that does not bear the legend set forth above and rescind any restriction on the transfer of such Transfer Restricted Security; and

(II) in the case of any Transfer Restricted Security that is represented by a Global Preferred Stock, with the consent of the Company, the Transfer Agent shall permit the Holder thereof to exchange such Transfer Restricted Security for Certificated Preferred Stock that does not bear the legend set forth above and rescind any restriction on the transfer of such Transfer Restricted Security, if the Holder's request for such exchange was made in reliance on Rule 144 and the Holder certifies to that effect in writing to the Transfer Agent (such certification to be in the form set forth in Exhibit C hereto).

(viii) Cancellation or Adjustment of Global Preferred Stock. At such time as all beneficial interests in Global Preferred Stock have either been exchanged for Certificated Preferred Stock, converted or canceled, such Global Preferred Stock shall be returned to DTC for cancellation or retained and canceled by the Transfer Agent. At any time prior to such cancellation, if any beneficial interest in Global Preferred Stock is exchanged for Certificated Preferred Stock, converted or canceled, the number of shares of Preferred Stock represented by such Global Preferred Stock shall be reduced and an adjustment shall be made on the books and records of the Transfer Agent with respect to such Global Preferred Stock, by the Transfer Agent or DTC, to reflect such reduction.

(ix) Obligations with Respect to Transfers and Exchanges of Preferred Stock. (1) To permit registrations of transfers and exchanges, the Company shall execute and the Transfer Agent shall authenticate Certificated Preferred Stock and Global Preferred Stock as required pursuant to the provisions of this paragraph 11 (c).

(2) All Certificated Preferred Stock and Global Preferred Stock issued upon any registration of transfer or exchange of Certificated Preferred Stock or Global Preferred Stock shall be the valid obligations of the Company, entitled to the same benefits under this Certificate of Designation as the Certificated Preferred Stock or Global Preferred Stock surrendered upon such registration of transfer or exchange.

(3) Prior to due presentment for registration of transfer of any shares of Preferred Stock, the Transfer Agent and the Company may deem and treat the Person in whose name such shares of Preferred Stock are registered as the absolute owner of such Preferred Stock and neither the Transfer Agent nor the Company shall be affected by notice to the contrary.

(4) No service charge shall be made to a Holder for any registration of transfer or exchange upon surrender of any Preferred Stock certificate or Common Stock certificate at the office of the Transfer Agent maintained for that purpose. However, the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Preferred Stock certificates or Common Stock certificates.

(5) Upon any sale or transfer of shares of Preferred Stock (including any Preferred Stock represented by a Global Preferred Stock Certificate) or of Certificated Common Stock pursuant to an effective registration statement under the Securities Act, pursuant to Rule 144 under the Securities Act or pursuant to an Opinion of Counsel reasonably satisfactory to the Company that no legend is required:

- (A) in the case of any Certificated Preferred Stock or Certificated Common Stock, the Company and the Transfer Agent shall permit the holder thereof to exchange such Preferred Stock or Certificated Common Stock for Certificated Preferred Stock or Certificated Common Stock, as the case may be, that does not bear the legend set forth in paragraph (c)(vii) above and rescind any restriction on the transfer of such Preferred Stock or Common Stock issuable in respect of the conversion of the Preferred Stock; and
- (B) in the case of any Global Preferred Stock, such Preferred Stock shall not be required to bear the legend set forth in paragraph (c)(vii) above but shall continue to be subject to the provisions of paragraph (c) (iv) hereof; provided, however, that with respect to any request for an exchange of Preferred Stock that is represented by Global Preferred Stock for Certificated Preferred Stock that does not bear the legend set forth in paragraph (c)(vii) above in connection with a sale or transfer thereof pursuant to Rule 144 (and based upon an Opinion of Counsel if the Company so requests), the Holder thereof shall certify in writing to the Transfer Agent that such request is being made pursuant to Rule 144 (such certification to be substantially in the form of Exhibit C hereto).

(x) No Obligation of the Transfer Agent.

(1) The Transfer Agent shall have no responsibility or obligation to any beneficial owner of Global Preferred Stock, a member of, or a participant in DTC or any other Person with respect to the accuracy of the records of DTC or its nominee or of any participant or member thereof, with respect to any ownership interest in the Preferred Stock or with respect to the delivery to any participant, member, beneficial owner or other Person (other than DTC) of any notice or the payment of any amount, under or with respect to such Global Preferred Stock. All notices and communications to be given to the Holders and all payments to be made to Holders under the Preferred Stock shall be given or made only to the Holders (which shall be DTC or its nominee in the case of the Global Preferred Stock). The rights of beneficial owners in any Global Preferred Stock shall be exercised only through DTC subject to the applicable rules and procedures of DTC. The Transfer Agent may rely and shall be fully protected in relying upon information furnished by DTC with respect to its members, participants and any beneficial owners.

(2) The Transfer Agent shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Certificate of Designation or under applicable law with respect to any transfer of any interest in any Preferred Stock (including any transfers between or among DTC participants, members or beneficial owners in any Global Preferred Stock) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Certificate of Designation, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

(d) Replacement Certificates. If a mutilated Preferred Stock certificate is surrendered to the Transfer Agent or if the Holder of a Preferred Stock certificate claims that the Preferred Stock certificate has been lost, destroyed or wrongfully taken, the Company shall issue and the Transfer Agent shall countersign a replacement Preferred Stock certificate if the reasonable requirements of the Transfer Agent and of Section 8-405 of the Uniform Commercial Code as in effect in the State of New York are met. If required by the Transfer Agent or the Company, such Holder shall furnish an indemnity bond sufficient in the judgment of the Company and the Transfer Agent to protect the Company and the Transfer Agent from any loss which either of them may suffer if a Preferred Stock certificate is replaced. The Company and the Transfer Agent may charge the Holder for their expenses in replacing a Preferred Stock certificate.

(e) Temporary Certificates. Until definitive Preferred Stock certificates are ready for delivery, the Company may prepare and the Transfer Agent shall countersign temporary Preferred Stock certificates. Temporary Preferred Stock certificates shall be substantially in the form of definitive Preferred Stock certificates but may have variations that the Company considers appropriate for temporary Preferred Stock certificates. Without unreasonable delay, the Company shall prepare and the Transfer Agent shall countersign definitive Preferred Stock certificates and deliver them in exchange for temporary Preferred Stock certificates.

(f) Cancellation. (i) In the event the Company shall purchase or otherwise acquire Certificated Preferred Stock, the same shall thereupon be delivered to the Transfer Agent for cancellation.

(ii) At such time as all beneficial interests in Global Preferred Stock have either been exchanged for Certificated Preferred Stock, converted, repurchased or canceled, such Global Preferred Stock shall thereupon be delivered to the Transfer Agent for cancellation.

(iii) The Transfer Agent and no one else shall cancel and destroy all Preferred Stock certificates surrendered for transfer, exchange, replacement or cancellation and deliver a certificate of such destruction to the Company unless the Company directs the Transfer Agent to deliver canceled Preferred Stock certificates to the Company. The Company may not issue new Preferred Stock certificates to replace Preferred Stock certificates to the extent they evidence Preferred Stock which the Company has purchased or otherwise acquired.

12. Additional Rights of Holders. In addition to the rights provided to Holders under this Certificate of Designation, Holders shall have the rights set forth in the Registration Rights Agreement.

### 13. Other Provisions.

(1) With respect to any notice to a holder of shares of Preferred Stock required to be provided hereunder, neither failure to mail such notice, nor any defect therein or in the mailing thereof, to any particular holder shall affect the sufficiency of the notice or the validity of the proceedings referred to in such notice with respect to the other holders or affect the legality or validity of any distribution, rights, warrant, reclassification, consolidation, merger, conveyance, transfer, dissolution, liquidation or winding-up, or the vote upon any such action. Any notice which was mailed in the manner herein provided shall be conclusively presumed to have been duly given whether or not the holder receives the notice.

(2) Shares of Preferred Stock issued and reacquired will be retired and canceled promptly after reacquisition thereof and, upon compliance with the applicable

requirements of Oklahoma law, have the status of authorized but unissued shares of preferred stock of the Company undesignated as to series and may with any and all other authorized but unissued shares of preferred stock of the Company be designated or redesignated and issued or reissued, as the case may be, as part of any series of preferred stock of the Corporation, except that any issuance or reissuance of shares of Preferred Stock must be in compliance with this Certificate of Designation.

(3) The shares of Preferred Stock shall be issuable only in whole shares.

(4) All notice periods referred to herein shall commence on the date of the mailing of the applicable notice.

IN WITNESS WHEREOF, the Company has caused this certificate to be signed and attested this 13th day of November, 2001.

CHESAPEAKE ENERGY CORPORATION

By: \_\_\_\_\_

Attest:

## FORM OF PREFERRED STOCK

## FACE OF SECURITY

[THE SECURITY EVIDENCED HEREBY (OR ITS PREDECESSOR) (AND THE COMMON STOCK INTO WHICH THIS SECURITY IS CONVERTIBLE) WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933 (THE "SECURITIES ACT") AND THIS SECURITY MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THE SECURITY EVIDENCED HEREBY (OR THE COMMON STOCK INTO WHICH THIS SECURITY IS CONVERTIBLE) IS HEREBY NOTIFIED THAT THE SELLER MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER. THE HOLDER OF THE SECURITY EVIDENCED HEREBY (AND OF THE COMMON STOCK INTO WHICH THIS SECURITY IS CONVERTIBLE) AGREES FOR THE BENEFIT OF THE COMPANY THAT (A) SUCH SECURITY (AND THE COMMON STOCK INTO WHICH THIS SECURITY IS CONVERTIBLE) MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (1) TO A PERSON WHO THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (2) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE), (3) TO THE COMPANY OR (4) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH OF CASES (1) THROUGH (4) IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE STATES OF THE UNITED STATES AND (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER OF THIS SECURITY FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE.]/2/

- - - - -

/2/ Subject to removal upon registration under the Securities Act of 1933 or otherwise when the security shall no longer be a Transfer Restricted Security.

[UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), NEW YORK, NEW YORK, TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OF PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO., OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC) ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO. HAS AN INTEREST HEREIN.]/3/

[TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE CERTIFICATE OF DESIGNATION REFERRED TO BELOW.]/3/

IN CONNECTION WITH ANY TRANSFER, THE HOLDER WILL DELIVER TO THE TRANSFER AGENT SUCH CERTIFICATES AND OTHER INFORMATION AS SUCH TRANSFER AGENT MAY REASONABLY REQUIRE TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS.

|                    |  |
|--------------------|--|
| Certificate Number | Number of Shares of<br>Convertible Preferred Stock |
|--------------------|--|

|     |     |
|-----|-----|
| [ ] | [ ] |
|-----|-----|

CUSIP NO.: 165167404

6.75% Cumulative Convertible Preferred Stock (par value \$0.01) (liquidation  
preference \$50 per share of Convertible Preferred Stock)

of

Chesapeake Energy Corporation

- - - - -  
/3/ Subject to removal if not a global security.



Chesapeake Energy Corporation, an Oklahoma corporation (the "Company"), hereby certifies that [ ] (the "Holder") is the registered owner of [ ] fully paid and non-assessable preferred securities of the Company designated the 6.75% Cumulative Convertible Preferred Stock (par value \$0.01) (liquidation preference \$50 per share of Preferred Stock) (the "Preferred Stock"). The shares of Preferred Stock are transferable on the books and records of the Transfer Agent, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for transfer. The designations, rights, privileges, restrictions, preferences and other terms and provisions of the Preferred Stock represented hereby are issued and shall in all respects be subject to the provisions of the Certificate of Designation dated November 13, 2001, as the same may be amended from time to time (the "Certificate of Designation"). Capitalized terms used herein but not defined shall have the meaning given them in the Certificate of Designation. The Company will provide a copy of the Certificate of Designation to a Holder without charge upon written request to the Company at its principal place of business.

Reference is hereby made to select provisions of the Preferred Stock set forth on the reverse hereof, and to the Certificate of Designation, which select provisions and the Certificate of Designation shall for all purposes have the same effect as if set forth at this place.

Upon receipt of this certificate, the Holder is bound by the Certificate of Designation and is entitled to the benefits thereunder.

Unless the Transfer Agent's Certificate of Authentication hereon has been properly executed, these shares of Preferred Stock shall not be entitled to any benefit under the Certificate of Designation or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Company has executed this certificate this [ ] day of [ ], [ ].

CHESAPEAKE ENERGY CORPORATION

By:

-----  
 Name:  
 Title:

TRANSFER AGENT'S CERTIFICATE OF AUTHENTICATION

These are shares of the Preferred Stock referred to in the within-mentioned Certificate of Designation.

Dated: November 13, 2001

UMB BANK, N.A., as Transfer Agent,

By:

-----  
Authorized Signatory

## REVERSE OF SECURITY

Cash dividends on each share of Preferred Stock shall be payable at a rate per annum set forth in the face hereof or as provided in the Certificate of Designation.

The shares of Preferred Stock shall be convertible into the Company's Common Stock in the manner and according to the terms set forth in the Certificate of Designation.

The Company will furnish without charge to each holder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock and the qualifications, limitations or restrictions of such preferences and/or rights.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers the shares of Preferred Stock evidenced hereby to:

-----

(Insert assignee's social security or tax identification number)

(Insert address and zip code of assignee)

and irrevocably appoints:

agent to transfer the shares of Preferred Stock evidenced hereby on the books of the Transfer Agent. The agent may substitute another to act for him or her.

Date: -----

Signature: -----

(Sign exactly as your name appears on the other side of this Preferred Stock Certificate)

Signature Guarantee:/4/ -----

- -----

/4/(Signature must be guaranteed by an "eligible guarantor institution" that is a bank, stockbroker, savings and loan association or credit union meeting the requirements of the Transfer Agent, which requirements include membership or participation in the Securities Transfer Agents Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Transfer Agent in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.)

NOTICE OF CONVERSION

(To be Executed by the Holder  
in order to Convert the Preferred Stock)

The undersigned hereby irrevocably elects to convert (the "Conversion") shares of 6.75% Cumulative Convertible Preferred Stock (the "Preferred Stock"), represented by stock certificate No(s). \_\_\_\_\_ (the "Preferred Stock Certificates") into shares of common stock ("Common Stock") of Chesapeake Energy Corporation (the "Company") according to the conditions of the Certificate of Designation of the Preferred Stock (the "Certificate of Designation"), as of the date written below. If shares are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto and is delivering herewith the Preferred Stock Certificates. No fee will be charged to the holder for any conversion, except for transfer taxes, if any. A copy of each Preferred Stock Certificate is attached hereto (or evidence of loss, theft or destruction thereof).

The undersigned represents and warrants that all offers and sales by the undersigned of the shares of Common Stock issuable to the undersigned upon conversion of the Preferred Stock shall be made pursuant to registration of the Common Stock under the Securities Act of 1933 (the "Act"), or pursuant to any exemption from registration under the Act.

Any holder, upon the exercise of its conversion rights in accordance with the terms of the Certificate of Designation and the Preferred Stock, agrees to be bound by the terms of the Registration Rights Agreement.

Capitalized terms used but not defined herein shall have the meanings ascribed thereto in or pursuant to the Certificate of Designation.

Date of Conversion: \_\_\_\_\_

Applicable Conversion Price: \_\_\_\_\_

Number of shares of Preferred Stock to be Converted: \_\_\_\_\_

Number of shares of Common Stock to be Issued: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: .....

Address:\*\* .....

Fax No.: .....

\*The Company is not required to issue shares of Common Stock until the original Preferred Stock Certificate(s) (or evidence of loss, theft or destruction thereof) to be converted are received by the Company or its Transfer Agent. The Company shall issue and deliver shares of Common Stock to an overnight courier not later than three business days following receipt of the original Preferred Stock Certificate(s) to be converted.

\*\*Address where shares of Common Stock and any other payments or certificates shall be sent by the Company.

CERTIFICATE TO BE DELIVERED UPON EXCHANGE OR  
REGISTRATION OF TRANSFER OF PREFERRED STOCK

Re: 6.75% Cumulative Convertible Preferred Stock (the "Preferred Stock") of  
Chesapeake Energy Corporation (the "Company")

This Certificate relates to \_\_\_\_ shares of Preferred Stock held in    
\*/ book-entry or  \*/ definitive form by \_\_\_\_\_ (the "Transferor").

The Transferor\*:

has requested the Transfer Agent by written order to deliver in  
exchange for its beneficial interest in the Preferred Stock held by the  
depository shares of Preferred Stock in definitive, registered form equal to its  
beneficial interest in such Preferred Stock (or the portion thereof indicated  
above); or

has requested the Transfer Agent by written order to exchange or  
register the transfer of Preferred Stock.

In connection with such request and in respect of such Preferred  
Stock, the Transferor does hereby certify that the Transferor is familiar with  
the Certificate of Designation relating to the above-captioned Preferred Stock  
and that the transfer of this Preferred Stock does not require registration  
under the Securities Act of 1933 (the "Securities Act") because \*/:

Such Preferred Stock is being acquired for the Transferor's own account  
without transfer.

Such Preferred Stock is being transferred to the Company.

Such Preferred Stock is being transferred to a qualified institutional  
buyer (as defined in Rule 144A under the Securities Act), in reliance on Rule  
144A.

- - - - -  
\*/ Please check applicable box.



Such Preferred Stock is being transferred in reliance on and in compliance with another exemption from the registration requirements of the Securities Act (and based on an Opinion of Counsel if the Company so requests).

[INSERT NAME OF TRANSFEROR]

by

Date: \_\_\_\_\_

CERTIFICATE OF ELIMINATION

Chesapeake Energy Corporation (the "Corporation"), a corporation organized and existing under the Oklahoma General Corporation Act,

DOES HEREBY CERTIFY:

FIRST: That the Corporation has acquired 2,000 shares of its 6.75% Cumulative Convertible Preferred Stock, par value \$.01 per share (the "Acquired Shares") through conversion by the holder.

SECOND: That the Board of Directors of the Corporation has adopted resolutions retiring the Acquired Shares.

THIRD: That the Certificate of Designation for the 6.75% Cumulative Convertible Preferred Stock (the "Certificate of Designation") prohibits the reissuance of shares when so retired and, pursuant to the provisions of Section 1078 of the Oklahoma General Corporation Act, upon the date of the filing of this Certificate of Elimination, the Certificate of Designation shall be amended so as to reduce the number of authorized shares of the 6.75% Cumulative Convertible Preferred Stock by 2,000 shares, being the total number of the Acquired Shares retired by the Board of Directors. Accordingly, the number of authorized but undesignated shares of preferred stock of the Company shall be increased by 2,000 shares. The retired Acquired Shares have a par value of \$.01 per share and an aggregate par value of \$20.

IN WITNESS WHEREOF, the Corporation has caused this Certificate to be executed by its Executive Vice President and Chief Financial Officer and attested to by its Secretary, this 1st day of November, 2002.

CHESAPEAKE ENERGY CORPORATION

By: /s/ Marcus C. Rowland

-----  
Marcus C. Rowland, Executive Vice  
President and Chief Financial Officer

ATTEST:

/s/ Jennifer M. Grigsby, Secretary

**CERTIFICATE OF ELIMINATION**

Chesapeake Energy Corporation (the "Corporation"), a corporation organized and existing under the Oklahoma General Corporation Act,

**DOES HEREBY CERTIFY:**

**FIRST:** That the Corporation has acquired 200 shares of its 6.75% Cumulative Convertible Preferred Stock, par value \$.01 per share (the "Acquired Shares") through conversion by the holder.

**SECOND:** That the Board of Directors of the Corporation has adopted resolutions retiring the Acquired Shares.

**THIRD:** That the Certificate of Designation for the 6.75% Cumulative Convertible Preferred Stock (the "Certificate of Designation") prohibits the reissuance of shares when so retired and, pursuant to the provisions of Section 1078 of the Oklahoma General Corporation Act, upon the date of the filing of this Certificate of Elimination, the Certificate of Designation shall be amended so as to reduce the number of authorized shares of the 6.75% Cumulative Convertible Preferred Stock by 200 shares, being the total number of the Acquired Shares retired by the Board of Directors. Accordingly, the number of authorized but undesignated shares of preferred stock of the Company shall be increased by 200 shares. The retired Acquired Shares have a par value of \$.01 per share and an aggregate par value of \$20.

**IN WITNESS WHEREOF**, the Corporation has caused this Certificate to be executed by its Executive Vice President and Chief Financial Officer and attested to by its Secretary, this 5<sup>th</sup> day of March, 2004.

**CHESAPEAKE ENERGY CORPORATION**

By: \_\_\_\_\_  
Marcus C. Rowland, Executive Vice President  
and Chief Financial Officer

**ATTEST:**

Jennifer M. Grigsby, Secretary

CERTIFICATE OF DESIGNATION  
OF  
6.00% CUMULATIVE CONVERTIBLE PREFERRED STOCK  
OF  
CHESAPEAKE ENERGY CORPORATION

Pursuant to Section 1032(G) of the Oklahoma General Corporation Act

CHESAPEAKE ENERGY CORPORATION, an Oklahoma corporation (the "Company"), does hereby certify that the following resolution was duly adopted by action of the Board of Directors of the Company, with the provisions thereof fixing the number of shares of the series and the dividend rate being set by action of the Board of Directors of the Company:

RESOLVED that pursuant to the authority expressly granted to and vested in the Board of Directors of the Company by the provisions of Article IV, Section 1 of the Certificate of Incorporation of the Company, as amended from time to time (the "Certificate of Incorporation"), and pursuant to Section 1032(G) of the Oklahoma General Corporation Act, the Board of Directors hereby creates a series of preferred stock of the Company and hereby states that the voting powers, designations, preferences and relative, participating, optional or other special rights of which, and qualifications, limitations or restrictions thereof (in addition to the provisions set forth in the Certificate of Incorporation which are applicable to the preferred stock of all classes and series), shall be as follows:

1. Designation and Amount; Ranking. (a) There shall be created from the 10,000,000 shares of preferred stock, par value \$0.01 per share, of the Company authorized to be issued pursuant to the Certificate of Incorporation, a series of preferred stock, designated as the "6.00% Cumulative Convertible Preferred Stock," par value \$0.01 per share (the "Preferred Stock"), and the number of shares of such series shall be 4,600,000. Such number of shares may be decreased by resolution of the Board of Directors; provided that no decrease shall reduce the number of shares of Preferred Stock to a number less than that of the shares of Preferred Stock then outstanding plus the number of shares issuable upon exercise of options or rights then outstanding.

(b) The Preferred Stock will, with respect to both dividend rights and rights upon the liquidation, winding-up or dissolution of the Company, rank on a parity with the 6.75% Preferred Stock, and the Preferred Stock will, with respect to dividend rights or rights upon the liquidation, winding-up or dissolution of the Company rank (i) senior to all Junior Stock, (ii) on a parity with all other Parity Stock and (iii) junior to all Senior Stock.

2. Definitions. As used herein, the following terms shall have the following meanings:

(1) "Accrued Dividends" shall mean, with respect to any share of Preferred Stock, as of any date, the accrued and unpaid dividends on such share from and including the most recent Dividend Payment Date (or the Issue Date, if such date is prior to the first Dividend Payment Date) to but not including such date.

(2) "Accumulated Dividends" shall mean, with respect to any share of Preferred Stock, as of any date, the aggregate accumulated and unpaid dividends on such share from the Issue Date until the most recent Dividend Payment Date on or prior to such date. There shall be no Accumulated Dividends with respect to any share of Preferred Stock prior to the first Dividend Payment Date.

(3) "Affiliate" shall have the meaning ascribed to it, on the date hereof, under Rule 405 of the Securities Act of 1933, as amended.

(4) "Board of Directors" shall mean the Board of Directors of the Company or, with respect to any action to be taken by the Board of Directors, any committee of the Board of Directors duly authorized to take such action.

(5) "Business Day" shall mean any day other than a Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law or executive order to close.

(6) "Change of Control" shall mean any of the following events: (i) the sale, lease or transfer, in one or a series of related transactions, of all or substantially all of the Company's assets (determined on a consolidated basis) to any Person or group (as such term is used in Section 13(d)(3) of the Exchange Act), other than to Permitted Holders; (ii) the adoption of a plan the consummation of which would result in the liquidation or dissolution of the Company; (iii) the acquisition, directly or indirectly, by any Person or group (as such term is used in Section 13(d)(3) of the Exchange Act), other than Permitted Holders, of beneficial ownership (as defined in Rule 13d-3 under the Exchange Act) of more than 50% of the aggregate voting power of the Voting Stock of the Company; provided, however, that the Permitted Holders beneficially own (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), directly

or indirectly, in the aggregate a lesser percentage of the total voting power of the Voting Stock of the Company than such other Person or group and do not have the right or ability by voting power, contract or otherwise to elect or designate for election a majority of the Board of Directors (for the purposes of this definition, such other Person or group shall be deemed to beneficially own any Voting Stock of a specified corporation held by a parent corporation, if such other Person or group is the beneficial owner (as defined above), directly or indirectly, of more than 35% of the voting power of the Voting Stock of such parent corporation and the Permitted Holders beneficially own (as defined in this proviso), directly or indirectly, in the aggregate a lesser percentage of the voting power of the Voting Stock of such parent corporation and do not have the right or ability by voting power, contract or otherwise to elect or designate for election a majority of the Board of Directors of such parent corporation); or (iv) during any period of two consecutive years, individuals who at the beginning of such period comprised the Board of Directors of the Company (together with any new directors whose election by such Board of Directors or whose nomination for election by the shareholders of the Company was approved by a vote of 66 2/3% of the directors of the Company then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the Board of Directors of the Company then in office. For purposes of this definition of "Change of Control," the term "Permitted Holders" means Aubrey K. McClendon and Tom L. Ward and their respective Affiliates.

(7) "Change of Control Date" shall mean the date on which the Change of Control event occurs.

(8) "Conversion Price" shall mean \$10.287, subject to adjustment as set forth in Section 7(c).

(9) "Common Stock" shall mean the common stock, par value \$0.01 per share, of the Company, or any other class of stock resulting from successive changes or reclassifications of such common stock consisting solely of changes in par value, or from par value to no par value, or as a result of a subdivision, combination, or merger, consolidation or similar transaction in which the Company is a constituent corporation.

(10) "DTC" or "Depository" means The Depository Trust Company.

(11) "Dividend Payment Date" shall mean March 15, June 15, September 15 and December 15 of each year, commencing June 15, 2003.

(12) "Dividend Record Date" shall mean March 1, June 1, September 1 and December 1 of each year.

(13) "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

(14) "Holder" or "holder" shall mean a holder of record of the Preferred Stock.

(15) "Issue Date" shall mean March 5, 2003, the original date of issuance of the Preferred Stock.

(16) "Junior Stock" shall mean all classes of common stock of the Company and the Series A Junior Participating Convertible Preferred Stock and each other class of capital stock or series of preferred stock established after the Issue Date, by the Board of Directors, the terms of which do not expressly provide that such class or series ranks senior to or on parity with the Preferred Stock as to dividend rights or rights upon the liquidation, winding-up or dissolution of the Company.

(17) "Liquidation Preference" shall mean, with respect to each share of Preferred Stock, \$50.

(18) "Market Value" shall mean the average closing price of the Common Stock for a five consecutive trading day period on the NYSE (or such other national securities exchange or automated quotation system on which the Common Stock is then listed or authorized for quotation or, if the Common Stock is not so listed or authorized for quotation, an amount determined in good faith by the Board of Directors to be the fair value of the Common Stock).

(19) "NYSE" shall mean the New York Stock Exchange, Inc.

(20) "Officer" means the Chairman of the Board of Directors, the President, any Vice President, the Treasurer, the Secretary or any Assistant Secretary of the Company.

(21) "Officers' Certificate" means a certificate signed by two Officers.

(22) "Opinion of Counsel" means a written opinion from legal counsel who is acceptable to the Transfer Agent. The counsel may be an employee of or counsel to the Company or the Transfer Agent.

(23) "Parity Stock" shall mean the 6.75% Preferred Stock and any class of capital stock or series of preferred stock established after the Issue Date by the Board of Directors, the terms of which expressly provide that such class or series will rank on parity with the Preferred Stock as to dividend rights or rights upon the liquidation, winding-up or dissolution of the Company.

(24) "Person" shall mean any individual, corporation, general partnership, limited partnership, limited liability partnership, joint venture, association, joint-stock company, trust, limited liability company, unincorporated organization or government or any agency or political subdivision thereof.

(25) "Purchase Agreement" shall mean that certain Purchase Agreement with respect to the Preferred Stock, dated February 27, 2003, among the Company, Credit Suisse First Boston LLC, Morgan Stanley & Co. Incorporated, Salomon Smith Barney Inc. and the other initial purchasers named therein.

(26) "Registration Rights Agreement" means the Registration Rights Agreement dated March 5, 2003, among the Company, Credit Suisse First Boston LLC, Morgan Stanley & Co. Incorporated, Salomon Smith Barney Inc. and the other initial purchasers named in the Purchase Agreement, with respect to the Preferred Stock.

(27) "SEC" or "Commission" shall mean the Securities and Exchange Commission.

(28) "Securities Act" means the Securities Act of 1933, as amended.

(29) "Senior Stock" shall mean each class of capital stock or series of preferred stock established after the Issue Date by the Board of Directors, the terms of which expressly provide that such class or series will rank senior to the Preferred Stock as to dividend rights or rights upon the liquidation, winding-up or dissolution of the Company.

(30) "Shelf Registration Statement" shall mean a shelf registration statement filed with the SEC to cover resales of Transfer Restricted Securities by holders thereof, as required by the Registration Rights Agreement.

(31) "6.75% Preferred Stock" shall mean the series of preferred stock, par value \$0.01 per share, of the Company designated as the "6.75% Cumulative Convertible Preferred Stock."

(32) "Transfer Agent" shall mean UMB Bank, N.A., the Company's duly appointed transfer agent, registrar and conversion and dividend disbursing agent for the Preferred Stock. The Company may, in its sole discretion, remove the Transfer Agent with 10 days' prior notice to the Transfer Agent; provided, that the Company shall appoint a successor Transfer Agent who shall accept such appointment prior to the effectiveness or such removal.



(33) "Transfer Restricted Securities" shall mean each share of Preferred Stock (or the shares of Common Stock into which such share of Preferred Stock is convertible) until (i) the date on which such security or its predecessor has been effectively registered under the Securities Act and disposed of in accordance with the Shelf Registration Statement or (ii) the date on which such security or predecessor is distributed to the public pursuant to Rule 144 under the Securities Act or is saleable pursuant to Rule 144(k) under the Securities Act.

(34) "Voting Rights Triggering Event" shall mean the failure of the Company to pay dividends on the Preferred Stock with respect to six or more quarterly periods (whether or not consecutive).

(35) "Voting Stock" shall mean, with respect to any Person, securities of any class or classes of Capital Stock in such Person entitling the holders thereof (whether at all times or only so long as no senior class of stock has voting power by reason of contingency) to vote in the election of members of the Board of Directors or other governing body of such Person. For purposes of this definition, "Capital Stock" shall mean, with respect to any Person, any and all shares, interests, participations or other equivalents (however designated) of corporate stock or partnership interests and any and all warrants, options and rights with respect thereto (whether or not currently exercisable), including each class of common stock and preferred stock of such Person.

### 3. Dividends.

(1) The holders of shares of the outstanding Preferred Stock shall be entitled, when, as and if declared by the Board of Directors out of funds of the Company legally available therefor, to receive cumulative cash dividends at the rate per annum of 6.00% per share on the Liquidation Preference (equivalent to \$3.00 per annum per share), payable quarterly in arrears (the "Dividend Rate"). The Dividend Rate may be increased in the circumstances described in Section 3(b) below. Dividends payable for each full dividend period will be computed by dividing the Dividend Rate by four and shall be payable in arrears on each Dividend Payment Date (commencing June 15, 2003) for the quarterly period ending immediately prior to such Dividend Payment Date, to the holders of record of Preferred Stock at the close of business on the Dividend Record Date applicable to such Dividend Payment Date. Such dividends shall be cumulative from the most recent date as to which dividends shall have been paid or, if no dividends have been paid, from the Issue Date (whether or not in any dividend period or periods there shall be funds of the Company legally available for the payment of such dividends) and shall accrue on a day-to-day basis, whether or not earned or declared, from and after the Issue Date. Dividends payable for any partial dividend period shall be computed on the basis of days elapsed over a 360-day year consisting of twelve 30-day months. Accumulations of dividends on shares of Preferred Stock shall not bear interest.

(2) If (i) by May 5, 2003, the Shelf Registration Statement has not been filed with the Commission, (ii) by September 1, 2003, the Shelf Registration Statement has not been declared effective by the Commission or (iii) after the Shelf Registration Statement has been declared effective, (A) the Shelf Registration Statement thereafter ceases to be effective or (B) the Shelf Registration Statement or the related prospectus ceases to be usable (in each case, subject to the exceptions described below) in connection with resales of Transfer Restricted Securities during the period that any Transfer Restricted Securities remain outstanding (each such event referred to in clauses (i), (ii) and (iii), a "Registration Default"), additional dividends shall accrue on the Preferred Stock at the rate of .50% per annum (resulting in a Dividend Rate of 6.50% per annum during the continuance of a Registration Default), from and including the date on which any such Registration Default shall occur to but excluding the date on which all Registration Defaults have been cured. At all other times, dividends shall accumulate on the Preferred Stock at the Dividend Rate as described in Section 3(a).

A Registration Default referred to in clause (iii) of Section 3(b) shall be deemed not to have occurred and be continuing in relation to the Shelf Registration Statement or the related prospectus if (i) such Registration Default has occurred solely as a result of (x) the filing of a post-effective amendment to the Shelf Registration Statement to incorporate annual audited financial information with respect to the Company where such post-effective amendment is not yet effective and needs to be declared effective to permit Holders to use the related prospectus or (y) other material events, with respect to the Company that would need to be described in the Shelf Registration Statement or the related prospectus and (ii) in the case of clause (y), the Company is proceeding promptly and in good faith to amend or supplement such Shelf Registration Statement and related prospectus to describe such events; provided, however, that in any case if such Registration Default referred to in clause (iii) of Section 3(b) occurs for a continuous period in excess of 30 days, additional dividends as described in Section 3(b) shall be payable in accordance therewith from the day such Registration Default occurs until such Registration Default is cured.

(3) No dividend will be declared or paid upon, or any sum set apart for the payment of dividends upon, any outstanding share of the Preferred Stock with respect to any dividend period unless all dividends for all preceding dividend periods have been declared and paid or declared and a sufficient sum set apart for the payment of such dividend, upon all outstanding shares of Preferred Stock.

(4) No dividends or other distributions (other than a dividend or distribution payable solely in shares of Parity Stock or Junior Stock (in the case of Parity Stock) or Junior Stock (in the case of Junior Stock) and other than cash paid in lieu of fractional shares) may be declared, made or paid, or set apart for payment upon, any Parity Stock or Junior Stock, nor may any Parity Stock or Junior Stock be redeemed, purchased or otherwise acquired for any consideration (or any money paid to or made

available for a sinking fund for the redemption of any Parity Stock or Junior Stock) by or on behalf of the Company (except by conversion into or exchange for shares of Parity Stock or Junior Stock (in the case of Parity Stock) or Junior Stock (in the case of Junior Stock)), unless full Accumulated Dividends shall have been or contemporaneously are declared and paid, or are declared and a sum sufficient for the payment thereof is set apart for such payment, on the Preferred Stock and any Parity Stock for all dividend payment periods terminating on or prior to the date of such declaration, payment, redemption, purchase or acquisition. Notwithstanding the foregoing, if full dividends have not been paid on the Preferred Stock and any Parity Stock, dividends may be declared and paid on the Preferred Stock and such Parity Stock so long as the dividends are declared and paid pro rata so that the amounts of dividends declared per share on the Preferred Stock and such Parity Stock will in all cases bear to each other the same ratio that accumulated and unpaid dividends per share on the shares of Preferred Stock and such other Parity Stock bear to each other.

(5) Holders of shares of Preferred Stock shall not be entitled to any dividends on the Preferred Stock, whether payable in cash, property or stock, in excess of full cumulative dividends. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on the Preferred Stock which may be in arrears.

(6) The holders of shares of Preferred Stock at the close of business on a Dividend Record Date will be entitled to receive the dividend payment on those shares on the corresponding Dividend Payment Date notwithstanding the subsequent conversion thereof or the Company's default in payment of the dividend due on that Dividend Payment Date. However, shares of Preferred Stock surrendered for conversion during the period between the close of business on any Dividend Record Date and the close of business on the Business Day immediately preceding the applicable Dividend Payment Date must be accompanied by payment of an amount equal to the dividend payable on the shares on that Dividend Payment Date. A holder of shares of Preferred Stock on a Dividend Record Date who (or whose transferee) tenders any shares for conversion on the corresponding Dividend Payment Date will receive the dividend payable by the Company on the Preferred Stock on that date, and the converting holder need not include payment in the amount of such dividend upon surrender of shares of Preferred Stock for conversion. Except as provided above with respect to a voluntary conversion pursuant to Section 7, the Company shall make no payment or allowance for unpaid dividends, whether or not in arrears, on converted shares or for dividends on the shares of Common Stock issued upon conversion.

#### 4. Change of Control.

(1) Upon the occurrence of a Change of Control, each holder of Preferred Stock shall, in the event that the Market Value for the period ending on the Change of Control Date is less than the Conversion Price, have a one-time option (the "Change of Control Option") to convert all of such holder's outstanding shares of Preferred Stock into fully paid and nonassessable shares of Common Stock at an adjusted Conversion Price equal to the greater of (i) the Market Value for the period ending on the Change of Control Date and (ii) \$5.47. The Change of Control Option must be exercised, if at all, during the period of not less than 30 days nor more than 60 days commencing on the third Business Day after notice of a Change in Control has been given by the Company in accordance with Section 4(b). In lieu of issuing the shares of Common Stock issuable upon conversion in the event of a Change of Control, the Company may, at its option, make a cash payment equal to the Market Value for each share of such Common Stock otherwise issuable determined for the period ending on the Change of Control Date. Notwithstanding the foregoing, upon the occurrence of a Change of Control in which (i) each holder of Common Stock receives consideration consisting solely of common stock of the successor, acquiror or other third party (and cash paid in lieu of fractional shares) that is listed on a national securities exchange or quoted on the NASDAQ National Market and (ii) all the Common Stock has been exchanged for, converted into or acquired for common stock of the successor, acquiror or other third party (and cash in lieu of fractional shares), and the Preferred Stock becomes convertible solely into such common stock, the Conversion Price will not be adjusted as described in this Section 4(a).

(2) In the event of a Change of Control (other than a Change of Control described in the last sentence of Section 4(a)), notice of such Change of Control shall be given, within five Business Days of the Change of Control Date, by the Company by first-class mail to each record holder of shares of Preferred Stock, at such holder's address as the same appears on the books of the Company. Each such notice shall state (i) that a Change of Control has occurred; (ii) the last day on which the Change of Control Option may be exercised (the "Expiration Date") pursuant to the terms hereof; (iii) the name and address of the Transfer Agent; and (iv) the procedures that holders must follow to exercise the Change of Control Option.

(3) On or before the Expiration Date, each holder of shares of Preferred Stock wishing to exercise the Change of Control Option shall surrender the certificate or certificates representing the shares of Preferred Stock to be converted, in the manner and at the place designated in the notice described in Section 4(b), and on such date the cash or shares of Common Stock due to such holder shall be delivered to the Person whose name appears on such certificate or certificates as the owner thereof and the shares represented by each surrendered certificate shall be returned to authorized but unissued shares. Upon surrender (in accordance with the notice described in Section 4(b)) of the certificate or certificates representing any shares to be so converted (properly endorsed or assigned for transfer, if the Company shall so require and the notice shall so

state), such shares shall be converted by the Company at the adjusted Conversion Price, if applicable, as described in Section 4(a).

(4) The rights of holders of Preferred Stock pursuant to this Section 4 are in addition to, and not in lieu of, the rights of holders of Preferred Stock provided for in Section 7 hereof.

#### 5. Voting.

(1) The shares of Preferred Stock shall have no voting rights except as set forth below or as otherwise required by Oklahoma law from time to time:

(i) If and whenever at any time or times a Voting Rights Triggering Event occurs, then the holders of shares of Preferred Stock, voting as a single class with any other preferred stock or preference securities having similar voting rights that are exercisable (the "Voting Rights Class"), will be entitled at the next regular or special meeting of stockholders of the Company to elect two additional directors of the Company, unless the Board of Directors is comprised of fewer than six directors at such time, in which case the Voting Rights Class shall be entitled to elect one additional director. Upon the election of any such additional directors, the number of directors that comprise the Board of Directors shall be increased by such number of additional directors.

(ii) Such voting rights may be exercised at a special meeting of the holders of the shares of the Voting Rights Class, called as hereinafter provided, or at any annual meeting of stockholders held for the purpose of electing directors, and thereafter at each such annual meeting until such time as all dividends in arrears on the shares of Preferred Stock shall have been paid in full, at which time or times such voting rights and the term of the directors elected pursuant to Section 5(a)(i) shall terminate.

(iii) At any time when such voting rights shall have vested in holders of shares of the Voting Rights Class, an Officer of the Company may call, and, upon written request of the record holders of shares representing at least twenty-five percent (25%) of the voting power of the shares then outstanding of the Voting Rights Class, addressed to the Secretary of the Company, shall call a special meeting of the holders of shares of the Voting Rights Class. Such meeting shall be held at the earliest practicable date upon the notice required for annual meetings of stockholders at the place for holding annual meetings of stockholders of the Company, or, if none, at a place designated by the Board of Directors. Notwithstanding the provisions of this Section 5(a)(iii), no such special meeting shall be called during a period within the 60 days immediately preceding the date fixed for the next annual meeting of stockholders in which such case, the election of directors pursuant to Section 5(a)(i) shall be held at such annual meeting of stockholders.

(iv) At any meeting held for the purpose of electing directors at which the holders of the Voting Rights Class shall have the right to elect directors as provided herein, the presence in person or by proxy of the holders of shares representing more than fifty percent (50%) in voting power of the then outstanding shares of the Voting Rights Class shall be required and shall be sufficient to constitute a quorum of such class for the election of directors by such class. The affirmative vote of the holders of shares of Preferred Stock constituting a majority of the shares of Preferred Stock present at such meeting, in person or by proxy, shall be sufficient to elect any such director.

(v) Any director elected pursuant to the voting rights created under this Section 5(a) shall hold office until the next annual meeting of stockholders (unless such term has previously terminated pursuant to Section 5 (a)(ii)) and any vacancy in respect of any such director shall be filled only by vote of the remaining director so elected by holders of the Voting Rights Class, or if there be no such remaining director, by the holders of shares of the Voting Rights Class at a special meeting called in accordance with the procedures set forth in this Section 5, or, if no such special meeting is called, at the next annual meeting of stockholders. Upon any termination of such voting rights, the term of office of all directors elected pursuant to this Section 5 shall terminate.

(vi) So long as any shares of Preferred Stock remain outstanding, unless a greater percentage shall then be required by law, the Company shall not, without the affirmative vote or consent of the holders of at least 66 2/3% of the outstanding Preferred Stock voting or consenting, as the case may be, separately as one class, (i) create, authorize or issue any class or series of Senior Stock (or any security convertible into Senior Stock) or (ii) amend the Certificate of Incorporation so as to affect adversely the specified rights, preferences, privileges or voting rights of holders of shares of Preferred Stock.

(vii) In exercising the voting rights set forth in this Section 5(a), each share of Preferred Stock shall be entitled to one vote.

(2) The Company may authorize, increase the authorized amount of, or issue any class or series of Parity Stock or Junior Stock, without the consent of the holders of Preferred Stock, and in taking such actions the Company shall not be deemed to have affected adversely the rights, preferences, privileges or voting rights of holders of shares of Preferred Stock.

## 6. Liquidation Rights.

(1) In the event of any liquidation, winding-up or dissolution of the Company, whether voluntary or involuntary, each holder of shares of Preferred Stock shall be entitled to receive and to be paid out of the assets of the Company available for distribution to its stockholders the Liquidation Preference plus Accumulated Dividends and Accrued Dividends thereon in preference to the holders of, and before any payment or distribution is made on, any Junior Stock, including, without limitation, on any Common Stock.

(2) Neither the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all the assets or business of the Company (other than in connection with the liquidation, winding-up or dissolution of its business) nor the merger or consolidation of the Company into or with any other Person shall be deemed to be a liquidation, winding-up or dissolution, voluntary or involuntary, for the purposes of this Section 6.

(3) After the payment to the holders of the shares of Preferred Stock of full preferential amounts provided for in this Section 6, the holders of Preferred Stock as such shall have no right or claim to any of the remaining assets of the Company.

(4) In the event the assets of the Company available for distribution to the holders of shares of Preferred Stock upon any liquidation, winding-up or dissolution of the Company, whether voluntary or involuntary, shall be insufficient to pay in full all amounts to which such holders are entitled pursuant to Section 6(a), no such distribution shall be made on account of any shares of Parity Stock upon such liquidation, dissolution or winding-up unless proportionate distributable amounts shall be paid on account of the shares of Preferred Stock, ratably, in proportion to the full distributable amounts for which holders of all Preferred Stock and of any Parity Stock are entitled upon such liquidation, winding-up or dissolution.

## 7. Conversion.

(a) Each holder of Preferred Stock shall have the right, at its option, exercisable at any time and from time to time from the Issue Date to convert, subject to the terms and provisions of this Section 7, any or all of such holder's shares of Preferred Stock. In such case, the shares of Preferred Stock shall be converted into such whole number of fully paid and nonassessable shares of Common Stock as is equal, subject to Section 7(g), to the product of the number of shares of Preferred Stock being so converted multiplied by the quotient of (i) the Liquidation Preference divided by (ii) the Conversion Price (as defined below) then in effect. The Conversion Price initially shall be \$10.287, subject to adjustment as set forth in Section 7(c).

The conversion right of a holder of Preferred Stock shall be exercised by the holder by the surrender to the Company of the certificates representing shares to be converted at any time during usual business hours at its principal place of business or the offices of its duly appointed Transfer Agent to be maintained by it, accompanied by written notice to the Company in the form of Exhibit B that the holder elects to convert all or a portion of the shares of Preferred Stock represented by such certificate and specifying the name or names (with address) in which a certificate or certificates for shares of Common Stock are to be issued and (if so required by the Company or its duly appointed Transfer Agent) by a written instrument or instruments of transfer in form reasonably satisfactory to the Company or its duly appointed Transfer Agent duly executed by the holder or its duly authorized legal representative and transfer tax stamps or funds therefor, if required pursuant to Section 7(i). Immediately prior to the close of business on the date of receipt by the Company or its duly appointed Transfer Agent of notice of conversion of shares of Preferred Stock, each converting holder of Preferred Stock shall be deemed to be the holder of record of Common Stock issuable upon conversion of such holder's Preferred Stock notwithstanding that the share register of the Company shall then be closed or that certificates representing such Common Stock shall not then be actually delivered to such holder. On the date of any conversion, all rights with respect to the shares of Preferred Stock so converted, including the rights, if any, to receive notices, will terminate, except only the rights of holders thereof to (i) receive certificates for the number of whole shares of Common Stock into which such shares of Preferred Stock have been converted and cash, in lieu of any fractional shares as provided in Section 7(f); and (ii) exercise the rights to which they are entitled as holders of Common Stock.

(b) If the last day for the exercise of the conversion right shall not be a Business Day, then such conversion right may be exercised on the next preceding Business Day.

(c) The Conversion Price shall be subject to adjustment as follows:



(i) In case the Company shall at any time or from time to time (A) pay a dividend (or other distribution) payable in shares of Common Stock on any class of capital stock (which, for purposes of this Section 7(c) shall include, without limitation, any dividends or distributions in the form of options, warrants or other rights to acquire capital stock) of the Company (other than the issuance of shares of Common Stock in connection with the conversion of preferred stock); (B) subdivide the outstanding shares of Common Stock into a larger number of shares; (C) combine the outstanding shares of Common Stock into a smaller number of shares; (D) issue any shares of its capital stock in a reclassification of the Common Stock; or (E) pay a dividend or make a distribution to all holders of shares of Common Stock (other than a dividend or distribution subject to Section 7(c)(ii)) pursuant to a stockholder rights plan, "poison pill" or similar arrangement and excluding dividends payable on the Preferred Stock then, and in each such case, the Conversion Price in effect immediately prior to such event shall be adjusted (and any other appropriate actions shall be taken by the Company) so that the holder of any share of Preferred Stock thereafter surrendered for conversion shall be entitled to receive the number of shares of Common Stock that such holder would have owned or would have been entitled to receive upon or by reason of any of the events described above, had such share of Preferred Stock been converted into shares of Common Stock immediately prior to the occurrence of such event. An adjustment made pursuant to this Section 7(c)(i) shall become effective retroactively (x) in the case of any such dividend or distribution, to the day immediately following the close of business on the record date for the determination of holders of Common Stock entitled to receive such dividend or distribution or (y) in the case of any such subdivision, combination or reclassification, to the close of business on the day upon which such corporate action becomes effective.

(ii) In case the Company shall at any time or from time to time issue to all holders of its Common Stock rights, options or warrants entitling the holders thereof to subscribe for or purchase shares of Common Stock (or securities convertible into or exchangeable for shares of Common Stock) at a price per share less than the Market Value for the period ending on the date of issuance (treating the price per share of any security convertible, or exchangeable or exercisable into Common Stock as equal to (A) the sum of the price paid to acquire such security convertible, exchangeable or exercisable into Common Stock plus any additional consideration payable (without regard to any anti-dilution adjustments) upon the conversion, exchange or exercise of such security into Common Stock divided by (B) the number of shares of Common Stock into which such convertible, exchangeable or exercisable security is initially convertible, exchangeable or exercisable), other than (I) issuances of such rights, options or warrants if the holder of Preferred Stock would be entitled to receive such rights, options or warrants upon conversion at any time of shares of Preferred Stock into Common Stock and (II) issuances that are subject to certain triggering events (until such time as such triggering events occur), then, and in each such case, the Conversion Price then in effect shall be adjusted by dividing the Conversion Price in effect on the day immediately prior to the record date

of such issuance by a fraction (y) the numerator of which shall be the sum of the number of shares of Common Stock outstanding on such record date plus the number of additional shares of Common Stock issued or to be issued upon or as a result of the issuance of such rights, options or warrants (or the maximum number into or for which such convertible or exchangeable securities initially may convert or exchange or for which such options, warrants or other rights initially may be exercised) and (z) the denominator of which shall be the sum of the number of shares of Common Stock outstanding on such record date plus the number of shares of Common Stock which the aggregate consideration for the total number of such additional shares of Common Stock so issued (or into or for which such convertible or exchangeable securities may convert or exchange or for which such options, warrants or other rights may be exercised plus the aggregate amount of any additional consideration initially payable upon the conversion, exchange or exercise of such security) would purchase at the Market Value for the period ending on the date of conversion; provided, that if the Company distributes rights or warrants (other than those referred to above in this subparagraph (c)(ii)) pro rata to the holders of Common Stock, so long as such rights or warrants have not expired or been redeemed by the Company, (y) the holder of any Preferred Stock surrendered for conversion shall be entitled to receive upon such conversion, in addition to the shares of Common Stock then issuable upon such conversion (the "Conversion Shares"), a number of rights or warrants to be determined as follows: (i) if such conversion occurs on or prior to the date for the distribution to the holders of rights or warrants of separate certificates evidencing such rights or warrants (the "Distribution Date"), the same number of rights or warrants to which a holder of a number of shares of Common Stock equal to the number of Conversion Shares is entitled at the time of such conversion in accordance with the terms and provisions applicable to the rights or warrants and (ii) if such conversion occurs after the Distribution Date, the same number of rights or warrants to which a holder of the number of shares of Common Stock into which such Preferred Stock was convertible immediately prior to such Distribution Date would have been entitled on such Distribution Date had such Preferred Stock been converted immediately prior to such Distribution Date in accordance with the terms and provisions applicable to the rights and warrants, and (z) the Conversion Price shall not be subject to adjustment on account of any declaration, distribution or exercise of such rights or warrants.

(iii) In case the Company shall at any time or from time to time (A) make a pro rata distribution to all holders of shares of its Common Stock consisting exclusively of cash (excluding any cash portion of distributions referred to in clause (E) of paragraph (c)(i) above, or cash distributed upon a merger or consolidation to which paragraph (g) below applies), that, when combined together with (x) all other such all-cash distributions made within the then-preceding 12 months in respect of which no adjustment has been made and (y) any cash and the fair market value of other consideration paid or payable in respect of any tender offer by the Company or any of its subsidiaries for shares of Common Stock concluded within the then-preceding 12 months in respect of which no

adjustment pursuant to this Section 7(c) has been made, in the aggregate exceeds 15% of the Company's market capitalization (defined as the product of the Market Value for the period ending on the record date of such distribution times the number of shares of Common Stock outstanding on such record date) on the record date of such distribution; (B) complete a tender or exchange offer by the Company or any of its subsidiaries for shares of Common Stock that involves an aggregate consideration that, together with (I) any cash and other consideration payable in a tender or exchange offer by the Company or any of its subsidiaries for shares of Common Stock expiring within the then-preceding 12 months in respect of which no adjustment pursuant to this Section 7(c) has been made and (II) the aggregate amount of any such all-cash distributions referred to in clause (A) above to all holders of shares of Common Stock within the then-preceding 12 months in respect of which no adjustments have been made, exceeds 15% of the Company's market capitalization on the expiration of such tender offer; or (C) make a distribution to all holders of its Common Stock consisting of evidences of indebtedness, shares of its capital stock other than Common Stock or assets (including securities, but excluding those dividends, rights, options, warrants and distributions referred to in paragraphs (c)(i), (c)(ii) above or this (c)(iii)), then, and in each such case, the Conversion Price then in effect shall be adjusted by dividing the Conversion Price in effect immediately prior to the date of such distribution or completion of such tender or exchange offer, as the case may be, by a fraction (x) the numerator of which shall be the Market Value for the period ending on the record date referred to below, or, if such adjustment is made upon the completion of a tender or exchange offer, on the payment date for such offer, and (y) the denominator of which shall be such Market Value less the then fair market value (as determined by the Board of Directors of the Company) of the portion of the cash, evidences of indebtedness, securities or other assets so distributed or paid in such tender or exchange offer, applicable to one share of Common Stock (but such denominator shall not be less than one); provided, however, that no adjustment shall be made with respect to any distribution of rights to purchase securities of the Company if the holder of shares of Preferred Stock would otherwise be entitled to receive such rights upon conversion at any time of shares of Preferred Stock into shares of Common Stock unless such rights are subsequently redeemed by the Company, in which case such redemption shall be treated for purposes of this Section 7(c)(iii) as a dividend on the Common Stock. Such adjustment shall be made whenever any such distribution is made or tender or exchange offer is completed, as the case may be, and shall become effective retroactively to a date immediately following the close of business on the record date for the determination of stockholders entitled to receive such distribution.

(iv) In the case the Company at any time or from time to time shall take any action affecting its Common Stock (it being understood that the issuance or sale of shares of Common Stock (or securities convertible into or exchangeable for shares of Common Stock, or any options, warrants or other rights to acquire shares of Common Stock) to any Person at a price per share less than the Conversion Price then in effect shall not be deemed such an action), other than an action described in any of Section 7(c)(i) through

Section 7(c)(iii), inclusive, or Section 7(g), then the Conversion Price shall be adjusted in such manner and at such time as the Board of Directors of the Company in good faith determines to be equitable in the circumstances (such determination to be evidenced in a resolution, a certified copy of which shall be mailed to the holders of the Preferred Stock).

(v) Notwithstanding anything herein to the contrary, no adjustment under this Section 7(c) need be made to the Conversion Price unless such adjustment would require an increase or decrease of at least 1% of the Conversion Price then in effect. Any lesser adjustment shall be carried forward and shall be made at the time of and together with the next subsequent adjustment, if any, which, together with any adjustment or adjustments so carried forward, shall amount to an increase or decrease of at least 1% of such Conversion Price.

(vi) The Company reserves the right to make such reductions in the Conversion Price in addition to those required in the foregoing provisions as it considers advisable in order that any event treated for Federal income tax purposes as a dividend of stock or stock rights will not be taxable to the recipients. In the event the Company elects to make such a reduction in the Conversion Price, the Company will comply with the requirements of Rule 14e-1 under the Exchange Act, and any other securities laws and regulations thereunder if and to the extent that such laws and regulations are applicable in connection with the reduction of the Conversion Price.

(d) If the Company shall take a record of the holders of its Common Stock for the purpose of entitling them to receive a dividend or other distribution, and shall thereafter (and before the dividend or distribution has been paid or delivered to stockholders) legally abandon its plan to pay or deliver such dividend or distribution, then thereafter no adjustment in the Conversion Price then in effect shall be required by reason of the taking of such record.

(e) Upon any increase or decrease in the Conversion Price, then, and in each such case, the Company promptly shall deliver to each holder of Preferred Stock a certificate signed by an authorized officer of the Company, setting forth in reasonable detail the event requiring the adjustment and the method by which such adjustment was calculated and specifying the increased or decreased Conversion Price then in effect following such adjustment.

(f) No fractional shares or securities representing fractional shares of Common Stock shall be issued upon the conversion of any shares of Preferred Stock, whether voluntary or mandatory. If more than one share of Preferred Stock shall be surrendered for conversion at one time by the same holder, the number of full shares of Common Stock issuable upon conversion thereof shall be computed on the basis of the aggregate Liquidation Preference of the shares of Preferred Stock so surrendered. If the

conversion of any share or shares of Preferred Stock results in a fraction, an amount equal to such fraction multiplied by the last reported sale price of the Common Stock on the NYSE (or on such other national securities exchange or automated quotation system on which the Common Stock is then listed for trading or authorized for quotation or, if the Common Stock is not then so listed or authorized for quotation, an amount determined in good faith by the Board of Directors to be the fair value of the Common Stock) at the close of business on the trading day next preceding the day of conversion shall be paid to such holder in cash by the Company.

(g) In the event of any reclassification of outstanding shares of Common Stock (other than a change in par value, or from par value to no par value, or from no par value to par value), or in the event of any consolidation or merger of the Company with or into another Person or any merger of another Person with or into the Company (other than a consolidation or merger in which the Company is the resulting or surviving Person and which does not result in any reclassification or change of outstanding Common Stock), or in the event of any sale or other disposition to another Person of all or substantially all of the assets of the Company (computed on a consolidated basis) (any of the foregoing, a "Transaction"), each share of Preferred Stock then outstanding shall, without the consent of any holder of Preferred Stock, become convertible at any time, at the option of the holder thereof, only into the kind and amount of securities (of the Company or another issuer), cash and other property receivable upon such Transaction by a holder of the number of shares of Common Stock into which such share of Preferred Stock could have been converted immediately prior to such Transaction, after giving effect to any adjustment event. The provisions of this Section 7(g) and any equivalent thereof in any such securities similarly shall apply to successive Transactions. The provisions of this Section 7(g) shall be the sole right of holders of Preferred Stock in connection with any Transaction and such holders shall have no separate vote thereon.

(h) The Company shall at all times reserve and keep available for issuance upon the conversion of the Preferred Stock such number of its authorized but unissued shares of Common Stock as will from time to time be sufficient to permit the conversion of all outstanding shares of Preferred Stock, and shall take all action required to increase the authorized number of shares of Common Stock if at any time there shall be insufficient unissued shares of Common Stock to permit such reservation or to permit the conversion of all outstanding shares of Preferred Stock.

(i) The issuance or delivery of certificates for Common Stock upon the conversion of shares of Preferred Stock shall be made without charge to the converting holder of shares of Preferred Stock for such certificates or for any tax in respect of the issuance or delivery of such certificates or the securities represented thereby, and such certificates shall be issued or delivered in the respective names of, or in such names as may be directed by, the holders of the shares of Preferred Stock converted; provided, however, that the Company shall not be required to pay any tax which may be payable in

respect of any transfer involved in the issuance and delivery of any such certificate in a name other than that of the holder of the shares of Preferred Stock converted, and the Company shall not be required to issue or deliver such certificate unless or until the Person or Persons requesting the issuance or delivery thereof shall have paid to the Company the amount of such tax or shall have established to the reasonable satisfaction of the Company that such tax has been paid.

#### 8. Mandatory Conversion.

(a) At any time on or after March 20, 2006, the Company shall have the right, at its option, to cause the Preferred Stock, in whole but not in part, to be automatically converted into that number of whole shares of Common Stock for each share of Preferred Stock equal to the quotient of (i) the Liquidation Preference divided by (ii) the Conversion Price then in effect, with any resulting fractional shares of Common Stock to be settled in accordance with Section 7(f). The Company may exercise its right to cause a mandatory conversion pursuant to this Section 8(a) only if the closing price of the Common Stock equals or exceeds 130% of the Conversion Price then in effect for at least 20 trading days in any consecutive 30-day trading period on the NYSE (or such other national securities exchange or automated quotation system on which the Common Stock is then listed or authorized for quotation, including the last trading day of such 30-day period, ending on the trading day prior to the Company's issuance of a press release announcing the mandatory conversion as described in Section 8(b).

(b) To exercise the mandatory conversion right described in Section 8(a), the Company must issue a press release for publication on the Dow Jones News Service prior to the opening of business on the first trading day following any date on which the conditions described in Section 8(a) are met, announcing such a mandatory conversion. The Company shall also give notice by mail or by publication (with subsequent prompt notice by mail) to the holders of Preferred Stock (not more than four Business Days after the date of the press release) of the mandatory conversion announcing the Company's intention to convert the Preferred Stock. The conversion date will be a date selected by the Company (the "Mandatory Conversion Date") and will be no more than five days after the date on which the Company issues the press release described in this Section 8(b).

(c) In addition to any information required by applicable law or regulation, the press release and notice of a mandatory conversion described in Section 8(b) shall state, as appropriate: (i) the Mandatory Conversion Date; (ii) the number of shares of Common Stock to be issued upon conversion of each share of Preferred Stock; (iii) the number of shares of Preferred Stock to be converted; and (iv) that dividends on the Preferred Stock to be converted will cease to accrue on the Mandatory Conversion Date.

(d) On and after the Mandatory Conversion Date, dividends will cease to accrue on the Preferred Stock called for a mandatory conversion pursuant to Section 8(a) and all rights of holders of such Preferred Stock will terminate except for the right to receive the whole shares of Common Stock issuable upon conversion thereof and cash, in lieu of any fractional shares of Common Stock in accordance with Section 7(f). The dividend payment with respect to the Preferred Stock called for a mandatory conversion pursuant to Section 8(a) on a date during the period between the close of business on any Dividend Record Date to the close of business on the corresponding Dividend Payment Date will be payable on such Dividend Payment Date to the record holder of such share on such Dividend Record Date if such share has been converted after such Dividend Record Date and prior to such Dividend Payment Date. Except as provided in the immediately preceding sentence with respect to a mandatory conversion pursuant to Section 8(a), no payment or adjustment will be made upon conversion of Preferred Stock for Accrued Dividends or for dividends with respect to the Common Stock issued upon such conversion.

(e) The Company may not authorize, issue a press release or give notice of any mandatory conversion pursuant to Section 8(a) unless, prior to giving the conversion notice, all Accumulated Dividends on the Preferred Stock for periods ended prior to the date of such conversion notice shall have been paid in cash.

(f) In addition to the mandatory conversion right described in Section 8(a), if there are less than 250,000 shares of Preferred Stock outstanding, the Company shall have the right, at any time on or after March 20, 2008, at its option, to cause the Preferred Stock to be automatically converted into that number of whole shares of Common Stock equal to the quotient of (i) the Liquidation Preference divided by (ii) the lesser of (A) the Conversion Price then in effect and (B) the Market Value for the period ending on the second trading day immediately prior to the Mandatory Conversion Date, with any resulting fractional shares of Common Stock to be settled in cash in accordance with Section 7(f). The provisions of clauses (b), (c), (d) and (e) of this Section 8 shall apply to any mandatory conversion pursuant to this clause (f); provided that (i) the Mandatory Conversion Date described in Section 8(b) shall not be less than 15 days nor more than 30 days after the date on which the Company issues a press release pursuant to Section 8(b) announcing such mandatory conversion and (ii) the press release and notice of mandatory conversion described in Section 8(c) will not state the number of shares of Common Stock to be issued upon conversion of each share of Preferred Stock.

#### 9. Consolidation, Merger and Sale of Assets.

(a) The Company, without the consent of the holders of any of the outstanding Preferred Stock, may consolidate with or merge into any other Person or convey, transfer or lease all or substantially all its assets to any Person or may permit any Person to consolidate with or merge into, or transfer or lease all or substantially all its

properties to, the Company; provided, however, that (a) the successor, transferee or lessee is organized under the laws of the United States or any political subdivision thereof; (b) the shares of Preferred Stock will become shares of such successor, transferee or lessee, having in respect of such successor, transferee or lessee the same powers, preferences and relative participating, optional or other special rights and the qualification, limitations or restrictions thereon, the Preferred Stock had immediately prior to such transaction; and (c) the Company delivers to the Transfer Agent an Officers' Certificate and an Opinion of Counsel stating that such transaction complies with this Certificate of Designation.

(b) Upon any consolidation by the Company with, or merger by the Company into, any other person or any conveyance, transfer or lease of all or substantially all the assets of the Company as described in Section 9(a), the successor resulting from such consolidation or into which the Company is merged or the transferee or lessee to which such conveyance, transfer or lease is made, will succeed to, and be substituted for, and may exercise every right and power of, the Company under the shares of Preferred Stock, and thereafter, except in the case of a lease, the predecessor (if still in existence) will be released from its obligations and covenants with respect to the Preferred Stock.

#### 10. SEC Reports.

Whether or not the Company is required to file reports with the Commission, if any shares of Preferred Stock are outstanding, the Company shall file with the Commission all such reports and other information as it would be required to file with the Commission by Section 13(a) or 15(d) under the Exchange Act. The Company shall supply each holder of Preferred Stock, upon request, without cost to such holder, copies of such reports or other information.

#### 11. Certificates.

(a) Form and Dating. The Preferred Stock and the Transfer Agent's certificate of authentication shall be substantially in the form of Exhibit A, which is hereby incorporated in and expressly made a part of this Certificate of Designation. The Preferred Stock certificate may have notations, legends or endorsements required by law, stock exchange rule, agreements to which the Company is subject, if any, or usage (provided that any such notation, legend or endorsement is in a form acceptable to the Company). Each Preferred Stock certificate shall be dated the date of its authentication. The terms of the Preferred Stock certificate set forth in Exhibit A are part of the terms of this Certificate of Designation.

(i) Global Preferred Stock. The Preferred Stock shall be issued initially in the form of one or more fully registered global certificates with the global securities legend and restricted securities legend set forth in Exhibit A hereto (the "Global Preferred



Stock"), which shall be deposited on behalf of the purchasers represented thereby with the Transfer Agent, as custodian for DTC (or with such other custodian as DTC may direct), and registered in the name of DTC or a nominee of DTC, duly executed by the Company and authenticated by the Transfer Agent as hereinafter provided. The number of shares of Preferred Stock represented by Global Preferred Stock may from time to time be increased or decreased by adjustments made on the records of the Transfer Agent and DTC or its nominee as hereinafter provided. With respect to shares of Preferred Stock that are not "restricted securities" as defined in Rule 144 on a conversion date, all shares of Common Stock distributed on such conversion date will be freely transferable without restriction under the Securities Act (other than by affiliates), and such shares will be eligible for receipt in global form through the facilities of DTC.

(ii) Book-Entry Provisions. In the event Global Preferred Stock is deposited with or on behalf of DTC, the Company shall execute and the Transfer Agent shall authenticate and deliver initially one or more Global Preferred Stock certificates that (a) shall be registered in the name of DTC as depository for such Global Preferred Stock or the nominee of DTC and (b) shall be delivered by the Transfer Agent to DTC or pursuant to DTC's instructions or held by the Transfer Agent as custodian for DTC.

Members of, or participants in, DTC ("Agent Members") shall have no rights under this Certificate of Designation with respect to any Global Preferred Stock held on their behalf by DTC or by the Transfer Agent as the custodian of DTC or under such Global Preferred Stock, and DTC may be treated by the Company, the Transfer Agent and any agent of the Company or the Transfer Agent as the absolute owner of such Global Preferred Stock for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Transfer Agent or any agent of the Company or the Transfer Agent from giving effect to any written certification, proxy or other authorization furnished by DTC or impair, as between DTC and its Agent Members, the operation of customary practices of DTC governing the exercise of the rights of a holder of a beneficial interest in any Global Preferred Stock.

(iii) Certificated Preferred Stock; Certificated Common Stock. Except as provided in this paragraph 11(a) or in paragraph 11(c), owners of beneficial interests in Global Preferred Stock will not be entitled to receive physical delivery of Preferred Stock in fully registered certificated form ("Certificated Preferred Stock"). With respect to shares of Preferred Stock that are "restricted securities" as defined in Rule 144 on a conversion date, all shares of Common Stock issuable on conversion of such shares on such conversion date will be issued in fully registered certificated form ("Certificated Common Stock"). Certificates of Certificated Common Stock will be mailed or made available at the office of the Transfer Agent for the Preferred Stock on or as soon as reasonably practicable after the relevant conversion date to the converting holder.

After a transfer of any Preferred Stock or Certificated Common Stock during the period of the effectiveness of a Shelf Registration Statement with respect to such Preferred Stock or such Certificated Common Stock, all requirements pertaining to legends on such Preferred Stock (including Global Preferred Stock) or Certificated Common Stock will cease to apply, the requirements requiring that any such Certificated Common Stock issued to Holders be issued in certificated form, as the case may, will cease to apply, and Preferred Stock or Common Stock, as the case may be, in global or fully registered certificated form, in either case without legends, will be available to the transferee of the Holder of such Preferred Stock or Certificated Common Stock upon exchange of such transferring Holder's Preferred Stock or Common Stock or directions to transfer such Holder's interest in the Global Preferred Stock, as applicable.

(b) Execution and Authentication. Two Officers shall sign the Preferred Stock certificate for the Company by manual or facsimile signature.

If an Officer whose signature is on a Preferred Stock certificate no longer holds that office at the time the Transfer Agent authenticates the Preferred Stock certificate, the Preferred Stock certificate shall be valid nevertheless.

A Preferred Stock certificate shall not be valid until an authorized signatory of the Transfer Agent manually signs the certificate of authentication on the Preferred Stock certificate. The signature shall be conclusive evidence that the Preferred Stock certificate has been authenticated under this Certificate of Designation.

The Transfer Agent shall authenticate and deliver certificates for up to 4,600,000 shares of Preferred Stock for original issue upon a written order of the Company signed by two Officers or by an Officer and an Assistant Treasurer of the Company. Such order shall specify the number of shares of Preferred Stock to be authenticated and the date on which the original issue of Preferred Stock is to be authenticated.

The Transfer Agent may appoint an authenticating agent reasonably acceptable to the Company to authenticate the certificates for Preferred Stock. Unless limited by the terms of such appointment, an authenticating agent may authenticate certificates for Preferred Stock whenever the Transfer Agent may do so. Each reference in this Certificate of Designation to authentication by the Transfer Agent includes authentication by such agent. An authenticating agent has the same rights as the Transfer Agent or agent for service of notices and demands.

(c) Transfer and Exchange. (i) Transfer and Exchange of Certificated Preferred Stock. When Certificated Preferred Stock is presented to the Transfer Agent with a request to register the transfer of such Certificated Preferred Stock or to exchange such Certificated Preferred Stock for an equal number of shares of Certificated Preferred Stock, the Transfer Agent shall register the transfer or make the exchange as requested if its reasonable requirements for such transaction are met; provided, however, that the Certificated Preferred Stock surrendered for transfer or exchange:

(1) shall be duly endorsed or accompanied by a written instrument of transfer in form reasonably satisfactory to the Company and the Transfer Agent, duly executed by the Holder thereof or its attorney duly authorized in writing; and

(2) is being transferred or exchanged pursuant to an effective registration statement under the Securities Act or pursuant to clause (I) or (II) below, and is accompanied by the following additional information and documents, as applicable:

(I) if such Certificated Preferred Stock is being delivered to the Transfer Agent by a Holder for registration in the name of such Holder, without transfer, a certification from such Holder to that effect in substantially the form of Exhibit C hereto; or

(II) if such Certificated Preferred Stock is being transferred to the Company or to a "qualified institutional buyer" ("QIB") in accordance with Rule 144A under the Securities Act or pursuant to another exemption from registration under the Securities Act, (i) a certification to that effect (in substantially the form of Exhibit C hereto) and (ii) if the Company so requests, an Opinion of Counsel or other evidence reasonably satisfactory to it as to the compliance with the restrictions set forth in the legend set forth in paragraph 11 (c) (vii).

(ii) Restrictions on Transfer of Certificated Preferred Stock for a Beneficial Interest in Global Preferred Stock. Certificated Preferred Stock may not be exchanged for a beneficial interest in Global Preferred Stock except upon satisfaction of the requirements set forth below. Upon receipt by the Transfer Agent of Certificated Preferred Stock, duly endorsed or accompanied by appropriate instruments of transfer, in form reasonably satisfactory to the Company and the Transfer Agent, together with written instructions directing the Transfer Agent to make, or to direct DTC to make, an adjustment on its books and records with respect to such Global Preferred Stock to reflect an increase in the number of shares of Preferred Stock represented by the Global Preferred Stock, then the Transfer Agent shall cancel such Certificated Preferred Stock and cause, or direct DTC to cause, in accordance with the standing instructions and procedures existing between DTC and the Transfer Agent, the number of shares of Preferred Stock represented by the Global Preferred Stock to be increased accordingly. If no Global Preferred Stock is then outstanding, the Company shall issue and the Transfer Agent shall authenticate, upon written order of the Company in the form of an Officers' Certificate, a new Global Preferred Stock representing the appropriate number of shares.

(iii) Transfer and Exchange of Global Preferred Stock. The transfer and exchange of Global Preferred Stock or beneficial interests therein shall be effected through DTC, in accordance with this Certificate of Designation (including applicable restrictions on transfer set forth herein, if any) and the procedures of DTC therefor.

(iv) Transfer of a Beneficial Interest in Global Preferred Stock for a Certificated Preferred Stock.

(1) Any Person having a beneficial interest in Preferred Stock that is being transferred or exchanged pursuant to an effective registration statement under the Securities Act or pursuant to another exemption from registration thereunder may upon request, but only with the consent of the Company, and if accompanied by a certification from such Person to that effect (in substantially the form of Exhibit C hereto), exchange such beneficial interest for Certificated Preferred Stock representing the same number of shares of Preferred Stock. Upon receipt by the Transfer Agent of written instructions or such other form of instructions as is customary for DTC from DTC or its nominee on behalf of any Person having a beneficial interest in Global Preferred Stock and upon receipt by the Transfer Agent of a written order or such other form of instructions as is customary for DTC or the Person designated by DTC as having such a beneficial interest in a Transfer Restricted Security only, then, the Transfer Agent or DTC, at the direction of the Transfer Agent, will cause, in accordance with the standing instructions and procedures existing between DTC and the Transfer Agent, the number of shares of Preferred Stock represented by Global Preferred Stock to be reduced on its books and records and, following such reduction, the Company will

execute and the Transfer Agent will authenticate and deliver to the transferee Certificated Preferred Stock.

(2) Certificated Preferred Stock issued in exchange for a beneficial interest in a Global Preferred Stock pursuant to this paragraph 11(c)(iv) shall be registered in such names and in such authorized denominations as DTC, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Transfer Agent. The Transfer Agent shall deliver such Certificated Preferred Stock to the Persons in whose names such Preferred Stock are so registered in accordance with the instructions of DTC.

(v) Restrictions on Transfer and Exchange of Global Preferred Stock.

(1) Notwithstanding any other provisions of this Certificate of Designation (other than the provisions set forth in paragraph 11(c)(vi)), Global Preferred Stock may not be transferred as a whole except by DTC to a nominee of DTC or by a nominee of DTC to DTC or another nominee of DTC or by DTC or any such nominee to a successor depository or a nominee of such successor depository.

(2) In the event that the Global Preferred Stock is exchanged for Preferred Stock in definitive registered form pursuant to paragraph 11(c)(vi) prior to the effectiveness of a Shelf Registration Statement with respect to such securities, such Preferred Stock may be exchanged only in accordance with such procedures as are substantially consistent with the provisions of this paragraph 11(c) (including the certification requirements set forth in the Exhibits to this Certificate of Designation intended to ensure that such transfers comply with Rule 144A or such other applicable exemption from registration under the Securities Act, as the case may be) and such other procedures as may from time to time be adopted by the Company.

(vi) Authentication of Certificated Preferred Stock. If at any time:

(1) DTC notifies the Company that DTC is unwilling or unable to continue as depository for the Global Preferred Stock and a successor depository for the Global Preferred Stock is not appointed by the Company within 90 days after delivery of such notice;

(2) DTC ceases to be a clearing agency registered under the Exchange Act and a successor depository for the Global Preferred Stock is not appointed by the Company within 90 days; or

(3) the Company, in its sole discretion, notifies the Transfer Agent in writing that it elects to cause the issuance of Certificated Preferred Stock under this Certificate of Designation,

then the Company will execute, and the Transfer Agent, upon receipt of a written order of the Company signed by two Officers or by an Officer and an Assistant Treasurer of the Company requesting the authentication and delivery of Certificated Preferred Stock to the Persons designated by the Company, will authenticate and deliver Certificated Preferred Stock equal to the number of shares of Preferred Stock represented by the Global Preferred Stock, in exchange for such Global Preferred Stock.

(vii) Legend. (1) Except as permitted by the following paragraph (2) and in paragraph 11(a)(iii), each certificate evidencing the Global Preferred Stock, the Certificated Preferred Stock and Certificated Common Stock shall bear a legend in substantially the following form:

"THE SECURITY EVIDENCED HEREBY (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933 (THE "SECURITIES ACT"), AND THIS SECURITY (AND THE COMMON STOCK INTO WHICH THIS SECURITY IS CONVERTIBLE) MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THE SECURITY EVIDENCED HEREBY IS HEREBY NOTIFIED THAT THE SELLER MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER. THE HOLDER OF THE SECURITY EVIDENCED HEREBY AGREES FOR THE BENEFIT OF THE COMPANY THAT (A) SUCH SECURITY (AND THE COMMON STOCK INTO WHICH THIS SECURITY IS CONVERTIBLE) MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (1) IN THE UNITED STATES TO A PERSON WHO THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (2) OUTSIDE OF THE UNITED STATES IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH RULE 904 UNDER THE SECURITIES ACT, (3) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE), (4) TO THE COMPANY OR (5) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH OF CASES (1) THROUGH (5) IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE STATES OF THE UNITED STATES AND (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER OF THIS SECURITY FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE. IN ANY CASE, THE HOLDER OF THIS SECURITY WILL NOT, DIRECTLY OR INDIRECTLY, ENGAGE IN ANY HEDGING TRANSACTION WITH REGARD TO THE SECURITY EXCEPT AS PERMITTED UNDER THE SECURITIES ACT."(1)

-----  
1 Subject to removal upon registration under the Securities Act of 1933 or otherwise when the security shall no longer be a Transfer Restricted Security.

(2) Upon any sale or transfer of a Transfer Restricted Security (including any Transfer Restricted Security represented by Global Preferred Stock) pursuant to Rule 144 under the Securities Act or another exemption from registration under the Securities Act or an effective registration statement under the Securities Act:

(I) in the case of any Transfer Restricted Security that is a Certificated Preferred Stock, the Transfer Agent shall permit the Holder thereof to exchange such Transfer Restricted Security for Certificated Preferred Stock that does not bear the legend set forth above and rescind any restriction on the transfer of such Transfer Restricted Security; and

(II) in the case of any Transfer Restricted Security that is represented by a Global Preferred Stock, with the consent of the Company, the Transfer Agent shall permit the Holder thereof to exchange such Transfer Restricted Security for Certificated Preferred Stock that does not bear the legend set forth above and rescind any restriction on the transfer of such Transfer Restricted Security, if the Holder's request for such exchange was made in reliance on Rule 144 or another exemption from registration under the Securities Act and the Holder certifies to that effect in writing to the Transfer Agent (such certification to be in the form set forth in Exhibit C hereto).

(viii) Cancellation or Adjustment of Global Preferred Stock. At such time as all beneficial interests in Global Preferred Stock have either been exchanged for Certificated Preferred Stock, converted or canceled, such Global Preferred Stock shall be returned to DTC for cancellation or retained and canceled by the Transfer Agent. At any time prior to such cancellation, if any beneficial interest in Global Preferred Stock is exchanged for Certificated Preferred Stock, converted or canceled, the number of shares of Preferred Stock represented by such Global Preferred Stock shall be reduced and an adjustment shall be made on the books and records of the Transfer Agent with respect to such Global Preferred Stock, by the Transfer Agent or DTC, to reflect such reduction.

(ix) Obligations with Respect to Transfers and Exchanges of Preferred Stock. (1) To permit registrations of transfers and exchanges, the Company shall execute and the Transfer Agent shall authenticate Certificated Preferred Stock and Global Preferred Stock as required pursuant to the provisions of this paragraph 11(c).

(2) All Certificated Preferred Stock and Global Preferred Stock issued upon any registration of transfer or exchange of Certificated Preferred Stock or Global Preferred Stock shall be the valid obligations of the Company, entitled to the same benefits under this Certificate of Designation as the Certificated



Preferred Stock or Global Preferred Stock surrendered upon such registration of transfer or exchange.

(3) Prior to due presentment for registration of transfer of any shares of Preferred Stock, the Transfer Agent and the Company may deem and treat the Person in whose name such shares of Preferred Stock are registered as the absolute owner of such Preferred Stock and neither the Transfer Agent nor the Company shall be affected by notice to the contrary.

(4) No service charge shall be made to a Holder for any registration of transfer or exchange upon surrender of any Preferred Stock certificate or Common Stock certificate at the office of the Transfer Agent maintained for that purpose. However, the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Preferred Stock certificates or Common Stock certificates.

(5) Upon any sale or transfer of shares of Preferred Stock (including any Preferred Stock represented by a Global Preferred Stock Certificate) or of Certificated Common Stock pursuant to an effective registration statement under the Securities Act or pursuant to Rule 144 or another exemption from registration under the Securities Act (and based upon an Opinion of Counsel reasonably satisfactory to the Company if it so requests):

- (A) in the case of any Certificated Preferred Stock or Certificated Common Stock, the Company and the Transfer Agent shall permit the holder thereof to exchange such Preferred Stock or Certificated Common Stock for Certificated Preferred Stock or Certificated Common Stock, as the case may be, that does not bear the legend set forth in paragraph (c)(vii) above and rescind any restriction on the transfer of such Preferred Stock or Common Stock issuable in respect of the conversion of the Preferred Stock; and
- (B) in the case of any Global Preferred Stock, such Preferred Stock shall not be required to bear the legend set forth in paragraph (c)(vii) above but shall continue to be subject to the provisions of paragraph (c)(iv) hereof; provided, however, that with respect to any request for an exchange of Preferred Stock that is represented by Global Preferred Stock for Certificated Preferred Stock that does not bear the legend set forth in paragraph (c)(vii) above in connection with a sale or transfer thereof pursuant to Rule 144 or another exemption from registration under the Securities Act (and based upon an Opinion of Counsel if the

Company so requests), the Holder thereof shall certify in writing to the Transfer Agent that such request is being made pursuant to such exemption (such certification to be substantially in the form of Exhibit C hereto).

(x) No Obligation of the Transfer Agent.

(1) The Transfer Agent shall have no responsibility or obligation to any beneficial owner of Global Preferred Stock, a member of, or a participant in DTC or any other Person with respect to the accuracy of the records of DTC or its nominee or of any participant or member thereof, with respect to any ownership interest in the Preferred Stock or with respect to the delivery to any participant, member, beneficial owner or other Person (other than DTC) of any notice or the payment of any amount, under or with respect to such Global Preferred Stock. All notices and communications to be given to the Holders and all payments to be made to Holders under the Preferred Stock shall be given or made only to the Holders (which shall be DTC or its nominee in the case of the Global Preferred Stock). The rights of beneficial owners in any Global Preferred Stock shall be exercised only through DTC subject to the applicable rules and procedures of DTC. The Transfer Agent may rely and shall be fully protected in relying upon information furnished by DTC with respect to its members, participants and any beneficial owners.

(2) The Transfer Agent shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Certificate of Designation or under applicable law with respect to any transfer of any interest in any Preferred Stock (including any transfers between or among DTC participants, members or beneficial owners in any Global Preferred Stock) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Certificate of Designation, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

(d) Replacement Certificates. If a mutilated Preferred Stock certificate is surrendered to the Transfer Agent or if the Holder of a Preferred Stock certificate claims that the Preferred Stock certificate has been lost, destroyed or wrongfully taken, the Company shall issue and the Transfer Agent shall countersign a replacement Preferred Stock certificate if the reasonable requirements of the Transfer Agent and of Section 8-405 of the Uniform Commercial Code as in effect in the State of Oklahoma are met. If required by the Transfer Agent or the Company, such Holder shall furnish an indemnity bond sufficient in the judgment of the Company and the Transfer Agent to protect the Company and the Transfer Agent from any loss which either of them may suffer if a

Preferred Stock certificate is replaced. The Company and the Transfer Agent may charge the Holder for their expenses in replacing a Preferred Stock certificate.

(e) Temporary Certificates. Until definitive Preferred Stock certificates are ready for delivery, the Company may prepare and the Transfer Agent shall countersign temporary Preferred Stock certificates. Temporary Preferred Stock certificates shall be substantially in the form of definitive Preferred Stock certificates but may have variations that the Company considers appropriate for temporary Preferred Stock certificates. Without unreasonable delay, the Company shall prepare and the Transfer Agent shall countersign definitive Preferred Stock certificates and deliver them in exchange for temporary Preferred Stock certificates.

(f) Cancellation. (i) In the event the Company shall purchase or otherwise acquire Certificated Preferred Stock, the same shall thereupon be delivered to the Transfer Agent for cancellation.

(ii) At such time as all beneficial interests in Global Preferred Stock have either been exchanged for Certificated Preferred Stock, converted, repurchased or canceled, such Global Preferred Stock shall thereupon be delivered to the Transfer Agent for cancellation.

(iii) The Transfer Agent and no one else shall cancel and destroy all Preferred Stock certificates surrendered for transfer, exchange, replacement or cancellation and deliver a certificate of such destruction to the Company unless the Company directs the Transfer Agent to deliver canceled Preferred Stock certificates to the Company. The Company may not issue new Preferred Stock certificates to replace Preferred Stock certificates to the extent they evidence Preferred Stock which the Company has purchased or otherwise acquired.

12. Additional Rights of Holders. In addition to the rights provided to Holders under this Certificate of Designation, Holders shall have the rights set forth in the Registration Rights Agreement.

13. Other Provisions.

(1) With respect to any notice to a holder of shares of Preferred Stock required to be provided hereunder, neither failure to mail such notice, nor any defect therein or in the mailing thereof, to any particular holder shall affect the sufficiency of the notice or the validity of the proceedings referred to in such notice with respect to the other holders or affect the legality or validity of any distribution, rights, warrant, reclassification, consolidation, merger, conveyance, transfer, dissolution, liquidation or winding-up, or the vote upon any such action. Any notice which was mailed in the manner herein provided shall be conclusively presumed to have been duly given whether or not the holder receives the notice.

(2) Shares of Preferred Stock issued and reacquired will be retired and canceled promptly after reacquisition thereof and, upon compliance with the applicable requirements of Oklahoma law, have the status of authorized but unissued shares of preferred stock of the Company undesignated as to series and may with any and all other authorized but unissued shares of preferred stock of the Company be designated or redesignated and issued or reissued, as the case may be, as part of any series of preferred stock of the Corporation, except that any issuance or reissuance of shares of Preferred Stock must be in compliance with this Certificate of Designation.

(3) The shares of Preferred Stock shall be issuable only in whole shares.

(4) All notice periods referred to herein shall commence on the date of the mailing of the applicable notice.

IN WITNESS WHEREOF, the Company has caused this certificate to be signed and attested this 28th day of February, 2003.

CHESAPEAKE ENERGY CORPORATION

By: /s/ TOM L. WARD

-----  
Tom L. Ward

Attest: /s/ JENNIFER M. GRIGSBY

-----  
Jennifer M. Grigsby

## FORM OF PREFERRED STOCK

## FACE OF SECURITY

[THE SECURITY EVIDENCED HEREBY (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933 (THE "SECURITIES ACT"), AND THIS SECURITY (AND THE COMMON STOCK INTO WHICH THIS SECURITY IS CONVERTIBLE) MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THE SECURITY EVIDENCED HEREBY IS HEREBY NOTIFIED THAT THE SELLER MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER. THE HOLDER OF THE SECURITY EVIDENCED HEREBY AGREES FOR THE BENEFIT OF THE COMPANY THAT (A) SUCH SECURITY (AND THE COMMON STOCK INTO WHICH THIS SECURITY IS CONVERTIBLE) MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (1) IN THE UNITED STATES TO A PERSON WHO THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (2) OUTSIDE THE UNITED STATES IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH RULE 904 UNDER THE SECURITIES ACT, (3) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE), (4) TO THE COMPANY OR (5) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH OF CASES (1) THROUGH (5) IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE STATES OF THE UNITED STATES AND (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER OF THIS SECURITY FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE. IN ANY CASE, THE HOLDER OF THIS SECURITY WILL NOT, DIRECTLY OR INDIRECTLY, ENGAGE IN ANY HEDGING TRANSACTION WITH REGARD TO THE SECURITY EXCEPT AS PERMITTED UNDER THE SECURITIES ACT.](2)

- - - - -  
2 Subject to removal upon registration under the Securities Act of 1933 or otherwise when the security shall no longer be a Transfer Restricted Security.

[UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), NEW YORK, NEW YORK, TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OF PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO., OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC) ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO. HAS AN INTEREST HEREIN.](3)

[TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE CERTIFICATE OF DESIGNATION REFERRED TO BELOW.](3)

IN CONNECTION WITH ANY TRANSFER, THE HOLDER WILL DELIVER TO THE TRANSFER AGENT SUCH CERTIFICATES AND OTHER INFORMATION AS SUCH TRANSFER AGENT MAY REASONABLY REQUIRE TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS.

|                    |  |
|--------------------|--|
| Certificate Number | Number of Shares of<br>Convertible Preferred Stock |
| [ ]                | [ ]  |

CUSIP NO.: 165167 60 2(4)

6.00% Cumulative Convertible Preferred Stock (par value \$0.01) (liquidation preference \$50 per share of Convertible Preferred Stock)

of

Chesapeake Energy Corporation

- - - - -

- 3 Subject to removal if not a global security.
- 4 CUSIP Number 165167 70 1, if not a Transfer Restricted Security.

Chesapeake Energy Corporation, an Oklahoma corporation (the "Company"), hereby certifies that [ ] (the "Holder") is the registered owner of [ ] fully paid and non-assessable preferred securities of the Company designated the 6.00% Cumulative Convertible Preferred Stock (par value \$0.01) (liquidation preference \$50 per share of Preferred Stock) (the "Preferred Stock"). The shares of Preferred Stock are transferable on the books and records of the Transfer Agent, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for transfer. The designations, rights, privileges, restrictions, preferences and other terms and provisions of the Preferred Stock represented hereby are issued and shall in all respects be subject to the provisions of the Certificate of Designation dated February 28, 2003, as the same may be amended from time to time (the "Certificate of Designation"). Capitalized terms used herein but not defined shall have the meaning given them in the Certificate of Designation. The Company will provide a copy of the Certificate of Designation to a Holder without charge upon written request to the Company at its principal place of business.

Reference is hereby made to select provisions of the Preferred Stock set forth on the reverse hereof, and to the Certificate of Designation, which select provisions and the Certificate of Designation shall for all purposes have the same effect as if set forth at this place.

Upon receipt of this certificate, the Holder is bound by the Certificate of Designation and is entitled to the benefits thereunder.

Unless the Transfer Agent's Certificate of Authentication hereon has been properly executed, these shares of Preferred Stock shall not be entitled to any benefit under the Certificate of Designation or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Company has executed this certificate this \_\_ day of \_\_, 2003.

CHESAPEAKE ENERGY CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

TRANSFER AGENT'S CERTIFICATE OF AUTHENTICATION

These are shares of the Preferred Stock referred to in the within-mentioned Certificate of Designation.

Dated: \_\_\_\_\_, 2003

UMB BANK, N.A., as Transfer Agent,

By: \_\_\_\_\_  
Authorized Signatory



## REVERSE OF SECURITY

Cash dividends on each share of Preferred Stock shall be payable at a rate per annum set forth in the face hereof or as provided in the Certificate of Designation.

The shares of Preferred Stock shall be convertible into the Company's Common Stock in the manner and according to the terms set forth in the Certificate of Designation.

The Company will furnish without charge to each holder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock and the qualifications, limitations or restrictions of such preferences and/or rights.

## ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers the shares of Preferred Stock evidenced hereby to:

(Insert assignee's social security or tax identification number)

(Insert address and zip code of assignee)

and irrevocably appoints:

agent to transfer the shares of Preferred Stock evidenced hereby on the books of the Transfer Agent. The agent may substitute another to act for him or her.

Date: -----

Signature: -----

(Sign exactly as your name appears on the other side of this Preferred Stock Certificate)

Signature Guarantee:(5) -----

5 (Signature must be guaranteed by an "eligible guarantor institution" that is a bank, stockbroker, savings and loan association or credit union meeting the requirements of the Transfer Agent, which requirements include membership or participation in the Securities Transfer Agents Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Transfer Agent in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.)

NOTICE OF CONVERSION

(To be Executed by the Holder  
in order to Convert the Preferred Stock)

The undersigned hereby irrevocably elects to convert (the "Conversion") shares of 6.00% Cumulative Convertible Preferred Stock (the "Preferred Stock"), represented by stock certificate No(s). (the "Preferred Stock Certificates") into shares of common stock ("Common Stock") of Chesapeake Energy Corporation (the "Company") according to the conditions of the Certificate of Designation of the Preferred Stock (the "Certificate of Designation"), as of the date written below. If shares are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto and is delivering herewith the Preferred Stock Certificates. No fee will be charged to the holder for any conversion, except for transfer taxes, if any. A copy of each Preferred Stock Certificate is attached hereto (or evidence of loss, theft or destruction thereof).

The undersigned represents and warrants that all offers and sales by the undersigned of the shares of Common Stock issuable to the undersigned upon conversion of the Preferred Stock shall be made pursuant to registration of the Common Stock under the Securities Act of 1933 (the "Act"), or pursuant to any exemption from registration under the Act.

Any holder, upon the exercise of its conversion rights in accordance with the terms of the Certificate of Designation and the Preferred Stock, agrees to be bound by the terms of the Registration Rights Agreement.

Capitalized terms used but not defined herein shall have the meanings ascribed thereto in or pursuant to the Certificate of Designation.

Date of Conversion: -----

Applicable Conversion Price: -----

Number of shares of  
Preferred Stock to be Converted: -----

Number of shares of  
Common Stock to be Issued:\* -----

Signature: -----

Name: -----

Address:\*\* -----

Fax No.: -----

\* The Company is not required to issue shares of Common Stock until the original Preferred Stock Certificate(s) (or evidence of loss, theft or destruction thereof) to be converted are received by the Company or its Transfer Agent. The Company shall issue and deliver shares of Common Stock to an overnight courier not later than three business days following receipt of the original Preferred Stock Certificate(s) to be converted.

\*\* Address where shares of Common Stock and any other payments or certificates shall be sent by the Company.

CERTIFICATE TO BE DELIVERED UPON EXCHANGE OR  
REGISTRATION OF TRANSFER OF PREFERRED STOCK

Re: 6.00% Cumulative Convertible Preferred Stock (the "Preferred Stock") of  
Chesapeake Energy Corporation (the "Company")

This Certificate relates to \_\_\_\_ shares of Preferred Stock held in  \*/  
book-entry or  \*/ definitive form by \_\_\_\_\_ (the "Transferor").

The Transferor\*:

has requested the Transfer Agent by written order to deliver in  
exchange for its beneficial interest in the Preferred Stock held by the  
Depository shares of Preferred Stock in definitive, registered form equal to its  
beneficial interest in such Preferred Stock (or the portion thereof indicated  
above); or

has requested the Transfer Agent by written order to exchange or  
register the transfer of Preferred Stock.

In connection with such request and in respect of such Preferred Stock, the  
Transferor does hereby certify that the Transferor is familiar with the  
Certificate of Designation relating to the above-captioned Preferred Stock and  
that the transfer of this Preferred Stock does not require registration under  
the Securities Act of 1933 (the "Securities Act") because \*/:

Such Preferred Stock is being acquired for the Transferor's own account  
without transfer.

Such Preferred Stock is being transferred to the Company.

Such Preferred Stock is being transferred to a qualified institutional  
buyer (as defined in Rule 144A under the Securities Act), in reliance on Rule  
144A.

- - - - -  
\* /Please check applicable box.

Such Preferred Stock is being transferred in reliance on and in compliance with another exemption from the registration requirements of the Securities Act (and based on an Opinion of Counsel if the Company so requests).

[INSERT NAME OF TRANSFEROR]

by

Date: -----

CERTIFICATE OF DESIGNATION  
OF  
5% CUMULATIVE CONVERTIBLE PREFERRED STOCK  
OF  
CHESAPEAKE ENERGY CORPORATION

Pursuant to Section 1032(G) of the Oklahoma General Corporation Act

CHESAPEAKE ENERGY CORPORATION, an Oklahoma corporation (the "Company"), does hereby certify that the following resolution was duly adopted by action of the Board of Directors of the Company, with the provisions thereof fixing the number of shares of the series and the dividend rate being set by action of the Board of Directors of the Company:

RESOLVED that pursuant to the authority expressly granted to and vested in the Board of Directors of the Company by the provisions of Article IV, Section 1 of the Certificate of Incorporation of the Company, as amended from time to time (the "Certificate of Incorporation"), and pursuant to Section 1032(G) of the Oklahoma General Corporation Act, the Board of Directors hereby creates a series of preferred stock of the Company and hereby states that the voting powers, designations, preferences and relative, participating, optional or other special rights of which, and qualifications, limitations or restrictions thereof (in addition to the provisions set forth in the Certificate of Incorporation which are applicable to the preferred stock of all classes and series), shall be as follows:

1. Designation and Amount; Ranking. (a) There shall be created from the 10,000,000 shares of preferred stock, par value \$0.01 per share, of the Company authorized to be issued pursuant to the Certificate of Incorporation, a series of preferred stock, designated as the "5% Cumulative Convertible Preferred Stock," par value \$0.01 per share (the "Preferred Stock"), and the number of shares of such series shall be 1,725,000. Such number of shares may be decreased by resolution of the Board of Directors; provided that no decrease shall reduce the number of shares of Preferred Stock to a number less than that of the shares of Preferred Stock then outstanding plus the number of shares issuable upon exercise of options or rights then outstanding.

(b) The Preferred Stock will, with respect to both dividend rights and rights upon the liquidation, winding-up or dissolution of the Company, rank on a parity with the 6.75% Preferred Stock and the 6.00% Preferred Stock, and the Preferred Stock will, with respect to dividend rights or rights upon the liquidation, winding-up or dissolution of the Company rank (i) senior to all Junior Stock, (ii) on a parity with all other Parity Stock and (iii) junior to all Senior Stock.

2. Definitions. As used herein, the following terms shall have the following meanings:

(a) "Accrued Dividends" shall mean, with respect to any share of Preferred Stock, as of any date, the accrued and unpaid dividends on such share from and including the most recent Dividend Payment Date (or the Issue Date, if such date is prior to the first Dividend Payment Date) to but not including such date.



(b) “Accumulated Dividends” shall mean, with respect to any share of Preferred Stock, as of any date, the aggregate accumulated and unpaid dividends on such share from the Issue Date until the most recent Dividend Payment Date on or prior to such date. There shall be no Accumulated Dividends with respect to any share of Preferred Stock prior to the first Dividend Payment Date.

(c) “Affiliate” shall have the meaning ascribed to it, on the date hereof, under Rule 405 of the Securities Act of 1933, as amended.

(d) “Board of Directors” shall mean the Board of Directors of the Company or, with respect to any action to be taken by the Board of Directors, any committee of the Board of Directors duly authorized to take such action.

(e) “Business Day” shall mean any day other than a Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law or executive order to close.

(f) “Change of Control” shall mean any of the following events: (i) the sale, lease or transfer, in one or a series of related transactions, of all or substantially all of the Company’s assets (determined on a consolidated basis) to any Person or group (as such term is used in Section 13(d)(3) of the Exchange Act), other than to Permitted Holders; (ii) the adoption of a plan the consummation of which would result in the liquidation or dissolution of the Company; (iii) the acquisition, directly or indirectly, by any Person or group (as such term is used in Section 13(d)(3) of the Exchange Act), other than Permitted Holders, of beneficial ownership (as defined in Rule 13d-3 under the Exchange Act) of more than 50% of the aggregate voting power of the Voting Stock of the Company; provided, however, that the Permitted Holders beneficially own (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), directly or indirectly, in the aggregate a lesser percentage of the total voting power of the Voting Stock of the Company than such other Person or group and do not have the right or ability by voting power, contract or otherwise to elect or designate for election a majority of the Board of Directors (for the purposes of this definition, such other Person or group shall be deemed to beneficially own any Voting Stock of a specified corporation held by a parent corporation, if such other Person or group is the beneficial owner (as defined above), directly or indirectly, of more than 35% of the voting power of the Voting Stock of such parent corporation and the Permitted Holders beneficially own (as defined in this proviso), directly or indirectly, in the aggregate a lesser percentage of the voting power of the Voting Stock of such parent corporation and do not have the right or ability by voting power, contract or otherwise to elect or designate for election a majority of the Board of Directors of such parent corporation); or (iv) during any period of two consecutive years, individuals who at the beginning of such period comprised the Board of Directors of the Company (together with any new directors whose election by such Board of Directors or whose nomination for election by the shareholders of the Company was approved by a vote of 66 2/3% of the directors of the Company then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the Board of Directors of the Company then in office. For purposes of this definition of “Change of Control,” the term “Permitted Holders” means Aubrey K. McClendon and Tom L. Ward and their respective Affiliates.

(g) "Change of Control Date" shall mean the date on which the Change of Control event occurs.

(h) "Conversion Price" shall mean \$16.4037, subject to adjustment as set forth in Section 7(c).

(i) "Common Stock" shall mean the common stock, par value \$0.01 per share, of the Company, or any other class of stock resulting from successive changes or reclassifications of such common stock consisting solely of changes in par value, or from par value to no par value, or as a result of a subdivision, combination, or merger, consolidation or similar transaction in which the Company is a constituent corporation.

(j) "DTC" or "Depository" shall mean The Depository Trust Company.

(k) "Dividend Payment Date" shall mean February 15, May 15, August 15 and November 15 of each year, commencing February 15, 2004.

(l) "Dividend Record Date" shall mean February 1, May 1, August 1 and November 1 of each year.

(m) "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

(n) "Holder" or "holder" shall mean a holder of record of the Preferred Stock.

(o) "Issue Date" shall mean November 18, 2003, the original date of issuance of the Preferred Stock.

(p) "Junior Stock" shall mean all classes of common stock of the Company and the Series A Junior Participating Convertible Preferred Stock and each other class of capital stock or series of preferred stock established after the Issue Date, by the Board of Directors, the terms of which do not expressly provide that such class or series ranks senior to or on parity with the Preferred Stock as to dividend rights or rights upon the liquidation, winding-up or dissolution of the Company.

(q) "Liquidation Preference" shall mean, with respect to each share of Preferred Stock, \$100.00.

(r) "Market Value" shall mean the average closing price of the Common Stock for a five consecutive trading day period on the NYSE (or such other national securities exchange or automated quotation system on which the Common Stock is then listed or authorized for quotation or, if the Common Stock is not so listed or authorized for quotation, an amount determined in good faith by the Board of Directors to be the fair value of the Common Stock).

(s) "NYSE" shall mean the New York Stock Exchange, Inc.

- (t) “Officer” shall mean the Chairman of the Board of Directors, the President, any Vice President, the Treasurer, the Secretary or any Assistant Secretary of the Company.
- (u) “Officers’ Certificate” shall mean a certificate signed by two Officers.
- (v) “Opinion of Counsel” shall mean a written opinion from legal counsel who is acceptable to the Transfer Agent. The counsel may be an employee of or counsel to the Company or the Transfer Agent.
- (w) “Parity Stock” shall mean the 6.00% Preferred Stock, the 6.75% Preferred Stock and any class of capital stock or series of preferred stock established after the Issue Date by the Board of Directors, the terms of which expressly provide that such class or series will rank on parity with the Preferred Stock as to dividend rights or rights upon the liquidation, winding-up or dissolution of the Company.
- (x) “Person” shall mean any individual, corporation, general partnership, limited partnership, limited liability partnership, joint venture, association, joint-stock company, trust, limited liability company, unincorporated organization or government or any agency or political subdivision thereof.
- (y) “SEC” or “Commission” shall mean the Securities and Exchange Commission.
- (z) “Securities Act” shall mean the Securities Act of 1933, as amended.
- (aa) “Senior Stock” shall mean each class of capital stock or series of preferred stock established after the Issue Date by the Board of Directors, the terms of which expressly provide that such class or series will rank senior to the Preferred Stock as to dividend rights or rights upon the liquidation, winding-up or dissolution of the Company.
- (bb) “Shelf Registration Statement” shall mean a shelf registration statement filed with the SEC to cover resales of any Transfer Restricted Securities by holders thereof.
- (cc) “6.00% Preferred Stock” shall mean the series of preferred stock, par value \$0.01 per share, of the Company designated as the “6.00% Cumulative Convertible Preferred Stock.”
- (dd) “6.75% Preferred Stock” shall mean the series of preferred stock, par value \$0.01 per share, of the Company designated as the “6.75% Cumulative Convertible Preferred Stock.”
- (ee) “Transfer Agent” shall mean UMB Bank, N.A., the Company’s duly appointed transfer agent, registrar and conversion and dividend disbursing agent for the Preferred Stock. The Company may, in its sole discretion, remove the Transfer Agent with 10 days’ prior notice to the Transfer Agent; provided, that the Company shall appoint a successor Transfer Agent who shall accept such appointment prior to the effectiveness of such removal.

(ff) "Transfer Restricted Securities" shall mean each share of Preferred Stock (or the shares of Common Stock into which such share of Preferred Stock is convertible) until (i) the date on which such security or its predecessor has been effectively registered under the Securities Act and disposed of in accordance therewith or (ii) the date on which such security or predecessor is distributed to the public pursuant to Rule 144 under the Securities Act or is saleable pursuant to Rule 144(k) under the Securities Act.

(gg) "Underwriting Agreement" shall mean that certain Underwriting Agreement with respect to the Preferred Stock, dated November 12, 2003, among the Company and Lehman Brothers Inc., Banc of America Securities LLC and Morgan Stanley & Co. Incorporated, as representatives of the several underwriters named therein.

(hh) "Voting Rights Triggering Event" shall mean the failure of the Company to pay dividends on the Preferred Stock with respect to six or more quarterly periods (whether or not consecutive).

(ii) "Voting Stock" shall mean, with respect to any Person, securities of any class or classes of Capital Stock in such Person entitling the holders thereof (whether at all times or only so long as no senior class of stock has voting power by reason of contingency) to vote in the election of members of the Board of Directors or other governing body of such Person. For purposes of this definition, "Capital Stock" shall mean, with respect to any Person, any and all shares, interests, participations or other equivalents (however designated) of corporate stock or partnership interests and any and all warrants, options and rights with respect thereto (whether or not currently exercisable), including each class of common stock and preferred stock of such Person.

### 3. Dividends.

(a) The holders of shares of the outstanding Preferred Stock shall be entitled, when, as and if declared by the Board of Directors out of funds of the Company legally available therefor, to receive cumulative cash dividends at the rate per annum of 5.00% per share on the Liquidation Preference (equivalent to \$5.00 per annum per share), payable quarterly in arrears (the "Dividend Rate"). The Dividend Rate may be increased in the circumstances described in Section 3(b) below. Dividends payable for each full dividend period will be computed by dividing the Dividend Rate by four and shall be payable in arrears on each Dividend Payment Date (commencing May 15, 2004) for the quarterly period ending immediately prior to such Dividend Payment Date, to the holders of record of Preferred Stock at the close of business on the Dividend Record Date applicable to such Dividend Payment Date. Such dividends shall be cumulative from the most recent date as to which dividends shall have been paid or, if no dividends have been paid, from the Issue Date (whether or not in any dividend period or periods there shall be funds of the Company legally available for the payment of such dividends) and shall accrue on a day-to-day basis, whether or not earned or declared, from and after the Issue Date. Dividends payable for any partial dividend period, including the initial partial dividend period ending immediately prior to February 15, 2004, shall be computed on the basis of days elapsed over a 360-day year consisting of twelve 30-day months. Accumulations of dividends on shares of Preferred Stock shall not bear interest.

(b) No dividend will be declared or paid upon, or any sum set apart for the payment of dividends upon, any outstanding share of the Preferred Stock with respect to any dividend period unless all dividends for all preceding dividend periods have been declared and paid or declared and a sufficient sum set apart for the payment of such dividend, upon all outstanding shares of Preferred Stock.

(c) No dividends or other distributions (other than a dividend or distribution payable solely in shares of Parity Stock or Junior Stock (in the case of Parity Stock) or Junior Stock (in the case of Junior Stock) and other than cash paid in lieu of fractional shares) may be declared, made or paid, or set apart for payment upon, any Parity Stock or Junior Stock, nor may any Parity Stock or Junior Stock be redeemed, purchased or otherwise acquired for any consideration (or any money paid to or made available for a sinking fund for the redemption of any Parity Stock or Junior Stock) by or on behalf of the Company (except by conversion into or exchange for shares of Parity Stock or Junior Stock (in the case of Parity Stock) or Junior Stock (in the case of Junior Stock)), unless full Accumulated Dividends shall have been or contemporaneously are declared and paid, or are declared and a sum sufficient for the payment thereof is set apart for such payment, on the Preferred Stock and any Parity Stock for all dividend payment periods terminating on or prior to the date of such declaration, payment, redemption, purchase or acquisition. Notwithstanding the foregoing, if full dividends have not been paid on the Preferred Stock and any Parity Stock, dividends may be declared and paid on the Preferred Stock and such Parity Stock so long as the dividends are declared and paid pro rata so that the amounts of dividends declared per share on the Preferred Stock and such Parity Stock will in all cases bear to each other the same ratio that accumulated and unpaid dividends per share on the shares of Preferred Stock and such other Parity Stock bear to each other.

(d) Holders of shares of Preferred Stock shall not be entitled to any dividends on the Preferred Stock, whether payable in cash, property or stock, in excess of full cumulative dividends. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on the Preferred Stock which may be in arrears.

(e) The holders of shares of Preferred Stock at the close of business on a Dividend Record Date will be entitled to receive the dividend payment on those shares on the next following Dividend Payment Date notwithstanding the subsequent conversion thereof or the Company's default in payment of the dividend due on that Dividend Payment Date. However, shares of Preferred Stock surrendered for conversion during the period between the close of business on any Dividend Record Date and the close of business on the Business Day immediately preceding the applicable Dividend Payment Date must be accompanied by payment of an amount equal to the dividend payable on the shares on that Dividend Payment Date. A holder of shares of Preferred Stock on a Dividend Record Date who (or whose transferee) tenders any shares for conversion on the corresponding Dividend Payment Date will receive the dividend payable by the Company on the Preferred Stock on that date, and the converting holder need not include payment in the amount of such dividend upon surrender of shares of Preferred Stock for conversion. Except as provided above with respect to a voluntary conversion pursuant to Section 7, the Company shall make no payment or allowance for unpaid dividends, whether or not in arrears, on converted shares or for dividends on the shares of Common Stock issued upon conversion.

#### 4. Change of Control.

(a) Upon the occurrence of a Change of Control, each holder of Preferred Stock shall, in the event that the Market Value for the period ending on the Change of Control Date is less than the Conversion Price, have a one-time option (the "Change of Control Option") to convert all of such holder's outstanding shares of Preferred Stock into fully paid and nonassessable shares of Common Stock at an adjusted Conversion Price equal to the greater of (i) the Market Value for the period ending on the Change of Control Date and (ii) \$7.9533. The Change of Control Option must be exercised, if at all, during the period of not less than 30 days nor more than 60 days commencing on the third Business Day after notice of a Change in Control has been given by the Company in accordance with Section 4(b). In lieu of issuing the shares of Common Stock issuable upon conversion in the event of a Change of Control, the Company may, at its option, make a cash payment equal to the Market Value for each share of such Common Stock otherwise issuable determined for the period ending on the Change of Control Date. Notwithstanding the foregoing, upon the occurrence of a Change of Control in which (i) each holder of Common Stock receives consideration consisting solely of common stock of the successor, acquiror or other third party (and cash paid in lieu of fractional shares) that is listed on a national securities exchange or quoted on the NASDAQ National Market and (ii) all the Common Stock has been exchanged for, converted into or acquired for common stock of the successor, acquiror or other third party (and cash in lieu of fractional shares), and the Preferred Stock becomes convertible solely into such common stock, the Conversion Price will not be adjusted as described in this Section 4(a).

(b) In the event of a Change of Control (other than a Change of Control described in the last sentence of Section 4(a)), notice of such Change of Control shall be given, within five Business Days of the Change of Control Date, by the Company by first-class mail to each record holder of shares of Preferred Stock, at such holder's address as the same appears on the books of the Company. Each such notice shall state (i) that a Change of Control has occurred; (ii) the last day on which the Change of Control Option may be exercised (the "Expiration Date") pursuant to the terms hereof; (iii) the name and address of the Transfer Agent; and (iv) the procedures that holders must follow to exercise the Change of Control Option.

(c) On or before the Expiration Date, each holder of shares of Preferred Stock wishing to exercise the Change of Control Option shall surrender the certificate or certificates representing the shares of Preferred Stock to be converted, in the manner and at the place designated in the notice described in Section 4(b), and on such date the cash or shares of Common Stock due to such holder shall be delivered to the Person whose name appears on such certificate or certificates as the owner thereof and the shares represented by each surrendered certificate shall be returned to authorized but unissued shares. Upon surrender (in accordance with the notice described in Section 4(b)) of the certificate or certificates representing any shares to be so converted (properly endorsed or assigned for transfer, if the Company shall so require and the notice shall so state), such shares shall be converted by the Company at the adjusted Conversion Price, if applicable, as described in Section 4(a).

(d) The rights of holders of Preferred Stock pursuant to this Section 4 are in addition to, and not in lieu of, the rights of holders of Preferred Stock provided for in Section 7 hereof.

5. Voting.

(a) The shares of Preferred Stock shall have no voting rights except as set forth below or as otherwise required by Oklahoma law from time to time:

(i) If and whenever at any time or times a Voting Rights Triggering Event occurs, then the holders of shares of Preferred Stock, voting as a single class with any other preferred stock or preference securities having similar voting rights that are exercisable, including the 6.00% Preferred Stock and the 6.75% Preferred Stock (the "Voting Rights Class"), will be entitled at the next regular or special meeting of stockholders of the Company to elect two additional directors of the Company. Upon the election of any such additional directors, the number of directors that comprise the Board of Directors shall be increased by such number of additional directors.

(ii) Such voting rights may be exercised at a special meeting of the holders of the shares of the Voting Rights Class, called as hereinafter provided, or at any annual meeting of stockholders held for the purpose of electing directors, and thereafter at each such annual meeting until such time as all dividends in arrears on the shares of Preferred Stock shall have been paid in full, at which time or times such voting rights and the term of the directors elected pursuant to Section 5(a)(i) shall terminate.

(iii) At any time when such voting rights shall have vested in holders of shares of the Voting Rights Class, an Officer of the Company may call, and, upon written request of the record holders of shares representing at least twenty-five percent (25%) of the voting power of the shares then outstanding of the Voting Rights Class, addressed to the Secretary of the Company, shall call a special meeting of the holders of shares of the Voting Rights Class. Such meeting shall be held at the earliest practicable date upon the notice required for annual meetings of stockholders at the place for holding annual meetings of stockholders of the Company, or, if none, at a place designated by the Board of Directors. Notwithstanding the provisions of this Section 5(a)(iii), no such special meeting shall be called during a period within the 60 days immediately preceding the date fixed for the next annual meeting of stockholders in which such case, the election of directors pursuant to Section 5(a)(i) shall be held at such annual meeting of stockholders.

(iv) At any meeting held for the purpose of electing directors at which the holders of the Voting Rights Class shall have the right to elect directors as provided herein, the presence in person or by proxy of the holders of shares representing more than fifty percent (50%) in voting power of the then outstanding shares of the Voting Rights Class shall be required and shall be sufficient to constitute a quorum of such class for the election of directors by such class. The affirmative vote of the holders of shares of Preferred Stock constituting a majority of the shares of Preferred Stock present at such meeting, in person or by proxy, shall be sufficient to elect any such director.

(v) Any director elected pursuant to the voting rights created under this Section 5(a) shall hold office until the next annual meeting of stockholders (unless such term has previously terminated pursuant to Section 5(a)(ii) ) and any vacancy in respect of any such director shall be filled only by vote of the remaining director so elected by holders of the Voting Rights Class, or if there be no such remaining director, by the holders of shares of the Voting Rights Class at a special meeting called in accordance with the procedures set forth in this Section 5, or, if no such special meeting is called, at the next annual meeting of stockholders. Upon any termination of such voting rights, the term of office of all directors elected pursuant to this Section 5 shall terminate.

(vi) So long as any shares of Preferred Stock remain outstanding, unless a greater percentage shall then be required by law, the Company shall not, without the affirmative vote or consent of the holders of at least 66 2/3% of the outstanding Preferred Stock voting or consenting, as the case may be, separately as one class, (i) create, authorize or issue any class or series of Senior Stock (or any security convertible into Senior Stock) or (ii) amend the Certificate of Incorporation so as to affect adversely the specified rights, preferences, privileges or voting rights of holders of shares of Preferred Stock.

(vii) In exercising the voting rights set forth in this Section 5(a), each share of Preferred Stock shall be entitled to one vote.

(b) The Company may authorize, increase the authorized amount of, or issue any class or series of Parity Stock or Junior Stock, without the consent of the holders of Preferred Stock, and in taking such actions the Company shall not be deemed to have affected adversely the rights, preferences, privileges or voting rights of holders of shares of Preferred Stock.

#### 6. Liquidation Rights.

(a) In the event of any liquidation, winding-up or dissolution of the Company, whether voluntary or involuntary, each holder of shares of Preferred Stock shall be entitled to receive and to be paid out of the assets of the Company available for distribution to its stockholders the Liquidation Preference plus Accumulated Dividends and Accrued Dividends thereon in preference to the holders of, and before any payment or distribution is made on, any Junior Stock, including, without limitation, on any Common Stock.

(b) Neither the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all the assets or business of the Company (other than in connection with the liquidation, winding-up or dissolution of its business) nor the merger or consolidation of the Company into or with any other Person shall be deemed to be a liquidation, winding-up or dissolution, voluntary or involuntary, for the purposes of this Section 6.

(c) After the payment to the holders of the shares of Preferred Stock of full preferential amounts provided for in this Section 6, the holders of Preferred Stock as such shall have no right or claim to any of the remaining assets of the Company.

(d) In the event the assets of the Company available for distribution to the holders of shares of Preferred Stock upon any liquidation, winding-up or dissolution of the



Company, whether voluntary or involuntary, shall be insufficient to pay in full all amounts to which such holders are entitled pursuant to Section 6(a), no such distribution shall be made on account of any shares of Parity Stock upon such liquidation, dissolution or winding-up unless proportionate distributable amounts shall be paid on account of the shares of Preferred Stock, ratably, in proportion to the full distributable amounts for which holders of all Preferred Stock and of any Parity Stock are entitled upon such liquidation, winding-up or dissolution.

7. Conversion.

(a) Each holder of Preferred Stock shall have the right, at its option, exercisable at any time and from time to time from the Issue Date to convert, subject to the terms and provisions of this Section 7, any or all of such holder's shares of Preferred Stock. In such case, the shares of Preferred Stock shall be converted into such whole number of fully paid and nonassessable shares of Common Stock as is equal, subject to Section 7(g), to the product of the number of shares of Preferred Stock being so converted multiplied by the quotient of (i) the Liquidation Preference divided by (ii) the Conversion Price (as defined below) then in effect. The Conversion Price initially shall be \$16.4037, subject to adjustment as set forth in Section 7(c).

The conversion right of a holder of Preferred Stock shall be exercised by the holder by the surrender to the Company of the certificates representing shares to be converted at any time during usual business hours at its principal place of business or the offices of its duly appointed Transfer Agent to be maintained by it, accompanied by written notice to the Company in the form of Exhibit B that the holder elects to convert all or a portion of the shares of Preferred Stock represented by such certificate and specifying the name or names (with address) in which a certificate or certificates for shares of Common Stock are to be issued and (if so required by the Company or its duly appointed Transfer Agent) by a written instrument or instruments of transfer in form reasonably satisfactory to the Company or its duly appointed Transfer Agent duly executed by the holder or its duly authorized legal representative and transfer tax stamps or funds therefor, if required pursuant to Section 7(i). Immediately prior to the close of business on the date of receipt by the Company or its duly appointed Transfer Agent of notice of conversion of shares of Preferred Stock, each converting holder of Preferred Stock shall be deemed to be the holder of record of Common Stock issuable upon conversion of such holder's Preferred Stock notwithstanding that the share register of the Company shall then be closed or that certificates representing such Common Stock shall not then be actually delivered to such holder. On the date of any conversion, all rights with respect to the shares of Preferred Stock so converted, including the rights, if any, to receive notices, will terminate, except only the rights of holders thereof to (i) receive certificates for the number of whole shares of Common Stock into which such shares of Preferred Stock have been converted and cash, in lieu of any fractional shares as provided in Section 7(f); and (ii) exercise the rights to which they are entitled as holders of Common Stock.

(b) If the last day for the exercise of the conversion right shall not be a Business Day, then such conversion right may be exercised on the next preceding Business Day.

(c) The Conversion Price shall be subject to adjustment as follows:

(i) In case the Company shall at any time or from time to time (A) pay a dividend (or other distribution) payable in shares of Common Stock on any class of capital stock (which, for purposes of this Section 7(c) shall include, without limitation, any dividends or distributions in the form of options, warrants or other rights to acquire capital stock) of the Company (other than the issuance of shares of Common Stock in connection with the conversion of preferred stock); (B) subdivide the outstanding shares of Common Stock into a larger number of shares; (C) combine the outstanding shares of Common Stock into a smaller number of shares; (D) issue any shares of its capital stock in a reclassification of the Common Stock; or (E) pay a dividend or make a distribution to all holders of shares of Common Stock (other than a dividend or distribution subject to Section 7(c)(ii)) pursuant to a stockholder rights plan, "poison pill" or similar arrangement and excluding dividends payable on the Preferred Stock then, and in each such case, the Conversion Price in effect immediately prior to such event shall be adjusted (and any other appropriate actions shall be taken by the Company) so that the holder of any share of Preferred Stock thereafter surrendered for conversion shall be entitled to receive the number of shares of Common Stock that such holder would have owned or would have been entitled to receive upon or by reason of any of the events described above, had such share of Preferred Stock been converted into shares of Common Stock immediately prior to the occurrence of such event. An adjustment made pursuant to this Section 7(c)(i) shall become effective retroactively (x) in the case of any such dividend or distribution, to the day immediately following the close of business on the record date for the determination of holders of Common Stock entitled to receive such dividend or distribution or (y) in the case of any such subdivision, combination or reclassification, to the close of business on the day upon which such corporate action becomes effective.

(ii) In case the Company shall at any time or from time to time issue to all holders of its Common Stock rights, options or warrants entitling the holders thereof to subscribe for or purchase shares of Common Stock (or securities convertible into or exchangeable for shares of Common Stock) at a price per share less than the Market Value for the period ending on the date of issuance (treating the price per share of any security convertible or exchangeable or exercisable into Common Stock as equal to (A) the sum of the price paid to acquire such security convertible, exchangeable or exercisable into Common Stock plus any additional consideration payable (without regard to any anti-dilution adjustments) upon the conversion, exchange or exercise of such security into Common Stock divided by (B) the number of shares of Common Stock into which such convertible, exchangeable or exercisable security is initially convertible, exchangeable or exercisable), other than (i) issuances of such rights, options or warrants if the holder of Preferred Stock would be entitled to receive such rights, options or warrants upon conversion at any time of shares of Preferred Stock into Common Stock and (ii) issuances that are subject to certain triggering events (until such time as such triggering events occur), then, and in each such case, the Conversion Price then in effect shall be adjusted by dividing the Conversion Price in effect on the day immediately prior to the record date of such issuance by a fraction (y) the numerator of which shall be the sum of the number of shares of Common Stock outstanding on such record date plus the number of additional shares of Common Stock issued or to be issued upon or as a result of the issuance of such rights, options or warrants (or the maximum number into or for which such convertible or exchangeable securities initially may convert or exchange or for which such options, warrants or other rights initially may be exercised) and (z) the denominator of which shall be the sum of the number of shares of Common Stock outstanding on such record date plus the number of shares

of Common Stock which the aggregate consideration for the total number of such additional shares of Common Stock so issued (or into or for which such convertible or exchangeable securities may convert or exchange or for which such options, warrants or other rights may be exercised plus the aggregate amount of any additional consideration initially payable upon the conversion, exchange or exercise of such security) would purchase at the Market Value for the period ending on the date of conversion; provided, that if the Company distributes rights or warrants (other than those referred to above in this subparagraph (c)(ii)) pro rata to the holders of Common Stock, so long as such rights or warrants have not expired or been redeemed by the Company, (y) the holder of any Preferred Stock surrendered for conversion shall be entitled to receive upon such conversion, in addition to the shares of Common Stock then issuable upon such conversion (the "Conversion Shares"), a number of rights or warrants to be determined as follows: (i) if such conversion occurs on or prior to the date for the distribution to the holders of rights or warrants of separate certificates evidencing such rights or warrants (the "Distribution Date"), the same number of rights or warrants to which a holder of a number of shares of Common Stock equal to the number of Conversion Shares is entitled at the time of such conversion in accordance with the terms and provisions applicable to the rights or warrants and (ii) if such conversion occurs after the Distribution Date, the same number of rights or warrants to which a holder of the number of shares of Common Stock into which such Preferred Stock was convertible immediately prior to such Distribution Date would have been entitled on such Distribution Date had such Preferred Stock been converted immediately prior to such Distribution Date in accordance with the terms and provisions applicable to the rights and warrants and (z) the Conversion Price shall not be subject to adjustment on account of any declaration, distribution or exercise of such rights or warrants.

(iii) If the Company shall at any time make a distribution, by dividend or otherwise, to all holders of shares of its Common Stock consisting exclusively of cash (excluding any cash portion of distributions referred to in clause (E) of paragraph (c)(i) above and cash distributed upon a merger or consolidation to which paragraph (g) below applies) in an amount per share of Common Stock that, when combined with the per share amounts of all other all-cash distributions to all holders of shares of its Common Stock made within the 90-day period ending on the record date for the distribution giving rise to an adjustment pursuant to this Section 7(c)(iii), exceeds \$0.05 per share of Common Stock (the "Distribution Threshold Amount"), then the Conversion Price will be adjusted by multiplying:

(1) the Conversion Price in effect immediately prior to the close of business on the record date fixed for the determination of holders of Common Stock entitled to receive such distribution by

(2) a fraction, the numerator of which will be the Market Value on the fourth trading day on the NYSE prior to such record date minus the amount of cash per share of Common Stock so distributed in excess of the Dividend Threshold Amount for which an adjustment has not otherwise been made pursuant to this Section 7(c)(iii) and the denominator of which will be the Market Value on the fourth trading day on the NYSE prior to such record date.

Subject to Section 7(d), such adjustment shall become effective immediately after the record date for the determination of holders of Common Stock entitled to receive the distribution giving rise to an adjustment pursuant to this Section 7(c)(iii). The Dividend

Threshold Amount is subject to adjustment under the same circumstances under which the Conversion Price is subject to adjustment pursuant to Section 7(c)(i) or Section 7(c)(ii).

(iv) In the case the Company at any time or from time to time shall take any action affecting its Common Stock (it being understood that the issuance or sale of shares of Common Stock (or securities convertible into or exchangeable for shares of Common Stock, or any options, warrants or other rights to acquire shares of Common Stock) to any Person at a price per share less than the Conversion Price then in effect shall not be deemed such an action), other than an action described in any of Section 7(c)(i) through Section 7(c)(iii), inclusive, or Section 7(g), then the Conversion Price shall be adjusted in such manner and at such time as the Board of Directors of the Company in good faith determines to be equitable in the circumstances (such determination to be evidenced in a resolution, a certified copy of which shall be mailed to the holders of the Preferred Stock).

(v) Notwithstanding anything herein to the contrary, no adjustment under this Section 7(c) need be made to the Conversion Price unless such adjustment would require an increase or decrease of at least 1% of the Conversion Price then in effect. Any lesser adjustment shall be carried forward and shall be made at the time of and together with the next subsequent adjustment, if any, which, together with any adjustment or adjustments so carried forward, shall amount to an increase or decrease of at least 1% of such Conversion Price.

(vi) The Company reserves the right to make such reductions in the Conversion Price in addition to those required in the foregoing provisions as it considers advisable in order that any event treated for Federal income tax purposes as a dividend of stock or stock rights will not be taxable to the recipients. In the event the Company elects to make such a reduction in the Conversion Price, the Company will comply with the requirements of Rule 14e-1 under the Exchange Act, and any other securities laws and regulations thereunder if and to the extent that such laws and regulations are applicable in connection with the reduction of the Conversion Price.

(d) If the Company shall take a record of the holders of its Common Stock for the purpose of entitling them to receive a dividend or other distribution, and shall thereafter (and before the dividend or distribution has been paid or delivered to stockholders) legally abandon its plan to pay or deliver such dividend or distribution, then thereafter no adjustment in the Conversion Price then in effect shall be required by reason of the taking of such record.

(e) Upon any increase or decrease in the Conversion Price, then, and in each such case, the Company promptly shall deliver to each holder of Preferred Stock a certificate signed by an authorized officer of the Company, setting forth in reasonable detail the event requiring the adjustment and the method by which such adjustment was calculated and specifying the increased or decreased Conversion Price then in effect following such adjustment.

(f) No fractional shares or securities representing fractional shares of Common Stock shall be issued upon the conversion of any shares of Preferred Stock, whether voluntary or mandatory. If more than one share of Preferred Stock shall be surrendered for conversion at one time by the same holder, the number of full shares of Common Stock issuable upon conversion thereof shall be computed on the basis of the aggregate Liquidation Preference

of the shares of Preferred Stock so surrendered. If the conversion of any share or shares of Preferred Stock results in a fraction, an amount equal to such fraction multiplied by the last reported sale price of the Common Stock on the NYSE (or on such other national securities exchange or automated quotation system on which the Common Stock is then listed for trading or authorized for quotation or, if the Common Stock is not then so listed or authorized for quotation, an amount determined in good faith by the Board of Directors to be the fair value of the Common Stock) at the close of business on the trading day next preceding the day of conversion shall be paid to such holder in cash by the Company.

(g) In the event of any reclassification of outstanding shares of Common Stock (other than a change in par value, or from par value to no par value, or from no par value to par value), or in the event of any consolidation or merger of the Company with or into another Person or any merger of another Person with or into the Company (other than a consolidation or merger in which the Company is the resulting or surviving Person and which does not result in any reclassification or change of outstanding Common Stock), or in the event of any sale or other disposition to another Person of all or substantially all of the assets of the Company (computed on a consolidated basis) (any of the foregoing, a "Transaction"), each share of Preferred Stock then outstanding shall, without the consent of any holder of Preferred Stock, become convertible at any time, at the option of the holder thereof, only into the kind and amount of securities (of the Company or another issuer), cash and other property receivable upon such Transaction by a holder of the number of shares of Common Stock into which such share of Preferred Stock could have been converted immediately prior to such Transaction, after giving effect to any adjustment event. The provisions of this Section 7(g) and any equivalent thereof in any such securities similarly shall apply to successive Transactions. The provisions of this Section 7(g) shall be the sole right of holders of Preferred Stock in connection with any Transaction and such holders shall have no separate vote thereon.

(h) The Company shall at all times reserve and keep available for issuance upon the conversion of the Preferred Stock such number of its authorized but unissued shares of Common Stock as will from time to time be sufficient to permit the conversion of all outstanding shares of Preferred Stock, and shall take all action required to increase the authorized number of shares of Common Stock if at any time there shall be insufficient unissued shares of Common Stock to permit such reservation or to permit the conversion of all outstanding shares of Preferred Stock.

(i) The issuance or delivery of certificates for Common Stock upon the conversion of shares of Preferred Stock shall be made without charge to the converting holder of shares of Preferred Stock for such certificates or for any tax in respect of the issuance or delivery of such certificates or the securities represented thereby, and such certificates shall be issued or delivered in the respective names of, or in such names as may be directed by, the holders of the shares of Preferred Stock converted; provided, however, that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any such certificate in a name other than that of the holder of the shares of Preferred Stock converted, and the Company shall not be required to issue or deliver such certificate unless or until the Person or Persons requesting the issuance or delivery thereof shall have paid to the Company the amount of such tax or shall have established to the reasonable satisfaction of the Company that such tax has been paid.

8. Mandatory Conversion.

(a) At any time on or after November 18, 2006, the Company shall have the right, at its option, to cause the Preferred Stock, in whole but not in part, to be automatically converted into that number of whole shares of Common Stock for each share of Preferred Stock equal to the quotient of (i) the Liquidation Preference divided by (ii) the Conversion Price then in effect, with any resulting fractional shares of Common Stock to be settled in accordance with Section 7(f). The Company may exercise its right to cause a mandatory conversion pursuant to this Section 8(a) only if the closing price of the Common Stock equals or exceeds 130% of the Conversion Price then in effect for at least 20 trading days in any consecutive 30-day trading period on the NYSE (or such other national securities exchange or automated quotation system on which the Common Stock is then listed or authorized for quotation), including the last trading day of such 30-day period, ending on the trading day prior to the Company's issuance of a press release announcing the mandatory conversion as described in Section 8(b).

(b) To exercise the mandatory conversion right described in Section 8(a), the Company must issue a press release for publication on the Dow Jones News Service prior to the opening of business on the first trading day following any date on which the conditions described in Section 8(a) are met, announcing such a mandatory conversion. The Company shall also give notice by mail or by publication (with subsequent prompt notice by mail) to the holders of Preferred Stock (not more than four Business Days after the date of the press release) of the mandatory conversion announcing the Company's intention to convert the Preferred Stock. The conversion date will be a date selected by the Company (the "Mandatory Conversion Date") and will be no more than five days after the date on which the Company issues the press release described in this Section 8(b).

(c) In addition to any information required by applicable law or regulation, the press release and notice of a mandatory conversion described in Section 8(b) shall state, as appropriate: (i) the Mandatory Conversion Date; (ii) the number of shares of Common Stock to be issued upon conversion of each share of Preferred Stock; (iii) the number of shares of Preferred Stock to be converted; and (iv) that dividends on the Preferred Stock to be converted will cease to accrue on the Mandatory Conversion Date.

(d) On and after the Mandatory Conversion Date, dividends will cease to accrue on the Preferred Stock called for a mandatory conversion pursuant to Section 8(a) and all rights of holders of such Preferred Stock will terminate except for the right to receive the whole shares of Common Stock issuable upon conversion thereof and cash, in lieu of any fractional shares of Common Stock in accordance with Section 7(f). The dividend payment with respect to the Preferred Stock called for a mandatory conversion pursuant to Section 8(a) on a date during the period between the close of business on any Dividend Record Date to the close of business on the corresponding Dividend Payment Date will be payable on such Dividend Payment Date to the record holder of such share on such Dividend Record Date if such share has been converted after such Dividend Record Date and prior to such Dividend Payment Date. Except as provided in the immediately preceding sentence with respect to a mandatory conversion pursuant to Section 8(a), no payment or adjustment will be made upon conversion of Preferred Stock for Accrued Dividends or for dividends with respect to the Common Stock issued upon such conversion.

(e) The Company may not authorize, issue a press release or give notice of any mandatory conversion pursuant to Section 8(a) unless, prior to giving the conversion notice, all Accumulated Dividends on the Preferred Stock for periods ended prior to the date of such conversion notice shall have been paid in cash.

(f) In addition to the mandatory conversion right described in Section 8(a), if there are less than 250,000 shares of Preferred Stock outstanding, the Company shall have the right, at any time on or after November 18, 2008, at its option, to cause the Preferred Stock to be automatically converted into that number of whole shares of Common Stock equal to the quotient of (i) the Liquidation Preference divided by (ii) the lesser of (A) the Conversion Price then in effect and (B) the Market Value for the period ending on the second trading day immediately prior to the Mandatory Conversion Date, with any resulting fractional shares of Common Stock to be settled in cash in accordance with Section 7(f). The provisions of clauses (b), (c), (d) and (e) of this Section 8 shall apply to any mandatory conversion pursuant to this clause (f); provided that (i) the Mandatory Conversion Date described in Section 8(b) shall not be less than 15 days nor more than 30 days after the date on which the Company issues a press release pursuant to Section 8(b) announcing such mandatory conversion and (ii) the press release and notice of mandatory conversion described in Section 8(c) will not state the number of shares of Common Stock to be issued upon conversion of each share of Preferred Stock.

9. Consolidation, Merger and Sale of Assets.

(a) The Company, without the consent of the holders of any of the outstanding Preferred Stock, may consolidate with or merge into any other Person or convey, transfer or lease all or substantially all its assets to any Person or may permit any Person to consolidate with or merge into, or transfer or lease all or substantially all its properties to, the Company; provided, however, that (a) the successor, transferee or lessee is organized under the laws of the United States or any political subdivision thereof; (b) the shares of Preferred Stock will become shares of such successor, transferee or lessee, having in respect of such successor, transferee or lessee the same powers, preferences and relative participating, optional or other special rights and the qualification, limitations or restrictions thereon, the Preferred Stock had immediately prior to such transaction; and (c) the Company delivers to the Transfer Agent an Officers' Certificate and an Opinion of Counsel stating that such transaction complies with this Certificate of Designation.

(b) Upon any consolidation by the Company with, or merger by the Company into, any other person or any conveyance, transfer or lease of all or substantially all the assets of the Company as described in Section 9(a), the successor resulting from such consolidation or into which the Company is merged or the transferee or lessee to which such conveyance, transfer or lease is made, will succeed to, and be substituted for, and may exercise every right and power of, the Company under the shares of Preferred Stock, and thereafter, except in the case of a lease, the predecessor (if still in existence) will be released from its obligations and covenants with respect to the Preferred Stock.

10. SEC Reports.

Whether or not the Company is required to file reports with the Commission, if any shares of Preferred Stock are outstanding, the Company shall file with the Commission all such reports and other information as it would be required to file with the Commission by Section 13(a) or 15(d) under the Exchange Act. The Company shall supply each holder of Preferred Stock, upon request, without cost to such holder, copies of such reports or other information.

11. Certificates.

(a) *Form and Dating.* The Preferred Stock and the Transfer Agent's certificate of authentication shall be substantially in the form set forth in Exhibit A, which is hereby incorporated in and expressly made a part of this Certificate of Designation. The Preferred Stock certificate may have notations, legends or endorsements required by law, stock exchange rule, agreements to which the Company is subject, if any, or usage (provided that any such notation, legend or endorsement is in a form acceptable to the Company). Each Preferred Stock certificate shall be dated the date of its authentication. The terms of the Preferred Stock certificate set forth in Exhibit A are part of the terms of this Certificate of Designation.

(i) *Global Preferred Stock.* The Preferred Stock shall be issued initially in the form of one or more fully registered global certificates with the global securities legend set forth in Exhibit A hereto (the "Global Preferred Stock"), which shall be deposited on behalf of the purchasers represented thereby with the Transfer Agent, as custodian for DTC (or with such other custodian as DTC may direct), and registered in the name of DTC or a nominee of DTC, duly executed by the Company and authenticated by the Transfer Agent as hereinafter provided. The number of shares of Preferred Stock represented by Global Preferred Stock may from time to time be increased or decreased by adjustments made on the records of the Transfer Agent and DTC or its nominee as hereinafter provided. With respect to shares of Preferred Stock that are not "restricted securities" as defined in Rule 144 on a conversion date, all shares of Common Stock distributed on such conversion date will be freely transferable without restriction under the Securities Act (other than by affiliates), and such shares will be eligible for receipt in global form through the facilities of DTC.

(ii) *Book-Entry Provisions.* In the event Global Preferred Stock is deposited with or on behalf of DTC, the Company shall execute and the Transfer Agent shall authenticate and deliver initially one or more Global Preferred Stock certificates that (a) shall be registered in the name of DTC as depository for such Global Preferred Stock or the nominee of DTC and (b) shall be delivered by the Transfer Agent to DTC or pursuant to DTC's instructions or held by the Transfer Agent as custodian for DTC.

Members of, or participants in, DTC ("Agent Members") shall have no rights under this Certificate of Designation with respect to any Global Preferred Stock held on their behalf by DTC or by the Transfer Agent as the custodian of DTC or under such Global Preferred Stock, and DTC may be treated by the Company, the Transfer Agent and any agent of the Company or the Transfer Agent as the absolute owner of such Global Preferred Stock for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company,



the Transfer Agent or any agent of the Company or the Transfer Agent from giving effect to any written certification, proxy or other authorization furnished by DTC or impair, as between DTC and its Agent Members, the operation of customary practices of DTC governing the exercise of the rights of a holder of a beneficial interest in any Global Preferred Stock.

(iii) *Certificated Preferred Stock; Certificated Common Stock.* Except as provided in this paragraph 11(a) or in paragraph 11(c), owners of beneficial interests in Global Preferred Stock will not be entitled to receive physical delivery of Preferred Stock in fully registered certificated form (“Certificated Preferred Stock”). With respect to shares of Preferred Stock that are “restricted securities” as defined in Rule 144 on a conversion date, all shares of Common Stock issuable on conversion of such shares on such conversion date will be issued in fully registered certificated form (“Certificated Common Stock”). Certificates of Certificated Common Stock will be mailed or made available at the office of the Transfer Agent for the Preferred Stock on or as soon as reasonably practicable after the relevant conversion date to the converting holder.

After a transfer of any Preferred Stock or Certificated Common Stock during the period of the effectiveness of a Shelf Registration Statement with respect to such Preferred Stock or such Certificated Common Stock, all requirements pertaining to legends on such Preferred Stock (including Global Preferred Stock) or Certificated Common Stock will cease to apply, the requirements requiring that any such Certificated Common Stock issued to Holders be issued in certificated form, as the case may, will cease to apply, and Preferred Stock or Common Stock, as the case may be, in global or fully registered certificated form, in either case without legends, will be available to the transferee of the Holder of such Preferred Stock or Certificated Common Stock upon exchange of such transferring Holder’s Preferred Stock or Common Stock or directions to transfer such Holder’s interest in the Global Preferred Stock, as applicable.

(b) *Execution and Authentication.* Two Officers shall sign the Preferred Stock certificate for the Company by manual or facsimile signature.

If an Officer whose signature is on a Preferred Stock certificate no longer holds that office at the time the Transfer Agent authenticates the Preferred Stock certificate, the Preferred Stock certificate shall be valid nevertheless.

A Preferred Stock certificate shall not be valid until an authorized signatory of the Transfer Agent manually signs the certificate of authentication on the Preferred Stock certificate. The signature shall be conclusive evidence that the Preferred Stock certificate has been authenticated under this Certificate of Designation.

The Transfer Agent shall authenticate and deliver certificates for up to 1,725,000 shares of Preferred Stock for original issue upon a written order of the Company signed by two Officers or by an Officer and an Assistant Treasurer of the Company. Such order shall specify the number of shares of Preferred Stock to be authenticated and the date on which the original issue of Preferred Stock is to be authenticated.

The Transfer Agent may appoint an authenticating agent reasonably acceptable to the Company to authenticate the certificates for Preferred Stock. Unless limited by the terms of

such appointment, an authenticating agent may authenticate certificates for Preferred Stock whenever the Transfer Agent may do so. Each reference in this Certificate of Designation to authentication by the Transfer Agent includes authentication by such agent. An authenticating agent has the same rights as the Transfer Agent or agent for service of notices and demands.

(c) *Transfer and Exchange.* (i) Transfer and Exchange of Certificated Preferred Stock. When Certificated Preferred Stock is presented to the Transfer Agent with a request to register the transfer of such Certificated Preferred Stock or to exchange such Certificated Preferred Stock for an equal number of shares of Certificated Preferred Stock, the Transfer Agent shall register the transfer or make the exchange as requested if its reasonable requirements for such transaction are met; provided, however, that the Certificated Preferred Stock surrendered for transfer or exchange:

(1) shall be duly endorsed or accompanied by a written instrument of transfer in form reasonably satisfactory to the Company and the Transfer Agent, duly executed by the Holder thereof or its attorney duly authorized in writing; and

(2) is being transferred or exchanged pursuant to an effective registration statement under the Securities Act or pursuant to clause (i) or (ii) below, and is accompanied by the following additional information and documents, as applicable:

(I) if such Certificated Preferred Stock is being delivered to the Transfer Agent by a Holder for registration in the name of such Holder, without transfer, a certification from such Holder to that effect in substantially the form of Exhibit C hereto; or

(II) if such Certificated Preferred Stock is being transferred to the Company or pursuant to an exemption from registration under the Securities Act, (i) a certification to that effect (in substantially the form of Exhibit C hereto) and (ii) if the Company so requests, an Opinion of Counsel or other evidence reasonably satisfactory to it as to the compliance with the restrictions set forth in the legend set forth in paragraph 11(c) (vii).

(ii) Restrictions on Transfer of Certificated Preferred Stock for a Beneficial Interest in Global Preferred Stock. Certificated Preferred Stock may not be exchanged for a beneficial interest in Global Preferred Stock except upon satisfaction of the requirements set forth below. Upon receipt by the Transfer Agent of Certificated Preferred Stock, duly endorsed or accompanied by appropriate instruments of transfer, in form reasonably satisfactory to the Company and the Transfer Agent, together with written instructions directing the Transfer Agent to make, or to direct DTC to make, an adjustment on its books and records with respect to such Global Preferred Stock to reflect an increase in the number of shares of Preferred Stock represented by the Global Preferred Stock, then the Transfer Agent shall cancel such Certificated Preferred Stock and cause, or direct DTC to cause, in accordance with the standing instructions and procedures existing between DTC and the Transfer Agent, the number

of shares of Preferred Stock represented by the Global Preferred Stock to be increased accordingly. If no Global Preferred Stock is then outstanding, the Company shall issue and the Transfer Agent shall authenticate, upon written order of the Company in the form of an Officers' Certificate, a new Global Preferred Stock representing the appropriate number of shares.

(iii) Transfer and Exchange of Global Preferred Stock. The transfer and exchange of Global Preferred Stock or beneficial interests therein shall be effected through DTC, in accordance with this Certificate of Designation (including applicable restrictions on transfer set forth herein, if any) and the procedures of DTC therefor.

(iv) Transfer of a Beneficial Interest in Global Preferred Stock for a Certificated Preferred Stock.

(1) Any Person having a beneficial interest in Preferred Stock that is being transferred or exchanged pursuant to an effective registration statement under the Securities Act or pursuant to another exemption from registration thereunder may upon request, but only with the consent of the Company, and if accompanied by a certification from such Person to that effect (in substantially the form of Exhibit C hereto), exchange such beneficial interest for Certificated Preferred Stock representing the same number of shares of Preferred Stock. Upon receipt by the Transfer Agent of written instructions or such other form of instructions as is customary for DTC from DTC or its nominee on behalf of any Person having a beneficial interest in Global Preferred Stock and upon receipt by the Transfer Agent of a written order or such other form of instructions as is customary for DTC or the Person designated by DTC as having such a beneficial interest in a Transfer Restricted Security only, then, the Transfer Agent or DTC, at the direction of the Transfer Agent, will cause, in accordance with the standing instructions and procedures existing between DTC and the Transfer Agent, the number of shares of Preferred Stock represented by Global Preferred Stock to be reduced on its books and records and, following such reduction, the Company will execute and the Transfer Agent will authenticate and deliver to the transferee Certificated Preferred Stock.

(2) Certificated Preferred Stock issued in exchange for a beneficial interest in a Global Preferred Stock pursuant to this paragraph 11(c)(iv) shall be registered in such names and in such authorized denominations as DTC, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Transfer Agent. The Transfer Agent shall deliver such Certificated Preferred Stock to the Persons in whose names such Preferred Stock are so registered in accordance with the instructions of DTC.

(v) Restrictions on Transfer and Exchange of Global Preferred Stock.

(1) Notwithstanding any other provisions of this Certificate of Designation (other than the provisions set forth in paragraph 11(c)(vi)), Global Preferred Stock may not be transferred as a whole except by DTC to a nominee of DTC or by a nominee of DTC to DTC or another nominee of DTC or by DTC or any such nominee to a successor depository or a nominee of such successor depository.

(2) In the event that the Global Preferred Stock is exchanged for Preferred Stock in definitive registered form pursuant to paragraph 11(c)(vi) prior to the effectiveness of a Shelf Registration Statement with respect to such securities, such Preferred Stock may be exchanged only in accordance with such procedures as are substantially consistent with the provisions of this paragraph 11(c) (including the certification requirements set forth in the Exhibits to this Certificate of Designation intended to ensure that such transfers comply with applicable exemptions from registration under the Securities Act, as the case may be) and such other procedures as may from time to time be adopted by the Company.

(vi) Authentication of Certificated Preferred Stock. If at any time:

(1) DTC notifies the Company that DTC is unwilling or unable to continue as depository for the Global Preferred Stock and a successor depository for the Global Preferred Stock is not appointed by the Company within 90 days after delivery of such notice;

(2) DTC ceases to be a clearing agency registered under the Exchange Act and a successor depository for the Global Preferred Stock is not appointed by the Company within 90 days; or

(3) the Company, in its sole discretion, notifies the Transfer Agent in writing that it elects to cause the issuance of Certificated Preferred Stock under this Certificate of Designation,

then the Company will execute, and the Transfer Agent, upon receipt of a written order of the Company signed by two Officers or by an Officer and an Assistant Treasurer of the Company requesting the authentication and delivery of Certificated Preferred Stock to the Persons designated by the Company, will authenticate and deliver Certificated Preferred Stock equal to the number of shares of Preferred Stock represented by the Global Preferred Stock, in exchange for such Global Preferred Stock.

(vii) Legend.

(1) Upon any sale or transfer of a Transfer Restricted Security (including any Transfer Restricted Security represented by Global Preferred Stock) pursuant to Rule 144 under the Securities Act or another exemption from registration under the Securities Act or an effective registration statement under the Securities Act:

(I) in the case of any Transfer Restricted Security that is a Certificated Preferred Stock, the Transfer Agent shall permit the Holder thereof to exchange such Transfer Restricted Security for Certificated Preferred Stock that does not bear a restrictive legend and rescind any restriction on the transfer of such Transfer Restricted Security; and

(II) in the case of any Transfer Restricted Security that is represented by a Global Preferred Stock, with the consent of the Company, the Transfer Agent shall permit the Holder thereof to exchange such Transfer Restricted Security for Certificated Preferred Stock that does not bear a restrictive legend and rescind any restriction on the transfer of such Transfer Restricted Security, if the Holder's request for such exchange was made in reliance on Rule 144 or another exemption from registration under the Securities Act and the Holder certifies to that effect in writing to the Transfer Agent (such certification to be in the form set forth in Exhibit C hereto).

(viii) Cancellation or Adjustment of Global Preferred Stock. At such time as all beneficial interests in Global Preferred Stock have either been exchanged for Certificated Preferred Stock, converted or canceled, such Global Preferred Stock shall be returned to DTC for cancellation or retained and canceled by the Transfer Agent. At any time prior to such cancellation, if any beneficial interest in Global Preferred Stock is exchanged for Certificated Preferred Stock, converted or canceled, the number of shares of Preferred Stock represented by such Global Preferred Stock shall be reduced and an adjustment shall be made on the books and records of the Transfer Agent with respect to such Global Preferred Stock, by the Transfer Agent or DTC, to reflect such reduction.

(ix) Obligations with Respect to Transfers and Exchanges of Preferred Stock.

(1) To permit registrations of transfers and exchanges, the Company shall execute and the Transfer Agent shall authenticate Certificated Preferred Stock and Global Preferred Stock as required pursuant to the provisions of this paragraph 11(c).

(2) All Certificated Preferred Stock and Global Preferred Stock issued upon any registration of transfer or exchange of Certificated Preferred Stock or Global Preferred Stock shall be the valid obligations of the Company, entitled to the same benefits under this Certificate of Designation as the Certificated Preferred Stock or Global Preferred Stock surrendered upon such registration of transfer or exchange.

(3) Prior to due presentment for registration of transfer of any shares of Preferred Stock, the Transfer Agent and the Company may deem and treat the Person in whose name such shares of Preferred Stock are registered as the absolute owner of such Preferred Stock and neither the Transfer Agent nor the Company shall be affected by notice to the contrary.

(4) No service charge shall be made to a Holder for any registration of transfer or exchange upon surrender of any Preferred Stock

certificate or Common Stock certificate at the office of the Transfer Agent maintained for that purpose. However, the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Preferred Stock certificates or Common Stock certificates.

(5) Upon any sale or transfer of shares of Preferred Stock (including any Preferred Stock represented by a Global Preferred Stock Certificate) or of Certificated Common Stock pursuant to an effective registration statement under the Securities Act or pursuant to Rule 144 or another exemption from registration under the Securities Act (and based upon an Opinion of Counsel reasonably satisfactory to the Company if it so requests):

(A) in the case of any Certificated Preferred Stock or Certificated Common Stock, the Company and the Transfer Agent shall permit the holder thereof to exchange such Preferred Stock or Certificated Common Stock for Certificated Preferred Stock or Certificated Common Stock, as the case may be, that does not bear a restrictive legend and rescind any restriction on the transfer of such Preferred Stock or Common Stock issuable in respect of the conversion of the Preferred Stock; and

(B) in the case of any Global Preferred Stock, such Preferred Stock shall not be required to bear the legend set forth in paragraph (c) (vii) above but shall continue to be subject to the provisions of paragraph (c)(iv) hereof; provided, however, that with respect to any request for an exchange of Preferred Stock that is represented by Global Preferred Stock for Certificated Preferred Stock that does not bear a restrictive legend in connection with a sale or transfer thereof pursuant to Rule 144 or another exemption from registration under the Securities Act (and based upon an Opinion of Counsel if the Company so requests), the Holder thereof shall certify in writing to the Transfer Agent that such request is being made pursuant to such exemption (such certification to be substantially in the form of Exhibit C hereto).

(x) No Obligation of the Transfer Agent.

(1) The Transfer Agent shall have no responsibility or obligation to any beneficial owner of Global Preferred Stock, a member of, or a participant in DTC or any other Person with respect to the accuracy of the records of DTC or its nominee or of any participant or member thereof, with respect to any ownership interest in the Preferred Stock or with respect to the delivery to any participant, member, beneficial owner or other Person (other than DTC) of any notice or the payment of any amount, under or with respect to such Global Preferred Stock. All notices and communications to be given to the Holders and all payments to be made to Holders under the Preferred Stock shall be given or made only to the Holders (which shall be DTC or its nominee in the case of the Global Preferred Stock). The rights of beneficial owners in any Global Preferred Stock shall be exercised only through DTC subject to the applicable rules and

procedures of DTC. The Transfer Agent may rely and shall be fully protected in relying upon information furnished by DTC with respect to its members, participants and any beneficial owners.

(2) The Transfer Agent shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Certificate of Designation or under applicable law with respect to any transfer of any interest in any Preferred Stock (including any transfers between or among DTC participants, members or beneficial owners in any Global Preferred Stock) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Certificate of Designation, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

(d) *Replacement Certificates.* If a mutilated Preferred Stock certificate is surrendered to the Transfer Agent or if the Holder of a Preferred Stock certificate claims that the Preferred Stock certificate has been lost, destroyed or wrongfully taken, the Company shall issue and the Transfer Agent shall countersign a replacement Preferred Stock certificate if the reasonable requirements of the Transfer Agent and of Section 8-405 of the Uniform Commercial Code as in effect in the State of Oklahoma are met. If required by the Transfer Agent or the Company, such Holder shall furnish an indemnity bond sufficient in the judgment of the Company and the Transfer Agent to protect the Company and the Transfer Agent from any loss which either of them may suffer if a Preferred Stock certificate is replaced. The Company and the Transfer Agent may charge the Holder for their expenses in replacing a Preferred Stock certificate.

(e) *Temporary Certificates.* Until definitive Preferred Stock certificates are ready for delivery, the Company may prepare and the Transfer Agent shall countersign temporary Preferred Stock certificates. Temporary Preferred Stock certificates shall be substantially in the form of definitive Preferred Stock certificates but may have variations that the Company considers appropriate for temporary Preferred Stock certificates. Without unreasonable delay, the Company shall prepare and the Transfer Agent shall countersign definitive Preferred Stock certificates and deliver them in exchange for temporary Preferred Stock certificates.

(f) *Cancellation.* (i) In the event the Company shall purchase or otherwise acquire Certificated Preferred Stock, the same shall thereupon be delivered to the Transfer Agent for cancellation.

(ii) At such time as all beneficial interests in Global Preferred Stock have either been exchanged for Certificated Preferred Stock, converted, repurchased or canceled, such Global Preferred Stock shall thereupon be delivered to the Transfer Agent for cancellation.

(iii) The Transfer Agent and no one else shall cancel and destroy all Preferred Stock certificates surrendered for transfer, exchange, replacement or cancellation and deliver a certificate of such destruction to the Company unless the Company directs the Transfer

Agent to deliver canceled Preferred Stock certificates to the Company. The Company may not issue new Preferred Stock certificates to replace Preferred Stock certificates to the extent they evidence Preferred Stock which the Company has purchased or otherwise acquired.

12. Additional Rights of Holders. [Reserved.]

13. Other Provisions.

(a) With respect to any notice to a holder of shares of Preferred Stock required to be provided hereunder, neither failure to mail such notice, nor any defect therein or in the mailing thereof, to any particular holder shall affect the sufficiency of the notice or the validity of the proceedings referred to in such notice with respect to the other holders or affect the legality or validity of any distribution, rights, warrant, reclassification, consolidation, merger, conveyance, transfer, dissolution, liquidation or winding-up, or the vote upon any such action. Any notice which was mailed in the manner herein provided shall be conclusively presumed to have been duly given whether or not the holder receives the notice.

(b) Shares of Preferred Stock issued and reacquired will be retired and canceled promptly after reacquisition thereof and, upon compliance with the applicable requirements of Oklahoma law, have the status of authorized but unissued shares of preferred stock of the Company undesignated as to series and may with any and all other authorized but unissued shares of preferred stock of the Company be designated or redesignated and issued or reissued, as the case may be, as part of any series of preferred stock of the Corporation, except that any issuance or reissuance of shares of Preferred Stock must be in compliance with this Certificate of Designation.

(c) The shares of Preferred Stock shall be issuable only in whole shares.

(d) All notice periods referred to herein shall commence on the date of the mailing of the applicable notice.

IN WITNESS WHEREOF, the Company has caused this certificate to be signed and attested this 18th day of November, 2003.

CHESAPEAKE ENERGY CORPORATION

By: \_\_\_\_\_

Attest:



## FORM OF PREFERRED STOCK

## FACE OF SECURITY

[UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), NEW YORK, NEW YORK, TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OF PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO., OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC) ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO. HAS AN INTEREST HEREIN.]<sup>1</sup>

[TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE CERTIFICATE OF DESIGNATION REFERRED TO BELOW.]<sup>2</sup>

IN CONNECTION WITH ANY TRANSFER, THE HOLDER WILL DELIVER TO THE TRANSFER AGENT SUCH CERTIFICATES AND OTHER INFORMATION AS SUCH TRANSFER AGENT MAY REASONABLY REQUIRE TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS.

---

<sup>1</sup> Subject to removal if not a global security.

<sup>2</sup> CUSIP Number 165167 80 0, if not a Transfer Restricted Security.

Certificate Number

Number of Shares of  
Convertible Preferred Stock  
[ ]

[ ]

CUSIP NO.: 165167 \_\_\_\_\_

5% Cumulative Convertible Preferred Stock (par value \$0.01)  
(liquidation preference \$100 per share of Convertible Preferred Stock)

of

Chesapeake Energy Corporation

Chesapeake Energy Corporation, an Oklahoma corporation (the "Company"), hereby certifies that [ ] (the "Holder") is the registered owner of [ ] fully paid and non-assessable preferred securities of the Company designated the 5% Cumulative Convertible Preferred Stock (par value \$0.01) (liquidation preference \$100 per share of Preferred Stock) (the "Preferred Stock"). The shares of Preferred Stock are transferable on the books and records of the Transfer Agent, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for transfer. The designations, rights, privileges, restrictions, preferences and other terms and provisions of the Preferred Stock represented hereby are issued and shall in all respects be subject to the provisions of the Certificate of Designation dated November 18, 2003, as the same may be amended from time to time (the "Certificate of Designation"). Capitalized terms used herein but not defined shall have the meaning given them in the Certificate of Designation. The Company will provide a copy of the Certificate of Designation to a Holder without charge upon written request to the Company at its principal place of business.

Reference is hereby made to select provisions of the Preferred Stock set forth on the reverse hereof, and to the Certificate of Designation, which select provisions and the Certificate of Designation shall for all purposes have the same effect as if set forth at this place.

Upon receipt of this certificate, the Holder is bound by the Certificate of Designation and is entitled to the benefits thereunder.

Unless the Transfer Agent's Certificate of Authentication hereon has been properly executed, these shares of Preferred Stock shall not be entitled to any benefit under the Certificate of Designation or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Company has executed this certificate this [ ] day of [ ], 2003.

By: \_\_\_\_\_

Name:  
Title:

By: \_\_\_\_\_

Name:  
Title:

TRANSFER AGENT'S CERTIFICATE OF AUTHENTICATION

These are shares of the Preferred Stock referred to in the within-mentioned Certificate of Designation.

Dated: \_\_\_\_\_, 2003

UMB BANK, N.A., as Transfer Agent,

By: \_\_\_\_\_

Authorized Signatory

REVERSE OF SECURITY

Cash dividends on each share of Preferred Stock shall be payable at a rate per annum set forth in the face hereof or as provided in the Certificate of Designation.

The shares of Preferred Stock shall be convertible into the Company's Common Stock in the manner and according to the terms set forth in the Certificate of Designation.

The Company will furnish without charge to each holder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock and the qualifications, limitations or restrictions of such preferences and/or rights.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers the shares of Preferred Stock evidenced hereby to:

(Insert assignee's social security or tax identification number)

(Insert address and zip code of assignee)

and irrevocably appoints:

agent to transfer the shares of Preferred Stock evidenced hereby on the books of the Transfer Agent. The agent may substitute another to act for him or her.

Date:

Signature:

(Sign exactly as your name appears on the other side of this Preferred Stock Certificate)

Signature Guarantee:<sup>3</sup>

---

<sup>3</sup> (Signature must be guaranteed by an "eligible guarantor institution" that is a bank, stockbroker, savings and loan association or credit union meeting the requirements of the Transfer Agent, which requirements include membership or participation in the Securities Transfer Agents Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Transfer Agent in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.)

## NOTICE OF CONVERSION

(To be Executed by the Holder  
in order to Convert the Preferred Stock)

The undersigned hereby irrevocably elects to convert (the "Conversion") shares of 5% Cumulative Convertible Preferred Stock (the "Preferred Stock"), represented by stock certificate No(s). (the "Preferred Stock Certificates") into shares of common stock ("Common Stock") of Chesapeake Energy Corporation (the "Company") according to the conditions of the Certificate of Designation of the Preferred Stock (the "Certificate of Designation"), as of the date written below. If shares are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto and is delivering herewith the Preferred Stock Certificates. No fee will be charged to the holder for any conversion, except for transfer taxes, if any. A copy of each Preferred Stock Certificate is attached hereto (or evidence of loss, theft or destruction thereof).

The undersigned represents and warrants that all offers and sales by the undersigned of the shares of Common Stock issuable to the undersigned upon conversion of the Preferred Stock shall be made pursuant to registration of the Common Stock under the Securities Act of 1933 (the "Act"), or pursuant to any exemption from registration under the Act.

Capitalized terms used but not defined herein shall have the meanings ascribed thereto in or pursuant to the Certificate of Designation.

Date of Conversion: \_\_\_\_\_

Applicable Conversion Price: \_\_\_\_\_

Number of shares of Preferred Stock to be Converted: \_\_\_\_\_

Number of shares of Common Stock to be Issued: \* \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Address:\*\* \_\_\_\_\_

Fax No.: \_\_\_\_\_

\* The Company is not required to issue shares of Common Stock until the original Preferred Stock Certificate(s) (or evidence of loss, theft or destruction thereof) to be converted are received by the Company or its Transfer Agent. The Company shall issue and deliver shares of Common Stock to an overnight courier not later than three business days following receipt of the original Preferred Stock Certificate(s) to be converted.

\*\* Address where shares of Common Stock and any other payments or certificates shall be sent by the Company.

CERTIFICATE TO BE DELIVERED UPON EXCHANGE OR  
REGISTRATION OF TRANSFER OF PREFERRED STOCK

Re: 5% Cumulative Convertible Preferred Stock (the "Preferred Stock") of Chesapeake Energy Corporation (the "Company")

This Certificate relates to \_\_\_\_\_ shares of Preferred Stock held in \*/ book-entry or \*/ definitive form by \_\_\_\_\_(the "Transferor").

The Transferor\*:

- has requested the Transfer Agent by written order to deliver in exchange for its beneficial interest in the Preferred Stock held by the Depository shares of Preferred Stock in definitive, registered form equal to its beneficial interest in such Preferred Stock (or the portion thereof indicated above); or
- has requested the Transfer Agent by written order to exchange or register the transfer of Preferred Stock.

In connection with such request and in respect of such Preferred Stock, the Transferor does hereby certify that the Transferor is familiar with the Certificate of Designation relating to the above-captioned Preferred Stock and that the transfer of this Preferred Stock does not require registration under the Securities Act of 1933 (the "Securities Act") because \*/:

- Such Preferred Stock is being acquired for the Transferor's own account without transfer.
- Such Preferred Stock is being transferred to the Company.
- Such Preferred Stock is being transferred in reliance on and in compliance with an exemption from the registration requirements of the Securities Act (and based on an Opinion of Counsel if the Company so requests).

\_\_\_\_\_  
[INSERT NAME OF TRANSFEROR]

by: \_\_\_\_\_

Date: \_\_\_\_\_

\*/ Please check applicable box.



CERTIFICATE OF DESIGNATION  
OF  
4.125% CUMULATIVE CONVERTIBLE PREFERRED STOCK  
OF  
CHESAPEAKE ENERGY CORPORATION

Pursuant to Section 1032(G) of the Oklahoma General Corporation Act

CHESAPEAKE ENERGY CORPORATION, an Oklahoma corporation (the "Company"), does hereby certify that the following resolution was duly adopted by action of the Board of Directors of the Company, with the provisions thereof fixing the number of shares of the series and the dividend rate being set by action of the Board of Directors of the Company:

RESOLVED that pursuant to the authority expressly granted to and vested in the Board of Directors of the Company by the provisions of Article IV, Section 1 of the Certificate of Incorporation of the Company, as amended from time to time (the "Certificate of Incorporation"), and pursuant to Section 1032(G) of the Oklahoma General Corporation Act, the Board of Directors hereby creates a series of preferred stock of the Company and hereby states that the voting powers, designations, preferences and relative, participating, optional or other special rights of which, and qualifications, limitations or restrictions thereof (in addition to the provisions set forth in the Certificate of Incorporation which are applicable to the preferred stock of all classes and series), shall be as follows:

1. Designation and Amount; Ranking

(a) There shall be created from the 10,000,000 shares of preferred stock, par value \$0.01 per share, of the Company authorized to be issued pursuant to the Certificate of Incorporation, a series of preferred stock, designated as the "4.125% Cumulative Convertible Preferred Stock," par value \$0.01 per share (the "Preferred Stock"), and the number of shares of such series shall be 313,250. Such number of shares may be decreased by resolution of the Board of Directors; provided that no decrease shall reduce the number of shares of Preferred Stock to a number less than that of the shares of Preferred Stock then outstanding plus the number of shares issuable upon exercise of options or rights then outstanding.

(b) The Preferred Stock will, with respect to both dividend rights and rights upon the liquidation, winding-up or dissolution of the Company, rank on a parity with the 6.75% Preferred Stock, the 6.00% Preferred Stock and the 5.00% Preferred Stock, and the Preferred Stock will, with respect to dividend rights or rights upon the liquidation, winding-up or dissolution of the Company rank (i) senior to all Junior Stock, (ii) on a parity with all other Parity Stock and (iii) junior to all Senior Stock.

2. Definitions. As used herein, the following terms shall have the following meanings:

(a) "Accrued Dividends" shall mean, with respect to any share of Preferred Stock, as of any date, the accrued and unpaid dividends on such share from and including the most recent Dividend Payment Date (or the Issue Date, if such date is prior to the first Dividend Payment Date) to but not including such date.

(b) "Accumulated Dividends" shall mean, with respect to any share of Preferred Stock, as of any date, the aggregate accumulated and unpaid dividends on such share from the Issue Date until the most recent Dividend Payment Date on or prior to such date. There shall be no Accumulated Dividends with respect to any share of Preferred Stock prior to the first Dividend Payment Date.

(c) "Affiliate" shall have the meaning ascribed to it, on the date hereof, under Rule 405 of the Securities Act of 1933, as amended.

(d) "Board of Directors" shall mean the Board of Directors of the Company or, with respect to any action to be taken by the Board of Directors, any committee of the Board of Directors duly authorized to take such action.

(e) "Business Day" shall mean any day other than a Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law or executive order to close.

(f) "Change of Control" shall mean any of the following events: (i) the sale, lease or transfer, in one or a series of related transactions, of all or substantially all of the Company's assets (determined on a consolidated basis) to any Person or group (as such term is used in Section 13(d)(3) of the Exchange Act), other than to Permitted Holders; (ii) the adoption of a plan the consummation of which would result in the liquidation or dissolution of the Company; (iii) the acquisition, directly or indirectly, by any Person or group (as such term is used in Section 13(d)(3) of the Exchange Act), other than Permitted Holders, of beneficial ownership (as defined in Rule 13d-3 under the Exchange Act) of more than 50% of the aggregate voting power of the Voting Stock of the Company; provided, however, that the Permitted Holders beneficially own (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), directly or indirectly, in the aggregate a lesser percentage of the total voting power of the Voting Stock of the Company than such other Person or group and do not have the right or ability by voting power, contract or otherwise to elect or designate for election a majority of the Board of Directors (for the purposes of this definition, such other Person or group shall be deemed to beneficially own any Voting Stock of a specified corporation held by a parent corporation, if such other Person or group is the beneficial owner (as defined above), directly or indirectly, of more than 35% of the voting power of the Voting Stock of such parent corporation and the Permitted Holders beneficially own (as defined in this proviso), directly or indirectly, in the aggregate a lesser percentage of the voting power of the Voting Stock of such parent corporation and do not have the right or ability by voting power, contract or otherwise to elect or designate for election a majority of the Board of Directors of such parent corporation); or (iv) during any period of two consecutive years, individuals who at the beginning of such period comprised the Board of Directors of the Company (together with any new directors whose election by such Board of Directors or whose nomination for election by the shareholders of the Company was approved by a vote of 66 2/3% of the directors of the Company then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the Board of Directors of the Company then in office. For purposes of this definition of "Change of Control," the term "Permitted Holders" means Aubrey K. McClendon and Tom L. Ward and their respective Affiliates.

(g) "Change of Control Date" shall mean the date on which the Change of Control event occurs.

(h) "Closing Sale Price" of the Common Stock on any date means the closing sale price per share (or if no closing sale price is reported, the average of the closing bid and ask prices or, if more than one in either case, the average of the average closing bid and the average closing ask prices) on such date as reported on the principal United States securities exchange on which the Common Stock is traded or, if the Common Stock is not listed on a United States national or regional securities exchange, as reported by Nasdaq or by the National Quotation Bureau Incorporated. In the absence of such a quotation, the Company will determine the Closing Sale Price on the basis it considers appropriate.

(i) "Conversion Price" shall mean \$16.6513, subject to adjustment as set forth in Section 7(d).

(j) "Common Stock" shall mean the common stock, par value \$0.01 per share, of the Company, or any other class of stock resulting from successive changes or reclassifications of such common stock consisting solely of changes in par value, or from par value to no par value, or as a result of a subdivision, combination, or merger, consolidation or similar transaction in which the Company is a constituent corporation.

(k) "DTC" or "Depository" shall mean The Depository Trust Company.

(l) "Dividend Payment Date" shall mean March 15, June 15, September 15 and December 15 of each year, commencing June 15, 2004.

(m) "Dividend Record Date" shall mean March 1, June 1, September 1 and December 1 of each year.

(n) "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

(o) "Holder" or "holder" shall mean a holder of record of the Preferred Stock.

(p) "Issue Date" shall mean March 30, 2004, the original date of issuance of the Preferred Stock.

(q) "Junior Stock" shall mean all classes of common stock of the Company and the Series A Junior Participating Convertible Preferred Stock and each other class of capital stock or series of preferred stock established after the Issue Date, by the Board of Directors, the terms of which do not expressly provide that such class or series ranks senior to or on parity with the Preferred Stock as to dividend rights or rights upon the liquidation, winding-up or dissolution of the Company.

(r) "Liquidation Preference" shall mean, with respect to each share of Preferred Stock, \$1,000.00.

(s) "Market Value" shall mean the average closing price of the Common Stock for a five consecutive trading day period on the NYSE (or such other national securities exchange or automated quotation system on which the Common Stock is then listed or authorized for quotation or, if the Common Stock is not so listed or authorized for quotation, an amount determined in good faith by the Board of Directors to be the fair value of the Common Stock).

(t) "NYSE" shall mean the New York Stock Exchange, Inc.

(u) "Officer" shall mean the Chairman of the Board of Directors, the President, any Vice President, the Treasurer, the Secretary or any Assistant Secretary of the Company.

(v) "Officers' Certificate" shall mean a certificate signed by two Officers.

(w) "Opinion of Counsel" shall mean a written opinion from legal counsel who is acceptable to the Transfer Agent. The counsel may be an employee of or counsel to the Company or the Transfer Agent.

(x) "Parity Stock" shall mean the 6.00% Preferred Stock, the 6.75% Preferred Stock, the 5.00% Preferred Stock and any class of capital stock or series of preferred stock established after the Issue Date by the Board of Directors, the terms of which expressly provide that such class or series will rank on parity with the Preferred Stock as to dividend rights or rights upon the liquidation, winding-up or dissolution of the Company.

(y) "Person" shall mean any individual, corporation, general partnership, limited partnership, limited liability partnership, joint venture, association, joint-stock company, trust, limited liability company, unincorporated organization or government or any agency or political subdivision thereof.

(z) "Purchase Agreement" shall mean that certain Purchase Agreement with respect to the Preferred Stock, dated March 24, 2004, among the Company, Lehman Brothers Inc., Banc of America Securities LLC, Bear, Stearns & Co. Inc. and Credit Suisse First Boston LLC and the other initial purchasers named therein.

(aa) "Registration Rights Agreement" means the Registration Rights Agreement dated March 30, 2004, among the Company, Lehman Brothers Inc., Banc of America Securities LLC, Bear, Stearns & Co. Inc. and Credit Suisse First Boston LLC and the other initial purchasers named in the Purchase Agreement, with respect to the Preferred Stock.

(bb) "SEC" or "Commission" shall mean the Securities and Exchange Commission.

(cc) "Securities Act" shall mean the Securities Act of 1933, as amended.

(dd) "Senior Stock" shall mean each class of capital stock or series of preferred stock established after the Issue Date by the Board of Directors, the terms of which expressly

provide that such class or series will rank senior to the Preferred Stock as to dividend rights or rights upon the liquidation, winding-up or dissolution of the Company.

(ee) "Shelf Registration Statement" shall mean a shelf registration statement filed with the SEC to cover resales of Transfer Restricted Securities by holders thereof, as required by the Registration Rights Agreement.

(ff) "5.00% Preferred Stock" shall mean the series of preferred stock, par value \$0.01 per share, of the Company designated as the "5.00% Cumulative Convertible Preferred Stock."

(gg) "6.00% Preferred Stock" shall mean the series of preferred stock, par value \$0.01 per share, of the Company designated as the "6.00% Cumulative Convertible Preferred Stock."

(hh) "6.75% Preferred Stock" shall mean the series of preferred stock, par value \$0.01 per share, of the Company designated as the "6.75% Cumulative Convertible Preferred Stock."

(ii) "Trading Day" shall mean a day during which trading in securities generally occurs on the New York Stock Exchange or, if Common Stock is not listed on the New York Stock Exchange, on the principal other national or regional securities exchange on which Common Stock is then listed or, if Common Stock is not listed on a national or regional securities exchange, on Nasdaq or, if Common Stock is not quoted on Nasdaq, on the principal other market on which Common Stock is then traded.

(jj) "Trading Price" of the Preferred Stock on any date of determination means the average of the secondary market bid quotations obtained by the Company or the calculation agent for 5,000 shares of Preferred Stock at approximately 3:30 p.m., New York City time, on such determination date from three independent nationally recognized securities dealers that the Company or the calculation agent selects; provided that if three such bids cannot reasonably be obtained by the Company or the calculation agent, but two such bids are obtained, the average of the two bids shall be used, and if only one such bid can reasonably be obtained by the Company or the calculation agent, that one bid shall be used. If the Company or the calculation agent cannot reasonably obtain at least one bid for 5,000 shares of Preferred Stock from a nationally recognized securities dealer, then the Trading Price per share of Preferred Stock will be deemed to be less than 98% of the product of (A) the Closing Sale Price of the Common Stock on such date (B) and the Conversion Price on such date.

(kk) "Transfer Agent" shall mean UMB Bank, N.A., the Company's duly appointed transfer agent, registrar and conversion and dividend disbursing agent for the Preferred Stock. The Company may, in its sole discretion, remove the Transfer Agent with 10 days' prior notice to the Transfer Agent; provided, that the Company shall appoint a successor Transfer Agent who shall accept such appointment prior to the effectiveness of such removal.

(ll) "Transfer Restricted Securities" shall mean each share of Preferred Stock (or the shares of Common Stock into which such share of Preferred Stock is convertible) until (i) the date on which such security or its predecessor has been effectively registered under the

Securities Act and disposed of in accordance with the Shelf Registration Statement or (ii) the date on which such security or predecessor is distributed to the public pursuant to Rule 144 under the Securities Act or is saleable pursuant to Rule 144(k) under the Securities Act.

(mm) "Voting Rights Triggering Event" shall mean the failure of the Company to pay dividends on the Preferred Stock with respect to six or more quarterly periods (whether or not consecutive).

(nn) "Voting Stock" shall mean, with respect to any Person, securities of any class or classes of Capital Stock in such Person entitling the holders thereof (whether at all times or only so long as no senior class of stock has voting power by reason of contingency) to vote in the election of members of the Board of Directors or other governing body of such Person. For purposes of this definition, "Capital Stock" shall mean, with respect to any Person, any and all shares, interests, participations or other equivalents (however designated) of corporate stock or partnership interests and any and all warrants, options and rights with respect thereto (whether or not currently exercisable), including each class of common stock and preferred stock of such Person.

### 3. Dividends.

(a) The holders of shares of the outstanding Preferred Stock shall be entitled, when, as and if declared by the Board of Directors out of funds of the Company legally available therefor, to receive cumulative cash dividends at the rate per annum of 4.125 % per share on the Liquidation Preference (equivalent to \$41.25 per annum per share), payable quarterly in arrears (the "Dividend Rate"). The Dividend Rate may be increased in the circumstances described in Section 3(b) below. Dividends payable for each full dividend period will be computed by dividing the Dividend Rate by four and shall be payable in arrears on each Dividend Payment Date (commencing June 15, 2004) for the quarterly period ending immediately prior to such Dividend Payment Date, to the holders of record of Preferred Stock at the close of business on the Dividend Record Date applicable to such Dividend Payment Date. Such dividends shall be cumulative from the most recent date as to which dividends shall have been paid or, if no dividends have been paid, from the Issue Date (whether or not in any dividend period or periods there shall be funds of the Company legally available for the payment of such dividends) and shall accrue on a day-to-day basis, whether or not earned or declared, from and after the Issue Date. Dividends payable for any partial dividend period, including the initial partial dividend period ending immediately prior to June 15, 2004, shall be computed on the basis of days elapsed over a 360-day year consisting of twelve 30-day months. Accumulations of dividends on shares of Preferred Stock shall not bear interest.

(b) If (i) by July 28, 2004, the Shelf Registration Statement has not been filed with the Commission, (ii) by November 25, 2004, the Shelf Registration Statement has not been declared effective by the Commission or (iii) after the Shelf Registration Statement has been declared effective, (A) the Shelf Registration Statement thereafter ceases to be effective or (B) the Shelf Registration Statement or the related prospectus ceases to be usable (in each case, subject to the exceptions described below) in connection with resales of Transfer Restricted Securities during the period that any Transfer Restricted Securities (other than Transfer Restricted Securities held or beneficially owned by affiliates of the Company) remain

outstanding (each such event referred to in clauses (i), (ii) and (iii), a "Registration Default"), additional dividends shall accrue on the Preferred Stock at the rate of .50% per annum (resulting in a Dividend Rate of 4.625% per annum during the continuance of a Registration Default), from and including the date on which any such Registration Default shall occur to but excluding the date on which all Registration Defaults have been cured. At all other times, dividends shall accumulate on the Preferred Stock at the Dividend Rate as described in Section 3(a).

A Registration Default referred to in clause (iii) of Section 3(b) shall be deemed not to have occurred and be continuing in relation to the Shelf Registration Statement or the related prospectus if (i) such Registration Default has occurred solely as a result of (x) the filing of a post-effective amendment to the Shelf Registration Statement to incorporate annual audited financial information with respect to the Company where such post-effective amendment is not yet effective and needs to be declared effective to permit Holders to use the related prospectus or (y) other material events, with respect to the Company that would need to be described in the Shelf Registration Statement or the related prospectus and (ii) in the case of clause (y), the Company is proceeding promptly and in good faith to amend or supplement such Shelf Registration Statement and related prospectus to describe such events; provided, however, that in any case if such Registration Default referred to in clause (iii) of Section 3(b) occurs for a continuous period in excess of 30 days, additional dividends as described in Section 3(b) shall be payable in accordance therewith from the day such Registration Default occurs until such Registration Default is cured.

(c) No dividend will be declared or paid upon, or any sum set apart for the payment of dividends upon, any outstanding share of the Preferred Stock with respect to any dividend period unless all dividends for all preceding dividend periods have been declared and paid or declared and a sufficient sum set apart for the payment of such dividend, upon all outstanding shares of Preferred Stock.

(d) No dividends or other distributions (other than a dividend or distribution payable solely in shares of Parity Stock or Junior Stock (in the case of Parity Stock) or Junior Stock (in the case of Junior Stock) and other than cash paid in lieu of fractional shares) may be declared, made or paid, or set apart for payment upon, any Parity Stock or Junior Stock, nor may any Parity Stock or Junior Stock be redeemed, purchased or otherwise acquired for any consideration (or any money paid to or made available for a sinking fund for the redemption of any Parity Stock or Junior Stock) by or on behalf of the Company (except by conversion into or exchange for shares of Parity Stock or Junior Stock (in the case of Parity Stock) or Junior Stock (in the case of Junior Stock)), unless full Accumulated Dividends shall have been or contemporaneously are declared and paid, or are declared and a sum sufficient for the payment thereof is set apart for such payment, on the Preferred Stock and any Parity Stock for all dividend payment periods terminating on or prior to the date of such declaration, payment, redemption, purchase or acquisition. Notwithstanding the foregoing, if full dividends have not been paid on the Preferred Stock and any Parity Stock, dividends may be declared and paid on the Preferred Stock and such Parity Stock so long as the dividends are declared and paid pro rata so that the amounts of dividends declared per share on the Preferred Stock and such Parity Stock will in all cases bear to each other the same ratio that accumulated and unpaid dividends per share on the shares of Preferred Stock and such other Parity Stock bear to each other.

(e) Holders of shares of Preferred Stock shall not be entitled to any dividends on the Preferred Stock, whether payable in cash, property or stock, in excess of full cumulative dividends. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on the Preferred Stock which may be in arrears.

(f) The holders of shares of Preferred Stock at the close of business on a Dividend Record Date will be entitled to receive the dividend payment on those shares on the next following Dividend Payment Date notwithstanding the subsequent conversion thereof or the Company's default in payment of the dividend due on that Dividend Payment Date. However, shares of Preferred Stock surrendered for conversion during the period between the close of business on any Dividend Record Date and the close of business on the Business Day immediately preceding the applicable Dividend Payment Date must be accompanied by payment of an amount equal to the dividend payable on the shares on that Dividend Payment Date. A holder of shares of Preferred Stock on a Dividend Record Date who (or whose transferee) tenders any shares for conversion on the corresponding Dividend Payment Date will receive the dividend payable by the Company on the Preferred Stock on that date, and the converting holder need not include payment in the amount of such dividend upon surrender of shares of Preferred Stock for conversion. Except as provided above with respect to a voluntary conversion pursuant to Section 7, the Company shall make no payment or allowance for unpaid dividends, whether or not in arrears, on converted shares or for dividends on the shares of Common Stock issued upon conversion.

#### 4. Change of Control.

(a) Upon the occurrence of a Change of Control, each holder of Preferred Stock shall, in the event that the Market Value for the period ending on the Change of Control Date is less than the Conversion Price, have a one-time option (the "Change of Control Option") to convert all of such holder's outstanding shares of Preferred Stock into fully paid and nonassessable shares of Common Stock at an adjusted Conversion Price equal to the greater of (i) the Market Value for the period ending on the Change of Control Date and (ii) \$8.0733. The Change of Control Option must be exercised, if at all, during the period of not less than 30 days nor more than 60 days commencing on the third Business Day after notice of a Change in Control has been given by the Company in accordance with Section 4(b). In lieu of issuing the shares of Common Stock issuable upon conversion in the event of a Change of Control, the Company may, at its option, make a cash payment equal to the Market Value for each share of such Common Stock otherwise issuable determined for the period ending on the Change of Control Date. Notwithstanding the foregoing, upon the occurrence of a Change of Control in which (i) each holder of Common Stock receives consideration consisting solely of common stock of the successor, acquiror or other third party (and cash paid in lieu of fractional shares) that is listed on a national securities exchange or quoted on the NASDAQ National Market and (ii) all the Common Stock has been exchanged for, converted into or acquired for common stock of the successor, acquiror or other third party (and cash in lieu of fractional shares), and the Preferred Stock becomes convertible solely into such common stock, the Conversion Price will not be adjusted as described in this Section 4(a).

(b) In the event of a Change of Control (other than a Change of Control described in the last sentence of Section 4(a)), notice of such Change of Control shall be given,



within five Business Days of the Change of Control Date, by the Company by first-class mail to each record holder of shares of Preferred Stock, at such holder's address as the same appears on the books of the Company. Each such notice shall state (i) that a Change of Control has occurred; (ii) the last day on which the Change of Control Option may be exercised (the "Expiration Date") pursuant to the terms hereof; (iii) the name and address of the Transfer Agent; and (iv) the procedures that holders must follow to exercise the Change of Control Option.

(c) On or before the Expiration Date, each holder of shares of Preferred Stock wishing to exercise the Change of Control Option shall surrender the certificate or certificates representing the shares of Preferred Stock to be converted, in the manner and at the place designated in the notice described in Section 4(b), and on such date the cash or shares of Common Stock due to such holder shall be delivered to the Person whose name appears on such certificate or certificates as the owner thereof and the shares represented by each surrendered certificate shall be returned to authorized but unissued shares. Upon surrender (in accordance with the notice described in Section 4(b)) of the certificate or certificates representing any shares to be so converted (properly endorsed or assigned for transfer, if the Company shall so require and the notice shall so state), such shares shall be converted by the Company at the adjusted Conversion Price, if applicable, as described in Section 4(a).

(d) The rights of holders of Preferred Stock pursuant to this Section 4 are in addition to, and not in lieu of, the rights of holders of Preferred Stock provided for in Section 7 hereof.

#### 5. Voting.

(a) The shares of Preferred Stock shall have no voting rights except as set forth below or as otherwise required by Oklahoma law from time to time:

(i) If and whenever at any time or times a Voting Rights Triggering Event occurs, then the holders of shares of Preferred Stock, voting as a single class with any other preferred stock or preference securities having similar voting rights that are exercisable, including the 5.00% Preferred Stock, the 6.00% Preferred Stock and the 6.75% Preferred Stock (the "Voting Rights Class"), will be entitled at the next regular or special meeting of stockholders of the Company to elect two additional directors of the Company. Upon the election of any such additional directors, the number of directors that comprise the Board of Directors shall be increased by such number of additional directors.

(ii) Such voting rights may be exercised at a special meeting of the holders of the shares of the Voting Rights Class, called as hereinafter provided, or at any annual meeting of stockholders held for the purpose of electing directors, and thereafter at each such annual meeting until such time as all dividends in arrears on the shares of Preferred Stock shall have been paid in full, at which time or times such voting rights and the term of the directors elected pursuant to Section 5(a)(i) shall terminate.

(iii) At any time when such voting rights shall have vested in holders of shares of the Voting Rights Class, an Officer of the Company may call, and, upon

written request of the record holders of shares representing at least twenty-five percent (25%) of the voting power of the shares then outstanding of the Voting Rights Class, addressed to the Secretary of the Company, shall call a special meeting of the holders of shares of the Voting Rights Class. Such meeting shall be held at the earliest practicable date upon the notice required for annual meetings of stockholders at the place for holding annual meetings of stockholders of the Company, or, if none, at a place designated by the Board of Directors. Notwithstanding the provisions of this Section 5(a)(iii), no such special meeting shall be called during a period within the 60 days immediately preceding the date fixed for the next annual meeting of stockholders in which such case, the election of directors pursuant to Section 5(a)(i) shall be held at such annual meeting of stockholders.

(iv) At any meeting held for the purpose of electing directors at which the holders of the Voting Rights Class shall have the right to elect directors as provided herein, the presence in person or by proxy of the holders of shares representing more than fifty percent (50%) in voting power of the then outstanding shares of the Voting Rights Class shall be required and shall be sufficient to constitute a quorum of such class for the election of directors by such class. The affirmative vote of the holders of shares of Preferred Stock constituting a majority of the shares of Preferred Stock present at such meeting, in person or by proxy, shall be sufficient to elect any such director.

(v) Any director elected pursuant to the voting rights created under this Section 5(a) shall hold office until the next annual meeting of stockholders (unless such term has previously terminated pursuant to Section 5(a)(ii) ) and any vacancy in respect of any such director shall be filled only by vote of the remaining director so elected by holders of the Voting Rights Class, or if there be no such remaining director, by the holders of shares of the Voting Rights Class at a special meeting called in accordance with the procedures set forth in this Section 5, or, if no such special meeting is called, at the next annual meeting of stockholders. Upon any termination of such voting rights, the term of office of all directors elected pursuant to this Section 5 shall terminate.

(vi) So long as any shares of Preferred Stock remain outstanding, unless a greater percentage shall then be required by law, the Company shall not, without the affirmative vote or consent of the holders of at least 66 2/3% of the outstanding Preferred Stock voting or consenting, as the case may be, separately as one class, (i) create, authorize or issue any class or series of Senior Stock (or any security convertible into Senior Stock) or (ii) amend the Certificate of Incorporation so as to affect adversely the specified rights, preferences, privileges or voting rights of holders of shares of Preferred Stock.

(vii) In exercising the voting rights set forth in this Section 5(a), each share of Preferred Stock shall be entitled to one vote.

(b) The Company may authorize, increase the authorized amount of, or issue any class or series of Parity Stock or Junior Stock, without the consent of the holders of Preferred Stock, and in taking such actions the Company shall not be deemed to have affected adversely the rights, preferences, privileges or voting rights of holders of shares of Preferred Stock.

## 6. Liquidation Rights.

(a) In the event of any liquidation, winding-up or dissolution of the Company, whether voluntary or involuntary, each holder of shares of Preferred Stock shall be entitled to receive and to be paid out of the assets of the Company available for distribution to its stockholders the Liquidation Preference plus Accumulated Dividends and Accrued Dividends thereon in preference to the holders of, and before any payment or distribution is made on, any Junior Stock, including, without limitation, on any Common Stock.

(b) Neither the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all the assets or business of the Company (other than in connection with the liquidation, winding-up or dissolution of its business) nor the merger or consolidation of the Company into or with any other Person shall be deemed to be a liquidation, winding-up or dissolution, voluntary or involuntary, for the purposes of this Section 6.

(c) After the payment to the holders of the shares of Preferred Stock of full preferential amounts provided for in this Section 6, the holders of Preferred Stock as such shall have no right or claim to any of the remaining assets of the Company.

(d) In the event the assets of the Company available for distribution to the holders of shares of Preferred Stock upon any liquidation, winding-up or dissolution of the Company, whether voluntary or involuntary, shall be insufficient to pay in full all amounts to which such holders are entitled pursuant to Section 6(a), no such distribution shall be made on account of any shares of Parity Stock upon such liquidation, dissolution or winding-up unless proportionate distributable amounts shall be paid on account of the shares of Preferred Stock, ratably, in proportion to the full distributable amounts for which holders of all Preferred Stock and of any Parity Stock are entitled upon such liquidation, winding-up or dissolution.

## 7. Conversion.

(a) Each holder of Preferred Stock shall have the right, only on or after the occurrence of the conversion triggering events described in Section 7(b), at its option, from the Issue Date to convert, subject to the terms and provisions of this Section 7, any or all of such holder's shares of Preferred Stock. In such case, the shares of Preferred Stock shall be converted into such whole number of fully paid and nonassessable shares of Common Stock as is equal, subject to Section 7(h), to the product of the number of shares of Preferred Stock being so converted multiplied by the quotient of (i) the Liquidation Preference divided by (ii) the Conversion Price (as defined below) then in effect. The Conversion Price initially shall be \$16.6513, subject to adjustment as set forth in Section 7(d).

The conversion right of a holder of Preferred Stock shall be exercised by the holder by the surrender to the Company of the certificates representing shares to be converted at any time during usual business hours at its principal place of business or the offices of its duly appointed Transfer Agent to be maintained by it, accompanied by written notice to the Company in the form of Exhibit B that the holder elects to convert all or a portion of the shares of Preferred Stock represented by such certificate and specifying the name or names (with address) in which a

certificate or certificates for shares of Common Stock are to be issued and (if so required by the Company or its duly appointed Transfer Agent) by a written instrument or instruments of transfer in form reasonably satisfactory to the Company or its duly appointed Transfer Agent duly executed by the holder or its duly authorized legal representative and transfer tax stamps or funds therefor, if required pursuant to Section 7(j). Immediately prior to the close of business on the date of receipt by the Company or its duly appointed Transfer Agent of notice of conversion of shares of Preferred Stock, each converting holder of Preferred Stock shall be deemed to be the holder of record of Common Stock issuable upon conversion of such holder's Preferred Stock notwithstanding that the share register of the Company shall then be closed or that certificates representing such Common Stock shall not then be actually delivered to such holder. On the date of any conversion, all rights with respect to the shares of Preferred Stock so converted, including the rights, if any, to receive notices, will terminate, except only the rights of holders thereof to (i) receive certificates for the number of whole shares of Common Stock into which such shares of Preferred Stock have been converted and cash, in lieu of any fractional shares as provided in Section 7(g); and (ii) exercise the rights to which they are entitled as holders of Common Stock.

(b) A holder's right to convert its shares of Preferred Stock will arise only upon the occurrence of the following events:

(i) *Conversion Rights Based on Common Share Price.* A holder may surrender shares of Preferred Stock for conversion into shares of Common Stock during any fiscal quarter after the fiscal quarter ending June 30, 2004 (and only during such fiscal quarter) if the Closing Sale Price of Common Stock for at least 20 Trading Days in a period of 30 consecutive Trading Days ending on the last Trading Day of the immediately preceding fiscal quarter is more than 130% of the Conversion Price on such Trading Day. If this Closing Sale Price condition is not satisfied at the end of any fiscal quarter, then conversion pursuant to this Section 7(b)(i) will not be permitted in the following fiscal quarter. The Company shall determine for each Trading Day during the 30 consecutive Trading Day period specified in this Section 7(b)(i) whether the Closing Sale Price exceeds 130% of the Conversion Price and whether the Preferred Stock shall be convertible as a result of the occurrence of the event set forth in this Section 7(b)(i).

(ii) *Conversion Upon Satisfaction of Trading Price Condition.* A holder may surrender its shares of Preferred Stock for conversion into Common Stock during the five business day period after any five consecutive Trading Day period in which the Trading Price of the Preferred Stock for each day of such five Trading Day period was less than 98% of the product of the Closing Sale Price of the Common Stock and the Conversion Price in effect on each such day. The Company shall determine whether the Preferred Stock may be converted pursuant to this Section 7(b)(ii) based on Trading Prices obtained from three independent nationally known securities dealers. The Company shall have no obligation to determine the Trading Price unless a holder of Preferred Stock provides it with reasonable evidence that the Trading Price was less than 98% of the product of the Closing Sale Price and the then-current Conversion Price. If such evidence is provided, the Company shall determine the Trading Price of the Preferred Stock beginning on the next Trading Day and on each successive Trading Day until the Trading Price is greater than or equal to 98% of the product of the Closing Sale Price and the then current Conversion Price.

*(iii) Conversion Rights Upon Occurrence of Certain Corporate Transactions.*

(1) If the Company is party to a consolidation, merger, binding share exchange or sale of all or substantially all of the Company's assets, in each case pursuant to which the Common Stock would be converted into cash, securities or other property, a holder may surrender its shares of Preferred Stock for conversion into Common Stock at any time from and after the date that is 15 days prior to the anticipated effective date of the transaction until 15 days after the actual date of such transaction and, at the effective time, the right to convert shares of Preferred Stock into Common Stock will be changed into a right to convert such Preferred Stock into the kind and amount of cash, securities or other property of the Company or another person that the holder would have received if the holder had converted the holder's Preferred Stock immediately prior to the transaction.

(2) If the Company elects to (A) distribute to all holders of Common Stock rights or warrants entitling them to purchase, for a period expiring within 45 days of the record date for such distribution, Common Stock at less than the average Closing Sale Price for the ten consecutive Trading Days immediately preceding the declaration date for such distribution or (B) distribute to all holders of Common Stock, cash, assets, debt securities or rights to purchase the Company's securities, which distribution has a per share value exceeding 5% of the Closing Sale Price of Common Stock on the Trading Day immediately preceding the declaration date for such distribution; then, in either case, the Company must notify holders of Preferred Stock at least 20 days prior to the ex-dividend date for such distribution. Once the Company has given such notice, a holder may surrender its shares of Preferred Stock for conversion at any time until the earlier of the close of business on the business day immediately preceding the ex-dividend date or any announcement by the Company that such distribution will not take place. Notwithstanding the foregoing, holders shall not have the right to surrender shares of Preferred Stock for conversion pursuant to this Section 7(b)(iii)(2), and no adjustment to the Conversion Price will be made, if all holders of the Preferred Stock will otherwise participate, on the same basis as a holder of Common Shares, in the distribution described above without first converting Preferred Stock into Common Shares.

(iv) Upon a Change of Control, holders of Preferred Stock shall, if the Market Value at such time is less than the Conversion Price, have a one-time option to convert all of their outstanding shares of Preferred Stock into Common Stock pursuant to Section 4.

(v) Upon determination that holders of Preferred Stock are or will be entitled to convert their Preferred Stock into Common Stock in accordance with any of the provisions of this Section 7(b), the Company will issue a press release and publish such information on its website on the World Wide Web.

(c) If the last day for the exercise of the conversion right shall not be a Business Day, then such conversion right may be exercised on the next preceding Business Day.

(d) The Conversion Price shall be subject to adjustment as follows:

(i) In case the Company shall at any time or from time to time (A) pay a dividend (or other distribution) payable in shares of Common Stock on any class of capital stock (which, for purposes of this Section 7(d) shall include, without limitation, any dividends or distributions in the form of options, warrants or other rights to acquire capital stock) of the Company (other than the issuance of shares of Common Stock in connection with the conversion of preferred stock); (B) subdivide the outstanding shares of Common Stock into a larger number of shares; (C) combine the outstanding shares of Common Stock into a smaller number of shares; (D) issue any shares of its capital stock in a reclassification of the Common Stock; or (E) pay a dividend or make a distribution to all holders of shares of Common Stock (other than a dividend or distribution subject to Section 7(d)(ii)) pursuant to a stockholder rights plan, "poison pill" or similar arrangement and excluding dividends payable on the Preferred Stock then, and in each such case, the Conversion Price in effect immediately prior to such event shall be adjusted (and any other appropriate actions shall be taken by the Company) so that the holder of any share of Preferred Stock thereafter surrendered for conversion shall be entitled to receive the number of shares of Common Stock that such holder would have owned or would have been entitled to receive upon or by reason of any of the events described above, had such share of Preferred Stock been converted into shares of Common Stock immediately prior to the occurrence of such event. An adjustment made pursuant to this Section 7(d)(i) shall become effective retroactively (x) in the case of any such dividend or distribution, to the day immediately following the close of business on the record date for the determination of holders of Common Stock entitled to receive such dividend or distribution or (y) in the case of any such subdivision, combination or reclassification, to the close of business on the day upon which such corporate action becomes effective.

(ii) In case the Company shall at any time or from time to time issue to all holders of its Common Stock rights, options or warrants entitling the holders thereof to subscribe for or purchase shares of Common Stock (or securities convertible into or exchangeable for shares of Common Stock) at a price per share less than the Market Value for the period ending on the date of issuance (treating the price per share of any security convertible or exchangeable or exercisable into Common Stock as equal to (A) the sum of the price paid to acquire such security convertible, exchangeable or exercisable into Common Stock plus any additional consideration payable (without regard to any anti-dilution adjustments) upon the conversion, exchange or exercise of such security into Common Stock divided by (B) the number of shares of Common Stock into which such convertible, exchangeable or exercisable security is initially convertible, exchangeable or exercisable), other than (i) issuances of such rights, options or warrants if the holder of Preferred Stock would be entitled to receive such rights, options or warrants upon conversion at any time of shares of Preferred Stock into Common Stock and (ii) issuances that are subject to certain triggering events (until such time as such triggering events occur), then, and in each such case, the Conversion Price then in effect shall be adjusted by dividing the Conversion Price in effect on the day immediately prior to the record date of such issuance by a fraction (y) the numerator of which shall be the sum of the number of shares of Common Stock outstanding on such record date plus the number of additional shares of Common Stock issued or to be issued upon or as a result of the issuance of such rights, options or warrants (or the maximum number into or for which such convertible or exchangeable securities initially may convert or exchange or for which such options, warrants or other rights initially may be exercised) and (z) the denominator of which shall be the sum of the number of shares of Common Stock outstanding on such record date plus the number of shares

of Common Stock which the aggregate consideration for the total number of such additional shares of Common Stock so issued (or into or for which such convertible or exchangeable securities may convert or exchange or for which such options, warrants or other rights may be exercised plus the aggregate amount of any additional consideration initially payable upon the conversion, exchange or exercise of such security) would purchase at the Market Value for the period ending on the date of conversion; provided, that if the Company distributes rights or warrants (other than those referred to above in this subparagraph (d)(ii)) pro rata to the holders of Common Stock, so long as such rights or warrants have not expired or been redeemed by the Company, (y) the holder of any Preferred Stock surrendered for conversion shall be entitled to receive upon such conversion, in addition to the shares of Common Stock then issuable upon such conversion (the "Conversion Shares"), a number of rights or warrants to be determined as follows: (i) if such conversion occurs on or prior to the date for the distribution to the holders of rights or warrants of separate certificates evidencing such rights or warrants (the "Distribution Date"), the same number of rights or warrants to which a holder of a number of shares of Common Stock equal to the number of Conversion Shares is entitled at the time of such conversion in accordance with the terms and provisions applicable to the rights or warrants and (ii) if such conversion occurs after the Distribution Date, the same number of rights or warrants to which a holder of the number of shares of Common Stock into which such Preferred Stock was convertible immediately prior to such Distribution Date would have been entitled on such Distribution Date had such Preferred Stock been converted immediately prior to such Distribution Date in accordance with the terms and provisions applicable to the rights and warrants and (z) the Conversion Price shall not be subject to adjustment on account of any declaration, distribution or exercise of such rights or warrants.

(iii) If the Company shall at any time make a distribution, by dividend or otherwise, to all holders of shares of its Common Stock consisting exclusively of cash (excluding any cash portion of distributions referred to in clause (E) of paragraph (d)(i) above and cash distributed upon a merger or consolidation to which paragraph (h) below applies) in an amount per share of Common Stock that, when combined with the per share amounts of all other all-cash distributions to all holders of shares of its Common Stock made within the 90-day period ending on the record date for the distribution giving rise to an adjustment pursuant to this Section 7(d)(iii), exceeds \$0.055 per share of Common Stock (the "Distribution Threshold Amount"), then the Conversion Price will be adjusted by multiplying:

(1) the Conversion Price in effect immediately prior to the close of business on the record date fixed for the determination of holders of Common Stock entitled to receive such distribution by

(2) a fraction, the numerator of which will be the Market Value on the fourth trading day on the NYSE prior to such record date minus the amount of cash per share of Common Stock so distributed in excess of the Dividend Threshold Amount for which an adjustment has not otherwise been made pursuant to this Section 7(d)(iii) and the denominator of which will be the Market Value on the fourth trading day on the NYSE prior to such record date.

Subject to Section 7(e), such adjustment shall become effective immediately after the record date for the determination of holders of Common Stock entitled to receive the distribution giving rise to an adjustment pursuant to this Section 7(d)(iii). The Dividend

Threshold Amount is subject to adjustment under the same circumstances under which the Conversion Price is subject to adjustment pursuant to Section 7(d)(i) or Section 7(d)(ii).

(iv) In the case the Company at any time or from time to time shall take any action affecting its Common Stock (it being understood that the issuance or sale of shares of Common Stock (or securities convertible into or exchangeable for shares of Common Stock, or any options, warrants or other rights to acquire shares of Common Stock) to any Person at a price per share less than the Conversion Price then in effect shall not be deemed such an action), other than an action described in any of Section 7(d)(i) through Section 7(d)(iii), inclusive, or Section 7(h), then the Conversion Price shall be adjusted in such manner and at such time as the Board of Directors of the Company in good faith determines to be equitable in the circumstances (such determination to be evidenced in a resolution, a certified copy of which shall be mailed to the holders of the Preferred Stock).

(v) Notwithstanding anything herein to the contrary, no adjustment under this Section 7(d) need be made to the Conversion Price unless such adjustment would require an increase or decrease of at least 1% of the Conversion Price then in effect. Any lesser adjustment shall be carried forward and shall be made at the time of and together with the next subsequent adjustment, if any, which, together with any adjustment or adjustments so carried forward, shall amount to an increase or decrease of at least 1% of such Conversion; provided, however, that with respect to adjustments to be made to the Conversion Price in connection with cash dividends paid by the Company, the Company shall make such adjustments, regardless of whether such aggregate adjustments amount to 1% or more of the Conversion Price, no later than March 15 of each calendar year.

(vi) The Company reserves the right to make such reductions in the Conversion Price in addition to those required in the foregoing provisions as it considers advisable in order that any event treated for Federal income tax purposes as a dividend of stock or stock rights will not be taxable to the recipients. In the event the Company elects to make such a reduction in the Conversion Price, the Company will comply with the requirements of Rule 14e-1 under the Exchange Act, and any other securities laws and regulations thereunder if and to the extent that such laws and regulations are applicable in connection with the reduction of the Conversion Price.

(e) If the Company shall take a record of the holders of its Common Stock for the purpose of entitling them to receive a dividend or other distribution, and shall thereafter (and before the dividend or distribution has been paid or delivered to stockholders) legally abandon its plan to pay or deliver such dividend or distribution, then thereafter no adjustment in the Conversion Price then in effect shall be required by reason of the taking of such record.

(f) Upon any increase or decrease in the Conversion Price, then, and in each such case, the Company promptly shall deliver to each holder of Preferred Stock a certificate signed by an authorized officer of the Company, setting forth in reasonable detail the event requiring the adjustment and the method by which such adjustment was calculated and specifying the increased or decreased Conversion Price then in effect following such adjustment.



(g) No fractional shares or securities representing fractional shares of Common Stock shall be issued upon the conversion of any shares of Preferred Stock, whether voluntary or mandatory. If more than one share of Preferred Stock shall be surrendered for conversion at one time by the same holder, the number of full shares of Common Stock issuable upon conversion thereof shall be computed on the basis of the aggregate Liquidation Preference of the shares of Preferred Stock so surrendered. If the conversion of any share or shares of Preferred Stock results in a fraction, an amount equal to such fraction multiplied by the last reported sale price of the Common Stock on the NYSE (or on such other national securities exchange or automated quotation system on which the Common Stock is then listed for trading or authorized for quotation or, if the Common Stock is not then so listed or authorized for quotation, an amount determined in good faith by the Board of Directors to be the fair value of the Common Stock) at the close of business on the trading day next preceding the day of conversion shall be paid to such holder in cash by the Company.

(h) In the event of any reclassification of outstanding shares of Common Stock (other than a change in par value, or from par value to no par value, or from no par value to par value), or in the event of any consolidation or merger of the Company with or into another Person or any merger of another Person with or into the Company (other than a consolidation or merger in which the Company is the resulting or surviving Person and which does not result in any reclassification or change of outstanding Common Stock), or in the event of any sale or other disposition to another Person of all or substantially all of the assets of the Company (computed on a consolidated basis) (any of the foregoing, a "Transaction"), each share of Preferred Stock then outstanding shall, without the consent of any holder of Preferred Stock, become convertible at any time, at the option of the holder thereof, only into the kind and amount of securities (of the Company or another issuer), cash and other property receivable upon such Transaction by a holder of the number of shares of Common Stock into which such share of Preferred Stock could have been converted immediately prior to such Transaction, after giving effect to any adjustment event. The provisions of this Section 7(h) and any equivalent thereof in any such securities similarly shall apply to successive Transactions. The provisions of this Section 7(h) shall be the sole right of holders of Preferred Stock in connection with any Transaction and such holders shall have no separate vote thereon.

(i) The Company shall at all times reserve and keep available for issuance upon the conversion of the Preferred Stock such number of its authorized but unissued shares of Common Stock as will from time to time be sufficient to permit the conversion of all outstanding shares of Preferred Stock, and shall take all action required to increase the authorized number of shares of Common Stock if at any time there shall be insufficient unissued shares of Common Stock to permit such reservation or to permit the conversion of all outstanding shares of Preferred Stock.

(j) The issuance or delivery of certificates for Common Stock upon the conversion of shares of Preferred Stock shall be made without charge to the converting holder of shares of Preferred Stock for such certificates or for any tax in respect of the issuance or delivery of such certificates or the securities represented thereby, and such certificates shall be issued or delivered in the respective names of, or in such names as may be directed by, the holders of the shares of Preferred Stock converted; provided, however, that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and

delivery of any such certificate in a name other than that of the holder of the shares of Preferred Stock converted, and the Company shall not be required to issue or deliver such certificate unless or until the Person or Persons requesting the issuance or delivery thereof shall have paid to the Company the amount of such tax or shall have established to the reasonable satisfaction of the Company that such tax has been paid.

#### 8. Mandatory Conversion.

(a) At any time on or after March 15, 2009, the Company shall have the right, at its option, to cause the Preferred Stock, in whole but not in part, to be automatically converted into that number of whole shares of Common Stock for each share of Preferred Stock equal to the quotient of (i) the Liquidation Preference divided by (ii) the Conversion Price then in effect, with any resulting fractional shares of Common Stock to be settled in accordance with Section 7(g). The Company may exercise its right to cause a mandatory conversion pursuant to this Section 8(a) only if the closing price of the Common Stock equals or exceeds 130% of the Conversion Price then in effect for at least 20 trading days in any consecutive 30-day trading period on the NYSE (or such other national securities exchange or automated quotation system on which the Common Stock is then listed or authorized for quotation), including the last trading day of such 30-day period, ending on the trading day prior to the Company's issuance of a press release announcing the mandatory conversion as described in Section 8(b).

(b) To exercise the mandatory conversion right described in Section 8(a), the Company must issue a press release for publication on the Dow Jones News Service prior to the opening of business on the first trading day following any date on which the conditions described in Section 8(a) are met, announcing such a mandatory conversion. The Company shall also give notice by mail or by publication (with subsequent prompt notice by mail) to the holders of Preferred Stock (not more than four Business Days after the date of the press release) of the mandatory conversion announcing the Company's intention to convert the Preferred Stock. The conversion date will be a date selected by the Company (the "Mandatory Conversion Date") and will be no more than five days after the date on which the Company issues the press release described in this Section 8(b).

(c) In addition to any information required by applicable law or regulation, the press release and notice of a mandatory conversion described in Section 8(b) shall state, as appropriate: (i) the Mandatory Conversion Date; (ii) the number of shares of Common Stock to be issued upon conversion of each share of Preferred Stock; (iii) the number of shares of Preferred Stock to be converted; and (iv) that dividends on the Preferred Stock to be converted will cease to accrue on the Mandatory Conversion Date.

(d) On and after the Mandatory Conversion Date, dividends will cease to accrue on the Preferred Stock called for a mandatory conversion pursuant to Section 8(a) and all rights of holders of such Preferred Stock will terminate except for the right to receive the whole shares of Common Stock issuable upon conversion thereof and cash, in lieu of any fractional shares of Common Stock in accordance with Section 7(g). The dividend payment with respect to the Preferred Stock called for a mandatory conversion pursuant to Section 8(a) on a date during the period between the close of business on any Dividend Record Date to the close of business on the corresponding Dividend Payment Date will be payable on such Dividend Payment Date to

the record holder of such share on such Dividend Record Date if such share has been converted after such Dividend Record Date and prior to such Dividend Payment Date. Except as provided in the immediately preceding sentence with respect to a mandatory conversion pursuant to Section 8(a), no payment or adjustment will be made upon conversion of Preferred Stock for Accrued Dividends or for dividends with respect to the Common Stock issued upon such conversion.

(e) The Company may not authorize, issue a press release or give notice of any mandatory conversion pursuant to Section 8(a) unless, prior to giving the conversion notice, all Accumulated Dividends on the Preferred Stock for periods ended prior to the date of such conversion notice shall have been paid in cash.

(f) In addition to the mandatory conversion right described in Section 8(a), if there are less than 25,000 shares of Preferred Stock outstanding, the Company shall have the right, at any time on or after March 15, 2009, at its option, to cause the Preferred Stock to be automatically converted into that number of whole shares of Common Stock equal to the quotient of (i) the Liquidation Preference divided by (ii) the lesser of (A) the Conversion Price then in effect and (B) the Market Value for the period ending on the second trading day immediately prior to the Mandatory Conversion Date, with any resulting fractional shares of Common Stock to be settled in cash in accordance with Section 7(g). The provisions of clauses (b), (c), (d) and (e) of this Section 8 shall apply to any mandatory conversion pursuant to this clause (f); provided that (i) the Mandatory Conversion Date described in Section 8(b) shall not be less than 15 days nor more than 30 days after the date on which the Company issues a press release pursuant to Section 8(b) announcing such mandatory conversion and (ii) the press release and notice of mandatory conversion described in Section 8(c) will not state the number of shares of Common Stock to be issued upon conversion of each share of Preferred Stock.

#### 9. Consolidation, Merger and Sale of Assets.

(a) The Company, without the consent of the holders of any of the outstanding Preferred Stock, may consolidate with or merge into any other Person or convey, transfer or lease all or substantially all its assets to any Person or may permit any Person to consolidate with or merge into, or transfer or lease all or substantially all its properties to, the Company; provided, however, that (a) the successor, transferee or lessee is organized under the laws of the United States or any political subdivision thereof; (b) the shares of Preferred Stock will become shares of such successor, transferee or lessee, having in respect of such successor, transferee or lessee the same powers, preferences and relative participating, optional or other special rights and the qualification, limitations or restrictions thereon, the Preferred Stock had immediately prior to such transaction; and (c) the Company delivers to the Transfer Agent an Officers' Certificate and an Opinion of Counsel stating that such transaction complies with this Certificate of Designation.

(b) Upon any consolidation by the Company with, or merger by the Company into, any other person or any conveyance, transfer or lease of all or substantially all the assets of the Company as described in Section 9(a), the successor resulting from such consolidation or into which the Company is merged or the transferee or lessee to which such conveyance, transfer or lease is made, will succeed to, and be substituted for, and may exercise every right and power

of, the Company under the shares of Preferred Stock, and thereafter, except in the case of a lease, the predecessor (if still in existence) will be released from its obligations and covenants with respect to the Preferred Stock.

10. SEC Reports.

Whether or not the Company is required to file reports with the Commission, if any shares of Preferred Stock are outstanding, the Company shall file with the Commission all such reports and other information as it would be required to file with the Commission by Section 13(a) or 15(d) under the Exchange Act. The Company shall supply each holder of Preferred Stock, upon request, without cost to such holder, copies of such reports or other information.

11. Certificates.

(a) *Form and Dating.* The Preferred Stock and the Transfer Agent's certificate of authentication shall be substantially in the form set forth in Exhibit A, which is hereby incorporated in and expressly made a part of this Certificate of Designation. The Preferred Stock certificate may have notations, legends or endorsements required by law, stock exchange rule, agreements to which the Company is subject, if any, or usage (provided that any such notation, legend or endorsement is in a form acceptable to the Company). Each Preferred Stock certificate shall be dated the date of its authentication. The terms of the Preferred Stock certificate set forth in Exhibit A are part of the terms of this Certificate of Designation.

(i) *Global Preferred Stock.* The Preferred Stock shall be issued initially in the form of one or more fully registered global certificates with the global securities legend and restricted securities legend set forth in Exhibit A hereto (the "Global Preferred Stock"), which shall be deposited on behalf of the purchasers represented thereby with the Transfer Agent, as custodian for DTC (or with such other custodian as DTC may direct), and registered in the name of DTC or a nominee of DTC, duly executed by the Company and authenticated by the Transfer Agent as hereinafter provided. The number of shares of Preferred Stock represented by Global Preferred Stock may from time to time be increased or decreased by adjustments made on the records of the Transfer Agent and DTC or its nominee as hereinafter provided. With respect to shares of Preferred Stock that are not "restricted securities" as defined in Rule 144 on a conversion date, all shares of Common Stock distributed on such conversion date will be freely transferable without restriction under the Securities Act (other than by affiliates), and such shares will be eligible for receipt in global form through the facilities of DTC.

(ii) *Book-Entry Provisions.* In the event Global Preferred Stock is deposited with or on behalf of DTC, the Company shall execute and the Transfer Agent shall authenticate and deliver initially one or more Global Preferred Stock certificates that (a) shall be registered in the name of DTC as depository for such Global Preferred Stock or the nominee of DTC and (b) shall be delivered by the Transfer Agent to DTC or pursuant to DTC's instructions or held by the Transfer Agent as custodian for DTC.

Members of, or participants in, DTC (“Agent Members”) shall have no rights under this Certificate of Designation with respect to any Global Preferred Stock held on their behalf by DTC or by the Transfer Agent as the custodian of DTC or under such Global Preferred Stock, and DTC may be treated by the Company, the Transfer Agent and any agent of the Company or the Transfer Agent as the absolute owner of such Global Preferred Stock for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Transfer Agent or any agent of the Company or the Transfer Agent from giving effect to any written certification, proxy or other authorization furnished by DTC or impair, as between DTC and its Agent Members, the operation of customary practices of DTC governing the exercise of the rights of a holder of a beneficial interest in any Global Preferred Stock.

(iii) *Certificated Preferred Stock; Certificated Common Stock.* Except as provided in this paragraph 11(a) or in paragraph 11(c), owners of beneficial interests in Global Preferred Stock will not be entitled to receive physical delivery of Preferred Stock in fully registered certificated form (“Certificated Preferred Stock”). With respect to shares of Preferred Stock that are “restricted securities” as defined in Rule 144 on a conversion date, all shares of Common Stock issuable on conversion of such shares on such conversion date will be issued in fully registered certificated form (“Certificated Common Stock”). Certificates of Certificated Common Stock will be mailed or made available at the office of the Transfer Agent for the Preferred Stock on or as soon as reasonably practicable after the relevant conversion date to the converting holder.

After a transfer of any Preferred Stock or Certificated Common Stock during the period of the effectiveness of a Shelf Registration Statement with respect to such Preferred Stock or such Certificated Common Stock, all requirements pertaining to legends on such Preferred Stock (including Global Preferred Stock) or Certificated Common Stock will cease to apply, the requirements requiring that any such Certificated Common Stock issued to Holders be issued in certificated form, as the case may, will cease to apply, and Preferred Stock or Common Stock, as the case may be, in global or fully registered certificated form, in either case without legends, will be available to the transferee of the Holder of such Preferred Stock or Certificated Common Stock upon exchange of such transferring Holder’s Preferred Stock or Common Stock or directions to transfer such Holder’s interest in the Global Preferred Stock, as applicable.

(b) *Execution and Authentication.* Two Officers shall sign the Preferred Stock certificate for the Company by manual or facsimile signature.

If an Officer whose signature is on a Preferred Stock certificate no longer holds that office at the time the Transfer Agent authenticates the Preferred Stock certificate, the Preferred Stock certificate shall be valid nevertheless.

A Preferred Stock certificate shall not be valid until an authorized signatory of the Transfer Agent manually signs the certificate of authentication on the Preferred Stock certificate. The signature shall be conclusive evidence that the Preferred Stock certificate has been authenticated under this Certificate of Designation.

The Transfer Agent shall authenticate and deliver certificates for up to 313,250 shares of Preferred Stock for original issue upon a written order of the Company signed by two

Officers or by an Officer and an Assistant Treasurer of the Company. Such order shall specify the number of shares of Preferred Stock to be authenticated and the date on which the original issue of Preferred Stock is to be authenticated.

The Transfer Agent may appoint an authenticating agent reasonably acceptable to the Company to authenticate the certificates for Preferred Stock. Unless limited by the terms of such appointment, an authenticating agent may authenticate certificates for Preferred Stock whenever the Transfer Agent may do so. Each reference in this Certificate of Designation to authentication by the Transfer Agent includes authentication by such agent. An authenticating agent has the same rights as the Transfer Agent or agent for service of notices and demands.

(c) *Transfer and Exchange.* (i) Transfer and Exchange of Certificated Preferred Stock. When Certificated Preferred Stock is presented to the Transfer Agent with a request to register the transfer of such Certificated Preferred Stock or to exchange such Certificated Preferred Stock for an equal number of shares of Certificated Preferred Stock, the Transfer Agent shall register the transfer or make the exchange as requested if its reasonable requirements for such transaction are met; provided, however, that the Certificated Preferred Stock surrendered for transfer or exchange:

(1) shall be duly endorsed or accompanied by a written instrument of transfer in form reasonably satisfactory to the Company and the Transfer Agent, duly executed by the Holder thereof or its attorney duly authorized in writing; and

(2) is being transferred or exchanged pursuant to an effective registration statement under the Securities Act or pursuant to clause (i) or (ii) below, and is accompanied by the following additional information and documents, as applicable:

(I) if such Certificated Preferred Stock is being delivered to the Transfer Agent by a Holder for registration in the name of such Holder, without transfer, a certification from such Holder to that effect in substantially the form of Exhibit C hereto; or

(II) if such Certificated Preferred Stock is being transferred to the Company or to a “qualified institutional buyer (“QIB”) in accordance with Rule 144A under the Securities Act or pursuant to another exemption from registration under the Securities Act, (i) a certification to that effect (in substantially the form of Exhibit C hereto) and (ii) if the Company so requests, an Opinion of Counsel or other evidence reasonably satisfactory to it as to the compliance with the restrictions set forth in the legend set forth in paragraph 11(c) (vii).

(ii) Restrictions on Transfer of Certificated Preferred Stock for a Beneficial Interest in Global Preferred Stock. Certificated Preferred Stock may not be exchanged for a beneficial interest in Global Preferred Stock except upon satisfaction of the requirements set forth below. Upon receipt by the Transfer Agent of Certificated Preferred Stock, duly endorsed or accompanied by appropriate instruments of transfer, in form reasonably satisfactory to the Company and the Transfer Agent, together with written instructions directing

the Transfer Agent to make, or to direct DTC to make, an adjustment on its books and records with respect to such Global Preferred Stock to reflect an increase in the number of shares of Preferred Stock represented by the Global Preferred Stock, then the Transfer Agent shall cancel such Certificated Preferred Stock and cause, or direct DTC to cause, in accordance with the standing instructions and procedures existing between DTC and the Transfer Agent, the number of shares of Preferred Stock represented by the Global Preferred Stock to be increased accordingly. If no Global Preferred Stock is then outstanding, the Company shall issue and the Transfer Agent shall authenticate, upon written order of the Company in the form of an Officers' Certificate, a new Global Preferred Stock representing the appropriate number of shares.

(iii) Transfer and Exchange of Global Preferred Stock. The transfer and exchange of Global Preferred Stock or beneficial interests therein shall be effected through DTC, in accordance with this Certificate of Designation (including applicable restrictions on transfer set forth herein, if any) and the procedures of DTC therefor.

(iv) Transfer of a Beneficial Interest in Global Preferred Stock for a Certificated Preferred Stock.

(1) Any Person having a beneficial interest in Preferred Stock that is being transferred or exchanged pursuant to an effective registration statement under the Securities Act or pursuant to another exemption from registration thereunder may upon request, but only with the consent of the Company, and if accompanied by a certification from such Person to that effect (in substantially the form of Exhibit C hereto), exchange such beneficial interest for Certificated Preferred Stock representing the same number of shares of Preferred Stock. Upon receipt by the Transfer Agent of written instructions or such other form of instructions as is customary for DTC from DTC or its nominee on behalf of any Person having a beneficial interest in Global Preferred Stock and upon receipt by the Transfer Agent of a written order or such other form of instructions as is customary for DTC or the Person designated by DTC as having such a beneficial interest in a Transfer Restricted Security only, then, the Transfer Agent or DTC, at the direction of the Transfer Agent, will cause, in accordance with the standing instructions and procedures existing between DTC and the Transfer Agent, the number of shares of Preferred Stock represented by Global Preferred Stock to be reduced on its books and records and, following such reduction, the Company will execute and the Transfer Agent will authenticate and deliver to the transferee Certificated Preferred Stock.

(2) Certificated Preferred Stock issued in exchange for a beneficial interest in a Global Preferred Stock pursuant to this paragraph 11(c)(iv) shall be registered in such names and in such authorized denominations as DTC, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Transfer Agent. The Transfer Agent shall deliver such Certificated Preferred Stock to the Persons in whose names such Preferred Stock are so registered in accordance with the instructions of DTC.

(v) Restrictions on Transfer and Exchange of Global Preferred Stock.

(1) Notwithstanding any other provisions of this Certificate of Designation (other than the provisions set forth in paragraph 11(c)(vi)), Global Preferred Stock may not be transferred as a whole except by DTC to a nominee of DTC or by a nominee of DTC to DTC or another nominee of DTC or by DTC or any such nominee to a successor depository or a nominee of such successor depository.

(2) In the event that the Global Preferred Stock is exchanged for Preferred Stock in definitive registered form pursuant to paragraph 11(c)(vi) prior to the effectiveness of a Shelf Registration Statement with respect to such securities, such Preferred Stock may be exchanged only in accordance with such procedures as are substantially consistent with the provisions of this paragraph 11(c) (including the certification requirements set forth in the Exhibits to this Certificate of Designation intended to ensure that such transfers comply with Rule 144A or such other applicable exemption from registration under the Securities Act, as the case may be) and such other procedures as may from time to time be adopted by the Company.

(vi) Authentication of Certificated Preferred Stock. If at any time:

(1) DTC notifies the Company that DTC is unwilling or unable to continue as depository for the Global Preferred Stock and a successor depository for the Global Preferred Stock is not appointed by the Company within 90 days after delivery of such notice;

(2) DTC ceases to be a clearing agency registered under the Exchange Act and a successor depository for the Global Preferred Stock is not appointed by the Company within 90 days; or

(3) the Company, in its sole discretion, notifies the Transfer Agent in writing that it elects to cause the issuance of Certificated Preferred Stock under this Certificate of Designation,

then the Company will execute, and the Transfer Agent, upon receipt of a written order of the Company signed by two Officers or by an Officer and an Assistant Treasurer of the Company requesting the authentication and delivery of Certificated Preferred Stock to the Persons designated by the Company, will authenticate and deliver Certificated Preferred Stock equal to the number of shares of Preferred Stock represented by the Global Preferred Stock, in exchange for such Global Preferred Stock.

(vii) Legend.

(1) Except as permitted by the following paragraph (2) and in paragraph 11(a)(iii), each certificate evidencing the Global Preferred Stock, the Certificated Preferred Stock and Certificated Common Stock shall bear a legend in substantially the following form:

“THE SECURITY EVIDENCED HEREBY (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT



OF 1933 (THE "SECURITIES ACT"), AND THIS SECURITY (AND THE COMMON STOCK INTO WHICH THIS SECURITY IS CONVERTIBLE) MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THE SECURITY EVIDENCED HEREBY IS HEREBY NOTIFIED THAT THE SELLER MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER. THE HOLDER OF THE SECURITY EVIDENCED HEREBY AGREES FOR THE BENEFIT OF THE COMPANY THAT (A) SUCH SECURITY (AND THE COMMON STOCK INTO WHICH THIS SECURITY IS CONVERTIBLE) MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (1) IN THE UNITED STATES TO A PERSON WHO THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (2) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE), (3) TO THE COMPANY OR (4) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH OF CASES (1) THROUGH (4) IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE STATES OF THE UNITED STATES AND (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER OF THIS SECURITY FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE. IN ANY CASE, THE HOLDER OF THIS SECURITY WILL NOT, DIRECTLY OR INDIRECTLY, ENGAGE IN ANY HEDGING TRANSACTION WITH REGARD TO THE SECURITY EXCEPT AS PERMITTED UNDER THE SECURITIES ACT."<sup>1</sup>

(2) Upon any sale or transfer of a Transfer Restricted Security (including any Transfer Restricted Security represented by Global Preferred Stock) pursuant to Rule 144 under the Securities Act or another exemption from registration under the Securities Act or an effective registration statement under the Securities Act:

(I) in the case of any Transfer Restricted Security that is a Certificated Preferred Stock, the Transfer Agent shall permit the Holder thereof to exchange such Transfer Restricted Security for Certificated Preferred Stock that

---

<sup>1</sup> Subject to removal upon registration under the Securities Act of 1933 or otherwise when the security shall no longer be a Transfer Restricted Security.

does not bear a restrictive legend and rescind any restriction on the transfer of such Transfer Restricted Security; and

(II) in the case of any Transfer Restricted Security that is represented by a Global Preferred Stock, with the consent of the Company, the Transfer Agent shall permit the Holder thereof to exchange such Transfer Restricted Security for Certificated Preferred Stock that does not bear the legend set forth above and rescind any restriction on the transfer of such Transfer Restricted Security, if the Holder's request for such exchange was made in reliance on Rule 144 or another exemption from registration under the Securities Act and the Holder certifies to that effect in writing to the Transfer Agent (such certification to be in the form set forth in Exhibit C hereto).

(viii) Cancellation or Adjustment of Global Preferred Stock. At such time as all beneficial interests in Global Preferred Stock have either been exchanged for Certificated Preferred Stock, converted or canceled, such Global Preferred Stock shall be returned to DTC for cancellation or retained and canceled by the Transfer Agent. At any time prior to such cancellation, if any beneficial interest in Global Preferred Stock is exchanged for Certificated Preferred Stock, converted or canceled, the number of shares of Preferred Stock represented by such Global Preferred Stock shall be reduced and an adjustment shall be made on the books and records of the Transfer Agent with respect to such Global Preferred Stock, by the Transfer Agent or DTC, to reflect such reduction.

(ix) Obligations with Respect to Transfers and Exchanges of Preferred Stock.

(1) To permit registrations of transfers and exchanges, the Company shall execute and the Transfer Agent shall authenticate Certificated Preferred Stock and Global Preferred Stock as required pursuant to the provisions of this paragraph 11(c).

(2) All Certificated Preferred Stock and Global Preferred Stock issued upon any registration of transfer or exchange of Certificated Preferred Stock or Global Preferred Stock shall be the valid obligations of the Company, entitled to the same benefits under this Certificate of Designation as the Certificated Preferred Stock or Global Preferred Stock surrendered upon such registration of transfer or exchange.

(3) Prior to due presentment for registration of transfer of any shares of Preferred Stock, the Transfer Agent and the Company may deem and treat the Person in whose name such shares of Preferred Stock are registered as the absolute owner of such Preferred Stock and neither the Transfer Agent nor the Company shall be affected by notice to the contrary.

(4) No service charge shall be made to a Holder for any registration of transfer or exchange upon surrender of any Preferred Stock certificate or Common Stock certificate at the office of the Transfer Agent maintained for that purpose. However, the Company may require payment of a sum sufficient to cover any tax or other

governmental charge that may be imposed in connection with any registration of transfer or exchange of Preferred Stock certificates or Common Stock certificates.

(5) Upon any sale or transfer of shares of Preferred Stock (including any Preferred Stock represented by a Global Preferred Stock Certificate) or of Certificated Common Stock pursuant to an effective registration statement under the Securities Act or pursuant to Rule 144 or another exemption from registration under the Securities Act (and based upon an Opinion of Counsel reasonably satisfactory to the Company if it so requests):

(A) in the case of any Certificated Preferred Stock or Certificated Common Stock, the Company and the Transfer Agent shall permit the holder thereof to exchange such Preferred Stock or Certificated Common Stock for Certificated Preferred Stock or Certificated Common Stock, as the case may be, that does not bear a restrictive legend and rescind any restriction on the transfer of such Preferred Stock or Common Stock issuable in respect of the conversion of the Preferred Stock; and

(B) in the case of any Global Preferred Stock, such Preferred Stock shall not be required to bear the legend set forth in paragraph (c)(vii) above but shall continue to be subject to the provisions of paragraph (c)(iv) hereof; provided, however, that with respect to any request for an exchange of Preferred Stock that is represented by Global Preferred Stock for Certificated Preferred Stock that does not bear the legend set forth in paragraph (c)(vii) above in connection with a sale or transfer thereof pursuant to Rule 144 or another exemption from registration under the Securities Act (and based upon an Opinion of Counsel if the Company so requests), the Holder thereof shall certify in writing to the Transfer Agent that such request is being made pursuant to such exemption (such certification to be substantially in the form of Exhibit C hereto).

(x) No Obligation of the Transfer Agent.

(1) The Transfer Agent shall have no responsibility or obligation to any beneficial owner of Global Preferred Stock, a member of, or a participant in DTC or any other Person with respect to the accuracy of the records of DTC or its nominee or of any participant or member thereof, with respect to any ownership interest in the Preferred Stock or with respect to the delivery to any participant, member, beneficial owner or other Person (other than DTC) of any notice or the payment of any amount, under or with respect to such Global Preferred Stock. All notices and communications to be given to the Holders and all payments to be made to Holders under the Preferred Stock shall be given or made only to the Holders (which shall be DTC or its nominee in the case of the Global Preferred Stock). The rights of beneficial owners in any Global Preferred Stock shall be exercised only through DTC subject to the applicable rules and procedures of DTC. The Transfer Agent may rely and shall be fully protected in relying upon information furnished by DTC with respect to its members, participants and any beneficial owners.

(2) The Transfer Agent shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Certificate of Designation or under applicable law with respect to any transfer of any interest in any Preferred Stock (including any transfers between or among DTC participants, members or beneficial owners in any Global Preferred Stock) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Certificate of Designation, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

(d) *Replacement Certificates.* If a mutilated Preferred Stock certificate is surrendered to the Transfer Agent or if the Holder of a Preferred Stock certificate claims that the Preferred Stock certificate has been lost, destroyed or wrongfully taken, the Company shall issue and the Transfer Agent shall countersign a replacement Preferred Stock certificate if the reasonable requirements of the Transfer Agent and of Section 8-405 of the Uniform Commercial Code as in effect in the State of Oklahoma are met. If required by the Transfer Agent or the Company, such Holder shall furnish an indemnity bond sufficient in the judgment of the Company and the Transfer Agent to protect the Company and the Transfer Agent from any loss which either of them may suffer if a Preferred Stock certificate is replaced. The Company and the Transfer Agent may charge the Holder for their expenses in replacing a Preferred Stock certificate.

(e) *Temporary Certificates.* Until definitive Preferred Stock certificates are ready for delivery, the Company may prepare and the Transfer Agent shall countersign temporary Preferred Stock certificates. Temporary Preferred Stock certificates shall be substantially in the form of definitive Preferred Stock certificates but may have variations that the Company considers appropriate for temporary Preferred Stock certificates. Without unreasonable delay, the Company shall prepare and the Transfer Agent shall countersign definitive Preferred Stock certificates and deliver them in exchange for temporary Preferred Stock certificates.

(f) *Cancellation.* (i) In the event the Company shall purchase or otherwise acquire Certificated Preferred Stock, the same shall thereupon be delivered to the Transfer Agent for cancellation.

(ii) At such time as all beneficial interests in Global Preferred Stock have either been exchanged for Certificated Preferred Stock, converted, repurchased or canceled, such Global Preferred Stock shall thereupon be delivered to the Transfer Agent for cancellation.

(iii) The Transfer Agent and no one else shall cancel and destroy all Preferred Stock certificates surrendered for transfer, exchange, replacement or cancellation and deliver a certificate of such destruction to the Company unless the Company directs the Transfer Agent to deliver canceled Preferred Stock certificates to the Company. The Company may not issue new Preferred Stock certificates to replace Preferred Stock certificates to the extent they evidence Preferred Stock which the Company has purchased or otherwise acquired.

12. Additional Rights of Holders. In addition to the rights provided to Holders under this Certificate of Designation, Holders shall have the rights set forth in the Registration Rights Agreement.

13. Other Provisions.

(a) With respect to any notice to a holder of shares of Preferred Stock required to be provided hereunder, neither failure to mail such notice, nor any defect therein or in the mailing thereof, to any particular holder shall affect the sufficiency of the notice or the validity of the proceedings referred to in such notice with respect to the other holders or affect the legality or validity of any distribution, rights, warrant, reclassification, consolidation, merger, conveyance, transfer, dissolution, liquidation or winding-up, or the vote upon any such action. Any notice which was mailed in the manner herein provided shall be conclusively presumed to have been duly given whether or not the holder receives the notice.

(b) Shares of Preferred Stock issued and reacquired will be retired and canceled promptly after reacquisition thereof and, upon compliance with the applicable requirements of Oklahoma law, have the status of authorized but unissued shares of preferred stock of the Company undesignated as to series and may with any and all other authorized but unissued shares of preferred stock of the Company be designated or redesignated and issued or reissued, as the case may be, as part of any series of preferred stock of the Corporation, except that any issuance or reissuance of shares of Preferred Stock must be in compliance with this Certificate of Designation.

(c) The shares of Preferred Stock shall be issuable only in whole shares.

(d) All notice periods referred to herein shall commence on the date of the mailing of the applicable notice.

IN WITNESS WHEREOF, the Company has caused this certificate to be signed and attested this 29th day of March, 2004.

CHESAPEAKE ENERGY CORPORATION

By: /s/ MARTHA A. BURGER

---

Martha A. Burger  
Treasurer & Sr. Vice President

Attest: /s/ JENNIFER M. GRIGSBY

---

Jennifer M. Grigsby  
Assistant Treasurer & Corporate Secretary

## FORM OF PREFERRED STOCK

## FACE OF SECURITY

[THE SECURITY EVIDENCED HEREBY (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933 (THE "SECURITIES ACT"), AND THIS SECURITY (AND THE COMMON STOCK INTO WHICH THIS SECURITY IS CONVERTIBLE) MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THE SECURITY EVIDENCED HEREBY IS HEREBY NOTIFIED THAT THE SELLER MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER. THE HOLDER OF THE SECURITY EVIDENCED HEREBY AGREES FOR THE BENEFIT OF THE COMPANY THAT (A) SUCH SECURITY (AND THE COMMON STOCK INTO WHICH THIS SECURITY IS CONVERTIBLE) MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (1) IN THE UNITED STATES TO A PERSON WHO THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (2) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE), (3) TO THE COMPANY OR (4) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH OF CASES (1) THROUGH (4) IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE STATES OF THE UNITED STATES AND (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER OF THIS SECURITY FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE. IN ANY CASE, THE HOLDER OF THIS SECURITY WILL NOT, DIRECTLY OR INDIRECTLY, ENGAGE IN ANY HEDGING TRANSACTION WITH REGARD TO THE SECURITY EXCEPT AS PERMITTED UNDER THE SECURITIES ACT.]<sup>1</sup>

[UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), NEW YORK, NEW YORK, TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO., OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC) ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY

---

<sup>1</sup> Subject to removal upon registration under the Securities Act of 1933 or otherwise when the security shall no longer be a Transfer Restricted Security.

PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO. HAS AN INTEREST HEREIN.][<sup>2</sup>

[TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE CERTIFICATE OF DESIGNATION REFERRED TO BELOW.]<sup>2</sup>

IN CONNECTION WITH ANY TRANSFER, THE HOLDER WILL DELIVER TO THE TRANSFER AGENT SUCH CERTIFICATES AND OTHER INFORMATION AS SUCH TRANSFER AGENT MAY REASONABLY REQUIRE TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS.

---

<sup>2</sup> Subject to removal if not a global security.

4.125% Cumulative Convertible Preferred Stock (par value \$0.01)  
(liquidation preference \$1000 per share of Convertible Preferred Stock)

of

Chesapeake Energy Corporation

Chesapeake Energy Corporation, an Oklahoma corporation (the "Company"), hereby certifies that [\_\_\_\_\_] (the "Holder") is the registered owner of [\_\_\_\_\_] fully paid and non-assessable preferred securities of the Company designated the 4.125% Cumulative Convertible Preferred Stock (par value \$0.01) (liquidation preference \$1000 per share of Preferred Stock) (the "Preferred Stock"). The shares of Preferred Stock are transferable on the books and records of the Transfer Agent, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for transfer. The designations, rights, privileges, restrictions, preferences and other terms and provisions of the Preferred Stock represented hereby are issued and shall in all respects be subject to the provisions of the Certificate of Designation dated March 29, 2004, as the same may be amended from time to time (the "Certificate of Designation"). Capitalized terms used herein but not defined shall have the meaning given them in the Certificate of Designation. The Company will provide a copy of the Certificate of Designation to a Holder without charge upon written request to the Company at its principal place of business.

Reference is hereby made to select provisions of the Preferred Stock set forth on the reverse hereof, and to the Certificate of Designation, which select provisions and the Certificate of Designation shall for all purposes have the same effect as if set forth at this place.

Upon receipt of this certificate, the Holder is bound by the Certificate of Designation and is entitled to the benefits thereunder.

Unless the Transfer Agent's Certificate of Authentication hereon has been properly executed, these shares of Preferred Stock shall not be entitled to any benefit under the Certificate of Designation or be valid or obligatory for any purpose.



IN WITNESS WHEREOF, the Company has executed this certificate this [ ] day of [ ], 2004.

CHESAPEAKE ENERGY CORPORATION

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

TRANSFER AGENT'S CERTIFICATE OF AUTHENTICATION

These are shares of the Preferred Stock referred to in the within-mentioned Certificate of Designation.

Dated: \_\_\_\_\_, 2004

UMB BANK, N.A., as Transfer Agent,

By: \_\_\_\_\_  
Authorized Signatory

REVERSE OF SECURITY

Cash dividends on each share of Preferred Stock shall be payable at a rate per annum set forth in the face hereof or as provided in the Certificate of Designation.

The shares of Preferred Stock shall be convertible into the Company's Common Stock in the manner and according to the terms set forth in the Certificate of Designation.

The Company will furnish without charge to each holder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock and the qualifications, limitations or restrictions of such preferences and/or rights.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers the shares of Preferred Stock evidenced hereby to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Insert assignee's social security or tax identification number)

\_\_\_\_\_  
\_\_\_\_\_

(Insert address and zip code of assignee)

and irrevocably appoints: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

agent to transfer the shares of Preferred Stock evidenced hereby on the books of the Transfer Agent. The agent may substitute another to act for him or her.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

(Sign exactly as your name appears on the other side of this Preferred Stock Certificate)

Signature Guarantee:<sup>3</sup> \_\_\_\_\_

\_\_\_\_\_

<sup>1</sup> (Signature must be guaranteed by an "eligible guarantor institution" that is a bank, stockbroker, savings and loan association or credit union meeting the requirements of the Transfer Agent, which requirements include membership or participation in the Securities Transfer Agents Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Transfer Agent in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.)

## NOTICE OF CONVERSION

(To be Executed by the Holder  
in order to Convert the Preferred Stock)

The undersigned hereby irrevocably elects to convert (the "Conversion") shares of 4.125% Cumulative Convertible Preferred Stock (the "Preferred Stock"), represented by stock certificate No(s) \_\_\_\_\_ (the "Preferred Stock Certificates") into shares of common stock ("Common Stock") of Chesapeake Energy Corporation (the "Company") according to the conditions of the Certificate of Designation of the Preferred Stock (the "Certificate of Designation"), as of the date written below. If shares are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto and is delivering herewith the Preferred Stock Certificates. No fee will be charged to the holder for any conversion, except for transfer taxes, if any. A copy of each Preferred Stock Certificate is attached hereto (or evidence of loss, theft or destruction thereof).

The undersigned represents and warrants that all offers and sales by the undersigned of the shares of Common Stock issuable to the undersigned upon conversion of the Preferred Stock shall be made pursuant to registration of the Common Stock under the Securities Act of 1933 (the "Act"), or pursuant to any exemption from registration under the Act.

Any holder, upon the exercise of its conversion rights in accordance with the terms of the Certificate of Designation and the Preferred Stock, agrees to be bound by the terms of the Registration Rights Agreement.

Capitalized terms used but not defined herein shall have the meanings ascribed thereto in or pursuant to the Certificate of Designation.

Date of Conversion: \_\_\_\_\_

Applicable Conversion Price: \_\_\_\_\_

Number of shares of Preferred Stock to be Converted: \_\_\_\_\_

Number of shares of Common Stock to be Issued: \* \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Address:\*\* \_\_\_\_\_

Fax No.: \_\_\_\_\_

\*The Company is not required to issue shares of Common Stock until the original Preferred Stock Certificate(s) (or evidence of loss, theft or destruction thereof) to be converted are received

by the Company or its Transfer Agent. The Company shall issue and deliver shares of Common Stock to an overnight courier not later than three business days following receipt of the original Preferred Stock Certificate(s) to be converted.

\*\*Address where shares of Common Stock and any other payments or certificates shall be sent by the Company.

CERTIFICATE TO BE DELIVERED UPON EXCHANGE OR  
REGISTRATION OF TRANSFER OF PREFERRED STOCK

Re: 4.125% Cumulative Convertible Preferred Stock (the "Preferred Stock") of Chesapeake Energy Corporation (the "Company")

This Certificate relates to \_\_\_\_\_ shares of Preferred Stock held in \*/ book-entry or \*/ definitive form by \_\_\_\_\_ (the "Transferor").

The Transferor\*:

- has requested the Transfer Agent by written order to deliver in exchange for its beneficial interest in the Preferred Stock held by the Depository shares of Preferred Stock in definitive, registered form equal to its beneficial interest in such Preferred Stock (or the portion thereof indicated above); or
- has requested the Transfer Agent by written order to exchange or register the transfer of Preferred Stock.

In connection with such request and in respect of such Preferred Stock, the Transferor does hereby certify that the Transferor is familiar with the Certificate of Designation relating to the above-captioned Preferred Stock and that the transfer of this Preferred Stock does not require registration under the Securities Act of 1933 (the "Securities Act") because \*/:

- Such Preferred Stock is being acquired for the Transferor's own account without transfer.
- Such Preferred Stock is being transferred to the Company.
- Such Preferred Stock is being transferred to a qualified institutional buyer (as defined in Rule 144A under the Securities Act), in reliance on Rule 144A.
- Such Preferred Stock is being transferred in reliance on and in compliance with another exemption from the registration requirements of the Securities Act (and based on an Opinion of Counsel if the Company so requests).

\_\_\_\_\_  
[INSERT NAME OF TRANSFEROR]

by: \_\_\_\_\_

Date: \_\_\_\_\_

\*/ Please check applicable box.

FOURTH AMENDED AND RESTATED CREDIT AGREEMENT

among

CHESAPEAKE ENERGY CORPORATION,

CHESAPEAKE EXPLORATION LIMITED PARTNERSHIP,  
as Borrower,

UNION BANK OF CALIFORNIA, N.A.,  
as Administrative Agent and Collateral Agent,

BNP PARIBAS  
and  
SUNTRUST BANK  
as Co-Syndication Agents,

and  
CALYON NEW YORK BRANCH  
and  
COMERICA BANK,  
as Co-Documentation Agents

and  
BANK OF SCOTLAND  
and  
WASHINGTON MUTUAL BANK  
and  
BANK OF AMERICA  
as Co-Agents

and

The Several Lenders  
from Time to Time Parties Hereto,

Dated as of May 7, 2004

UNION BANK OF CALIFORNIA, N.A.  
Lead Arranger

---



## TABLE OF CONTENTS

|   |         |
|---|---------|
| SECTION 1. DEFINITIONS  | i       |
| 1.1. Defined Terms  | i       |
| 1.2. Other Definitional Provisions  | xxii    |
| SECTION 2. AMOUNT AND TERMS OF REVOLVING COMMITMENTS                              | xxiii   |
| 2.1. Revolving Commitments  | xxiii   |
| 2.2. Procedure for Revolving Loan Borrowing                                       | xxiv    |
| 2.3. Commitment Fees, etc.  | xxiv    |
| 2.4. Termination or Reduction of Revolving Commitments                            | xxiv    |
| 2.5. L/C Commitment   | xxv     |
| 2.6. Procedure for Issuance of Letter of Credit                                   | xxv     |
| 2.7. Fees and Other Charges   | xxvi    |
| 2.8. L/C Participations   | xxvi    |
| 2.9. Reimbursement Obligation of the Borrower                                     | xxvii   |
| 2.10. Obligations Absolute  | xxviii  |
| 2.11. Letter of Credit Payments   | xxix    |
| 2.12. Applications  | xxix    |
| 2.13. Borrowing Base and Collateral Value Determination                           | xxix    |
| SECTION 3. GENERAL PROVISIONS APPLICABLE TO REVOLVING LOANS AND LETTERS OF CREDIT | xxxi    |
| 3.1. Optional Prepayments   | xxxi    |
| 3.2. Mandatory Prepayments  | xxxii   |
| 3.3. Conversion and Continuation Options  | xxxiv   |
| 3.4. Limitations on Eurodollar Tranches   | xxxiv   |
| 3.5. Interest Rates and Payment Dates   | xxxv    |
| 3.6. Computation of Interest and Fees   | xxxv    |
| 3.7. Inability to Determine Interest Rate   | xxxvi   |
| 3.8. Pro Rata Treatment and Payments  | xxxvi   |
| 3.9. Requirements of Law  | xxxviii |
| 3.10. Taxes   | xxxix   |
| 3.11. Indemnity   | xli     |
| 3.12. Change of Lending Office  | xli     |
| 3.13. Replacement of Lenders  | xlii    |
| 3.14. Evidence of Debt  | xlii    |
| 3.15. Illegality  | xliii   |
| SECTION 4. REPRESENTATIONS AND WARRANTIES   | xliii   |
| 4.1. Financial Condition  | xliii   |

|   |        |
|---|--------|
| 4.2. No Change  | xliii  |
| 4.3. Existence; Compliance with Law                         | xliv   |
| 4.4. Power; Authorization; Enforceable Obligations          | xliv   |
| 4.5. No Legal Bar   | xliv   |
| 4.6. Litigation   | xliv   |
| 4.7. No Default   | xlv    |
| 4.8. Ownership of Property; Liens                           | xlv    |
| 4.9. Intellectual Property                                  | xlv    |
| 4.10. Taxes   | xlv    |
| 4.11. Federal Regulations                                   | xlv    |
| 4.12. Labor Matters   | xlvi   |
| 4.13. ERISA   | xlvi   |
| 4.14. Investment Company Act; Other Regulations             | xlvi   |
| 4.15. Subsidiaries  | xlvi   |
| 4.16. Use of Proceeds                                       | xlvii  |
| 4.17. Environmental Matters                                 | xlvii  |
| 4.18. Accuracy of Information, etc.                         | xlviii |
| 4.19. Security Documents                                    | xlviii |
| 4.20. Solvency  | xlviii |
| 4.21. Senior Debt Limit                                     | xlviii |
| 4.22. Proved Developed Properties                           | xlviii |
| 4.23. Subsidiary Guarantors                                 | xlviii |
| <br>  |        |
| SECTION 5. CONDITIONS PRECEDENT                             | xlix   |
| 5.1. Conditions to Initial Extension of Credit              | xlix   |
| 5.2. Conditions to Each Extension of Credit                 | li     |
| <br>  |        |
| SECTION 6. AFFIRMATIVE COVENANTS                            | li     |
| 6.1. Financial Statements                                   | li     |
| 6.2. Certificates; Other Information                        | lii    |
| 6.3. Payment of Obligations                                 | liv    |
| 6.4. Maintenance of Existence; Compliance                   | liv    |
| 6.5. Maintenance of Property; Insurance                     | liv    |
| 6.6. Inspection of Property; Books and Records; Discussions | lv     |
| 6.7. Notices  | lv     |
| 6.8. Environmental Laws                                     | lvi    |
| 6.9. Collateral Coverage and Guarantees                     | lvi    |
| 6.10. Further Assurances                                    | lvii   |
| <br>  |        |
| SECTION 7. NEGATIVE COVENANTS                               | lvii   |
| 7.1. Financial Condition Covenants                          | lvii   |
| 7.2. Indebtedness   | lviii  |
| 7.3. Liens  | lx     |

|  |            |
|--|------------|
| 7.4. Fundamental Changes   | lxii       |
| 7.5. Disposition of Property   | lxii       |
| 7.6. Restricted Payments   | lxiii      |
| 7.7. Investments   | lxiv       |
| 7.8. Optional Payments and Modifications of Certain Debt Instruments | lxvi       |
| 7.9. Transactions with Affiliates                                    | lxvi       |
| 7.10. Sales and Leasebacks   | lxvi       |
| 7.11. Changes in Fiscal Periods                                      | lxvi       |
| 7.12. Negative Pledge Clauses  | lxvi       |
| 7.13. Clauses Restricting Subsidiary Distributions                   | lxvii      |
| 7.14. Take-or-Pay Contracts.   | lxvii      |
| 7.15. Lines of Business  | lxvii      |
| 7.16. Senior Debt Limit  | lxvii      |
| 7.17. Preferred Stock Issuance                                       | lxvii      |
| <br>SECTION 8. EVENTS OF DEFAULT                                     | <br>lxviii |
| <br>SECTION 9. THE AGENTS  | <br>lxxi   |
| 9.1. Appointment   | lxxi       |
| 9.2. Delegation of Duties  | lxxi       |
| 9.3. Exculpatory Provisions  | lxxi       |
| 9.4. Reliance by Agents  | lxxii      |
| 9.5. Notice of Default   | lxxii      |
| 9.6. Non-Reliance on Agents and Other Lenders                        | lxxii      |
| 9.7. Indemnification   | lxxiii     |
| 9.8. Agent in Its Individual Capacity                                | lxxiv      |
| 9.9. Successor Administrative Agent                                  | lxxiv      |
| 9.10. Agents Generally   | lxxiv      |
| <br>SECTION 10. MISCELLANEOUS  | <br>lxxiv  |
| 10.1. Amendments and Waivers   | lxxiv      |
| 10.2. Notices  | lxxv       |
| 10.3. No Waiver; Cumulative Remedies                                 | lxxvi      |
| 10.4. Survival of Representations and Warranties                     | lxxvii     |
| 10.5. Payment of Expenses and Taxes                                  | lxxvii     |
| 10.6. Successors and Assigns; Participations and Assignments         | lxxviii    |
| 10.6A. Procedure for Increases and Addition of New Lenders           | lxxx       |
| 10.7. Adjustments; Set-off   | lxxx       |
| 10.8. Counterparts   | lxxxii     |
| 10.9. Severability   | lxxxii     |
| 10.10. Integration   | lxxxii     |
| 10.11. <b>GOVERNING LAW</b>  | lxxxii     |
| 10.12. Submission To Jurisdiction; Waivers                           | lxxxii     |

|  |         |
|--|---------|
| 10.13. Acknowledgments   | lxxxiii |
| 10.14. Releases of Guarantees and Liens; Designation of Subsidiaries | lxxxiii |
| 10.15. Confidentiality   | lxxxiv  |
| 10.16. <b>WAIVERS OF JURY TRIAL</b>                                  | lxxxv   |
| 10.17. Delivery of Addenda   | lxxxv   |
| 10.18. Special Provisions  | lxxxv   |
| 10.19. Limitation on Interest  | lxxxvi  |
| 10.20. USA Patriot Act Notice  | lxxxvii |

**SCHEDULES:**

|         |   |
|---------|---|
| 1.1A    | Commitments   |
| 1.1B    | Mortgaged Property  |
| 4.1(b)  | Certain Hedging Transactions  |
| 4.4     | Consents, Authorizations, Filings and Notices   |
| 4.6     | Litigation  |
| 4.15(a) | Subsidiaries  |
| 4.15(b) | Outstanding Subscriptions, Options, Warrants, Calls, Rights etc. Relating to Capital Stock of the Company or any Subsidiary |
| 4.17(d) | Environmental Matters   |
| 4.17(f) | NonCompliance with Environmental Laws   |
| 4.19    | Mortgage Filing Jurisdictions   |
| 5.1(i)  | Existing Mortgages  |
| 7.2(d)  | Existing Indebtedness   |
| 7.3(f)  | Existing Liens  |
| 7.7(m)  | Investments   |

**EXHIBITS:**

|   |   |
|---|---|
| A | Form of Guarantee Agreement                         |
| B | Form of Compliance Certificate                      |
| C | Form of Closing Certificate                         |
| D | Form of Mortgage                                    |
| E | Form of Assignment and Acceptance                   |
| F | Form of Legal Opinion of Commercial Law Group, P.C. |
| G | Form of Exemption Certificate                       |
| H | Form of Revolving Note                              |
| I | Form of Addendum                                    |
| J | Form of Pari Passu Hedging Obligation Notice        |
| K | Requirements for Hedging Support Credit Facility    |

FOURTH AMENDED AND RESTATED CREDIT AGREEMENT, dated as of May 7, 2004, among CHESAPEAKE EXPLORATION LIMITED PARTNERSHIP, an Oklahoma limited partnership (the "Borrower"), CHESAPEAKE ENERGY CORPORATION, an Oklahoma corporation (the "Company"), UNION BANK OF CALIFORNIA, N.A., as administrative agent and collateral agent (in such capacities, the "Administrative Agent"), and as Issuing Lender, BNP PARIBAS and SUNTRUST BANK, as Co-Syndication Agents, CALYON NEW YORK BRANCH as successor in interest by consolidation to Credit Lyonnais New York Branch and COMERICA BANK, as Co-Documentation Agents, BANK OF SCOTLAND, WASHINGTON MUTUAL BANK, FA and BANK OF AMERICA, as Co-Agents, the several banks and other financial institutions or entities from time to time parties to this Agreement (the "Lenders") and UNION BANK OF CALIFORNIA, N.A., as Lead Arranger.

WITNESSETH:

WHEREAS, the Company and the Borrower wish to amend and restate the Third Amended and Restated Credit Agreement, dated as of May 30, 2003 (as amended, the "Existing Credit Agreement") to obtain a senior secured revolving credit facility in an aggregate principal amount of up to \$500,000,000, subject to increase as provided herein, and the parties hereto are willing to amend and restate the Existing Credit Agreement as set forth herein.

NOW, THEREFORE, in consideration of the premises set forth, the parties hereto hereby agree as follows:

SECTION 1. DEFINITIONS

1.1. Defined Terms. As used in this Agreement, the terms listed in this Section 1.1 shall have the respective meanings set forth in this Section 1.1.

"Addendum": an instrument, substantially in the form of Exhibit I, by which a Lender becomes a party to this Agreement as of the Closing Date.

"Adjusted Consolidated Net Tangible Assets": as defined in the Indentures, as applicable.

"Adjusted SPE Basis Projected Production": for any month the total of (a) SPE Basis Projected Production for such month attributable to reserves that are, at the time of determination, classified as "Producing" reserves plus (b) 25% of SPE Basis Projected Production for such month attributable to "Proved" reserves that are not, at the time of determination, classified as "Producing" reserves.

"Administrative Agent": as defined in the preamble to this Agreement.

"Affiliate": as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" of a Person means the power, directly or indirectly, either to (a) vote 20% or more of the securities having ordinary voting power for the election of directors (or persons

performing similar functions) of such Person or (b) direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.

“Agents”: the collective reference to the Administrative Agent, BNP Paribas and Suntrust Bank, as Co-Syndication Agents, Calyon New York Branch and Comerica Bank, as Co-Documentation Agents, Bank of Scotland, Washington Mutual Bank, FA, and Bank of America as Co-Agents, and Union Bank of California, N.A. as Lead Arranger, which term shall include, for purposes of Section 9 only, the Issuing Lender.

“Aggregate Exposure”: with respect to any Lender at any time, an amount equal to (a) until the Closing Date, the aggregate amount of such Lender’s Revolving Commitments at such time and (b) thereafter, the amount of such Lender’s Revolving Commitment then in effect or, if the Revolving Commitments have been terminated, the amount of such Lender’s Revolving Extensions of Credit then outstanding.

“Aggregate Exposure Percentage”: with respect to any Lender at any time, the ratio (expressed as a percentage) of such Lender’s Aggregate Exposure at such time to the Aggregate Exposure of all Lenders at such time.

“Agreement”: this Fourth Amended and Restated Credit Agreement, as amended, supplemented or otherwise modified from time to time.

“Applicable Margin”: for each Type of Revolving Loan, on any day, the rate per annum set forth at the appropriate intersection at the relevant column heading below based on the Applicable Rating Level as of the close of business on the immediately preceding Business Day:

| <u>Applicable<br/>Rating Level</u> | <u>Base Rate Loans</u> | <u>Eurodollar Loans</u> |
|------------------------------------|------------------------|-------------------------|
| Level I                            | .50%                   | 2.00%                   |
| Level II                           | .25%                   | 1.75%                   |
| Level III                          | 0%                     | 1.50%                   |
| Level IV                           | 0%                     | 1.25%                   |

; provided, that, prior to January 1, 2005, the Applicable Margin with respect to each Type of Revolving Loan will be set based on Level III.

“Applicable Rating Level”: means the level set forth below that corresponds to the ratings issued from time to time by Moody’s and S&P, as applicable to the Company’s senior unsecured long-term debt:

|           | <u>Moody's</u> | <u>S&amp;P</u> |
|-----------|----------------|----------------|
| Level I   | <Ba3           | <BB-           |
| Level II  | Ba3            | BB-            |
| Level III | Ba2            | BB             |
| Level IV  | >Ba2           | >BB            |

For purposes of the foregoing, (i) “>” means a rating more favorable than; “<” means a rating less favorable than; (ii) if ratings for the Company’s senior unsecured long-term debt shall not be available from either S&P or Moody’s, Level I shall be deemed applicable; (iii) if the ratings for the Company’s senior unsecured long-term debt fall within different levels that are one level apart, the more favorable of the two ratings shall apply (for example, if the Moody’s rating is Ba3 and the S&P rating is BB, Level III shall apply), (iv) if the ratings for the Company’s senior unsecured long-term debt fall within different levels that are more than one level apart, the level that is one level more favorable than the less favorable of the two ratings shall apply (for example, if the Moody’s rating is Ba3 and the S&P rating is BB+, Level III shall apply, and (v) if either of the Rating Agencies shall change its ratings nomenclature prior to the date all Obligations have been paid and the Commitments canceled, the Borrower and the Majority Lenders shall negotiate in good faith to amend the references to specific ratings in this definition to reflect such change, and pending such amendment, if an appropriate Applicable Rating Level is otherwise not determinable based upon the foregoing grid, the last Applicable Rating Level in effect at the time of such change shall continue to apply. A change in the Applicable Rating Level shall be effective as of the date on which a change in the rating is first announced irrespective of when notice of such change shall have been furnished by the Borrower to the Administrative Agent and the Lenders.

“Application”: an application, in such form as the Issuing Lender may specify from time to time, requesting the Issuing Lender to open a Letter of Credit.

“Approved Fund”: with respect to any Lender that is a fund that invests in commercial loans, any other fund that invests in commercial loans and is managed or advised by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

“Assignee”: as defined in Section 10.6(c).

“Assignment and Acceptance”: an Assignment and Acceptance, substantially in the form of Exhibit E.

“Assignor”: as defined in Section 10.6(c).

“Available Revolving Commitment”: as to any Lender at any time, an amount equal to the excess, if any, of (a) such Lender’s Revolving Commitment then in effect over (b) such Lender’s Revolving Extensions of Credit then outstanding.

“Base Rate”: for any day, a rate per annum (rounded upwards, if necessary, to the next 1/16 of 1%) equal to the greater of (a) the Reference Rate in effect on such day and (b) the Federal Funds Effective Rate in effect on such day plus 0.50%. For purposes hereof: “Reference Rate” shall mean the rate of interest per annum publicly announced from time to time by the Administrative Agent as its “reference rate” (the Reference Rate not intended to be the lowest rate of interest charged by the Administrative Agent in connection with extensions of credit to debtors). Any change in the Base Rate due to a change in the Reference Rate or the Federal Funds Effective Rate shall be effective as of the opening of business on the effective day of such change in the Reference Rate or the Federal Funds Effective Rate, respectively.

“Base Rate Loans”: Revolving Loans the rate of interest applicable to which is based upon the Base Rate.

“Benefited Lender”: as defined in Section 10.7(a).

“Board”: the Board of Governors of the Federal Reserve System of the United States (or any successor).

“Borrower”: as defined in the preamble to this Agreement.

“Borrowing Base”: at any time, the amount of the “Borrowing Base” as determined in accordance with Section 2.13, as reduced by the Borrower pursuant to Section 3.2.

“Borrowing Base Deficiency”: as defined in Section 3.2(b).

“Borrowing Base Deficiency Notice”: as defined in Section 3.2(b).

“Borrowing Base Period”: as defined in Section 2.13(b).

“Borrowing Date”: any Business Day specified by the Borrower as a date on which the Borrower requests the Lenders to make Revolving Loans hereunder.

“Budget Basis Projected Production” means, at any time of determination, the projected production of oil or gas (measured by volume unit or BTU equivalent, not sales price) from properties and interests owned by any Group Member which are located in or offshore of the United States and Canada, as such production is projected (i) in the most recent report delivered pursuant to Section 6.2(c) for purposes of management planning and budgeting after deducting projected production from any properties or interests sold or under contract for sale that had been included in such report and after adding projected production from any properties or interests that had not been reflected in such report.

“Business”: as defined in Section 4.17(b).

“Business Day”: a day other than a Saturday, Sunday or other day on which commercial banks in New York City or Los Angeles, California are authorized or required by law to close, provided, that with respect to notices and determinations in connection with, and



payments of principal and interest on, Eurodollar Loans, such day is also a day for trading by and between banks in Dollar deposits in the interbank eurodollar market.

“Capital Lease Obligations”: as to any Person, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP and, for the purposes of this Agreement, the amount of such obligations at any time shall be the capitalized amount thereof at such time determined in accordance with GAAP.

“Capital Stock”: any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation) and any and all warrants, rights or options to purchase any of the foregoing, including, without limitation, any preferred stock.

“Cash Equivalents”: means the following kinds of instruments if, in the case of instruments referred to in clauses (i)-(iv) below, on the date of purchase or other acquisition of any such instrument by the Company or any Subsidiary, the remaining term to maturity is not more than one year; (i) readily marketable obligations issued or unconditionally guaranteed as to principal of and interest thereon by the United States of America or by any agency or authority controlled or supervised by and acting as an instrumentality of the United States of America; (ii) repurchase obligations for instruments of the type described in clause (i) for which delivery of the instrument is made against payment; (iii) obligations (including, but not limited to, demand or time deposits, bankers’ acceptances and certificates of deposit) issued by a depository institution or trust company incorporated or doing business under the laws of the United States of America, any state thereof or the District of Columbia or a branch or subsidiary of any such depository institution or trust company operating outside the United States, provided, that such depository institution or trust company has, at the time of the Company’s or such Subsidiary’s investment therein or contractual commitment providing for such investment, capital surplus or undivided profits (as of the date of such institution’s most recently published financial statements) in excess of \$500,000,000; (iv) commercial paper issued by any corporation, if such commercial paper has, at the time of the Company’s or any Subsidiary’s investment therein or contractual commitment providing for such investment, credit ratings of A-1 (or higher) by Standard & Poor’s Ratings Services (“S&P”) and P-1 (or higher) by Moody’s Investors Service, Inc. (“Moody’s”); and (v) money market mutual or similar funds having assets in excess of \$500,000,000.

“CEMI Group”: means Chesapeake Energy Marketing, Inc., Mayfield Processing, L.L.C., MidCon Compression, L.P. and each other Subsidiary which is designated as an Unrestricted Subsidiary (as defined in the Indentures) in compliance with the terms of this Agreement and the Indentures.

“Closing Date”: the date on which the conditions precedent set forth in Section 5.1 shall have been satisfied, which date is May 7, 2004.

“Code”: the Internal Revenue Code of 1986, as amended from time to time.

“Collateral”: all property of the Loan Parties, now owned or hereafter acquired, upon which a Lien is purported to be created by any Security Document.

“Collateral Coverage Ratio”: at any time, the ratio of (a) the Collateral Value to (b) the greater of (i) the lesser of the Borrowing Base, if applicable, or the Total Revolving Commitments and (ii) the Total Revolving Extensions of Credit then outstanding.

“Collateral Deficiency Date”: as defined in Section 3.2(a).

“Collateral Value”: on any date, the net present value (using the discount rate then customarily utilized by Administrative Agent for collateral valuation purposes, which, on the Closing Date, is a 9% discount rate) of the projected future net revenues attributable to the portion of the reserves categorized as “Producing”, of the Mortgaged Properties, as determined from time to time in accordance with Section 2.13; provided, that the portion of the Collateral Value attributable to the net present value (as so determined) of the Mortgaged Properties owned by the Guarantors (the “Guarantors Collateral Value”) shall be limited such that the Guarantors Collateral Value shall not exceed 25% of the resulting total Collateral Value.

“Commitment Fee Rate”: on any day the rate per annum set forth below based on the Applicable Rating Level as of the close of business on the preceding Business Day:

| <u>Applicable Rating Level</u> | <u>Commitment Fee Rate</u> |
|--------------------------------|----------------------------|
| Level I or II                  | .375%                      |
| Level III or IV                | .30%                       |

provided that, prior to January 1, 2005, the Commitment Fee Rate will be set based on Level III.

“Commonly Controlled Entity”: an entity, whether or not incorporated, that is under common control with the Company within the meaning of Section 4001 of ERISA or is part of a group that includes the Company and that is treated as a single employer under Section 414 of the Code.

“Company”: as defined in the preamble to this Agreement.

“Company Report”: as defined in Section 6.2(d).

“Compliance Certificate”: a certificate duly executed by a Responsible Officer substantially in the form of Exhibit B.

“Conduit Lender”: any special purpose entity organized and administered by any Lender for the purpose of making Revolving Loans otherwise required to be made by such Lender and designated by such Lender in a written instrument, subject to the consent of the Administrative Agent and the Borrower (which consent shall not be unreasonably withheld);

provided, that the designation by any Lender of a Conduit Lender shall not relieve the designating Lender of any of its obligations to fund a Revolving Loan under this Agreement if, for any reason, its Conduit Lender fails to fund any such Revolving Loan, and the designating Lender (and not the Conduit Lender) shall have the sole right and responsibility to deliver all consents and waivers required or requested under this Agreement with respect to its Conduit Lender; and provided, further, that no Conduit Lender shall (a) be entitled to receive any greater amount pursuant to Sections 3.9, 3.10, 3.11 or 10.5 than the designating Lender would have been entitled to receive in respect of the extensions of credit made by such Conduit Lender or (b) be deemed to have any Revolving Commitment.

“Consolidated EBITDA”: for any period, Consolidated Net Income for such period plus, without duplication and to the extent reflected as a charge in the statement of such Consolidated Net Income for such period, the sum of (a) income tax expense, (b) Consolidated Interest Expense, (c) depletion, depreciation and amortization expense, (d) any extraordinary charges or losses determined in accordance with GAAP, and (e) any other non-cash charges, non-cash expenses or non-cash losses of any Group Member for such period (excluding any such charge, expense or loss incurred in the ordinary course of business that constitutes an accrual of or reserve for cash charges for any future period) including non-cash losses or charges resulting from the requirements of SFAS 133 or 143; provided that cash payments made during such period or in any future period in respect of such non-cash charges, expenses or losses (other than any such excluded charge, expense or loss as described above) shall be subtracted from Consolidated Net Income in calculating Consolidated EBITDA for the period in which such payments are made, and minus, to the extent included in the statement of such Consolidated Net Income for such period, the sum of (a) interest income, (b) any extraordinary income or gains determined in accordance with GAAP and (c) any other non-cash income or gain (excluding any items that represent the reversal of any accrual of, or cash reserve for, anticipated cash charges in any prior period that are described in the parenthetical to clause (e) above) including any non-cash income or gains resulting from the requirements of SFAS 133 or 143, all as determined on a consolidated basis in accordance with GAAP.

“Consolidated Fixed Charge Coverage Ratio”: for any period, the ratio of (a) Consolidated EBITDA for such period to (b) Consolidated Fixed Charges for such period.

“Consolidated Fixed Charges”: for any period, the sum (without duplication) of (a) Consolidated Interest Expense for such period, (b) scheduled or required payments made during such period on account of principal of Indebtedness of any Group Member (other than payment of the principal amount of a series of notes issued under an Indenture on the final maturity of such series of notes) and (c) all dividends (other than dividends payable in Capital Stock) declared by the Company and attributable to such period. For purposes of this Agreement, a dividend is “attributed” to the fiscal quarter immediately preceding the quarter in which such dividend is actually declared by the Company.

“Consolidated Indebtedness” means the indebtedness of the Group Members (without duplication) of the type described in clauses (a), (b), (c), (d), (e), (g) and (h) of the definition of Indebtedness as determined on a consolidated basis in accordance with GAAP.

**“Consolidated Interest Expense”**: for any period, the sum of (a) all interest, commitment fees and loan fees in respect of Indebtedness (including that attributable to Capital Lease Obligations) of any Group Member deducted in determining Consolidated Net Income for such period, together with all interest capitalized or deferred during such period and not deducted in determining Consolidated Net Income for such period, plus (b) all fees, expenses and charges in respect of letters of credit issued for the account of any Group Member deducted in determining Consolidated Net Income for such period, together with all such fees, expenses and charges in respect of letters of credit capitalized or deferred during such period and not deducted in determining Consolidated Net Income for such period, all as determined on a consolidated basis in accordance with GAAP. Revenues and expenses derived from Hedge Agreements related to interest rates or dividend rates will be treated as adjustments to interest expense for purposes of this definition.

**“Consolidated Net Income”**: for any period, the consolidated net income (or loss) of the Group Members, determined on a consolidated basis in accordance with GAAP; provided that there shall be excluded (a) the income (or deficit) of any Person accrued prior to the date it becomes a Subsidiary of the Company or is merged into or consolidated with the Company or any of its Subsidiaries, (b) the income (or deficit) of any Person (other than a Subsidiary of the Company) in which the Company or any of its Subsidiaries has an ownership interest, except to the extent that any such income is actually received by the Company or such Subsidiary in the form of dividends or similar distributions and (c) the undistributed earnings of any Subsidiary of the Company to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary is not at the time permitted by the terms of any Contractual Obligation (other than under any Loan Document) or Requirement of Law applicable to such Subsidiary.

**“Continuing Directors”**: the directors of the Company on the Closing Date and each other director, if, in each case, such other director’s nomination for election to the board of directors of the Company is recommended by at least 66-2/3% of the then Continuing Directors.

**“Contractual Obligation”**: as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

**“Current Ratio”**: as at the last day of any period, the ratio of (a)(i) the current assets of the Loan Parties plus (ii) the Unused Commitments to (b) the current liabilities of the Loan Parties, all determined on a consolidated basis in accordance with GAAP. For purposes of this definition, (A) current liabilities shall exclude current maturities of long term debt and current maturities of the Revolving Loans and (B) current liabilities and current assets shall exclude any liability or asset representing a valuation account arising from the application of SFAS 133 and 143.

**“Default”**: any of the events specified in Section 8, whether or not any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

**“Derivatives Counterparty”**: as defined in Section 7.6.

“Determination Date”: as defined in Section 2.13.

“Disposition”: with respect to any Property, any sale, lease, sale and leaseback, assignment, conveyance, transfer or other disposition thereof. The terms “Dispose” and “Disposed of” shall have correlative meanings.

“Dollars” and “\$”: dollars in lawful currency of the United States.

“Engineering Reports”: as defined in Section 6.2(d).

“Environmental Laws”: any and all foreign, Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, requirements of any Governmental Authority or other Requirements of Law (including common law) regulating, relating to or imposing liability or standards of conduct concerning protection of human health or the environment, as now or may at any time hereafter be in effect.

“ERISA”: the Employee Retirement Income Security Act of 1974, as amended from time to time.

“Eurocurrency Reserve Requirements”: for any day as applied to a Eurodollar Loan, the aggregate (without duplication) of the maximum rates (expressed as a decimal fraction) of reserve requirements in effect on such day (including basic, supplemental, marginal and emergency reserves under any regulations of the Board or other Governmental Authority having jurisdiction with respect thereto) dealing with reserve requirements prescribed for eurocurrency funding (currently referred to as “Eurocurrency Liabilities” in Regulation D of the Board) maintained by a member bank of the Federal Reserve System.

“Eurodollar Base Rate”: with respect to each day during each Interest Period pertaining to a Eurodollar Loan, the rate per annum determined on the basis of the rate for deposits in Dollars for a period equal to such Interest Period commencing on the first day of such Interest Period appearing on Page 3750 of the Dow Jones Markets screen as of 9:00 A.M., London time, two Business Days prior to the beginning of such Interest Period. In the event that such rate does not appear on Page 3750 of the Dow Jones Markets screen (or otherwise on such screen), the “Eurodollar Base Rate” shall be determined by reference to such other comparable publicly available service for displaying eurodollar rates as may be selected by the Administrative Agent or, in the absence of such availability, by reference to the rate at which the Administrative Agent is offered Dollar deposits at or about 9:00 A.M., New York City time, two Business Days prior to the beginning of such Interest Period in the interbank eurodollar market where its eurodollar and foreign currency and exchange operations are then being conducted for delivery on the first day of such Interest Period for the number of days comprised therein.

“Eurodollar Loans”: Revolving Loans the rate of interest applicable to which is based upon the Eurodollar Rate.

“Eurodollar Rate”: with respect to each day during each Interest Period pertaining to a Eurodollar Loan, a rate per annum determined by the Administrative Agent for

such day in accordance with the following formula (rounded upward to the nearest 1/100<sup>th</sup> of 1%):

$$\frac{\text{Eurodollar Base Rate}}{1.00 - \text{Eurocurrency Reserve Requirements}}$$

“Eurodollar Tranche”: the collective reference to Eurodollar Loans the then current Interest Periods with respect to all of which begin on the same date and end on the same later date (whether or not such Eurodollar Loans shall originally have been made on the same day).

“Evaluation Date”: (a) in the case of the Borrowing Base, if applicable, December 31 of each year, and in the case of the Collateral Value, June 30 and December 31 of each year, (b) such other dates as the Majority Lenders, at their option, determine pursuant to a notice executed by the Majority Lenders that the Borrowing Base, if applicable, and the Collateral Value shall be redetermined and (c) such other dates as the Borrower shall request; provided, that the Borrower shall not be entitled to request that a date be an “Evaluation Date” more than once during any six month period beginning January 1 and July 1.

“Event of Default”: any of the events specified in Section 8, provided that any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

“Excess Amount”: as defined in Section 7.5.

“Exchange Act”: as defined in Section 8(k).

“Existing Credit Agreement”: as defined in the preamble to this Agreement.

“Exiting Lenders”: as defined in Section 5.1(l).

“Existing Mortgages”: the collective reference to each existing deed of trust, mortgage, chattel mortgage, security agreement, financing statement and other security documents delivered pursuant to the Existing Credit Agreement and listed on Schedule 5.1(i).

“Federal Funds Effective Rate”: for any day, the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for the day of such transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by it.

“Funding Office”: the office of the Administrative Agent specified in Section 10.2 or such other office as may be specified from time to time by the Administrative Agent as its funding office by written notice to the Borrower and the Lenders.

“GAAP”: generally accepted accounting principles in the United States as in effect from time to time except for purposes of Section 7.1, GAAP shall be determined on the

basis of such principles in effect on the date hereof and consistent with those used in the preparation of the most recent audited financial statements referred to in Section 4.1. In the event that any Accounting Change (as defined below) shall occur and such change results in a change in the method of calculation of financial covenants, standards or terms in this Agreement, then the Company and the Administrative Agent agree to enter into negotiations in order to amend such provisions of this Agreement so as to equitably reflect such Accounting Changes with the desired result that the criteria for evaluating the Company's financial condition shall be the same after such Accounting Changes as if such Accounting Changes had not been made. Until such time as such an amendment shall have been executed and delivered by the Company, the Borrower, the Administrative Agent and the Majority Lenders, all financial covenants, standards and terms in this Agreement shall continue to be calculated or construed as if such Accounting Changes had not occurred. "Accounting Changes" refers to changes in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants or, if applicable, the SEC.

"Governmental Authority": any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization (including the National Association of Insurance Commissioners).

"Group Members": the collective reference to the Company, the Borrower and their respective Subsidiaries.

"Guarantee Agreement": the Guarantee Agreement to be executed and delivered by the Company and each Subsidiary Guarantor, substantially in the form of Exhibit A.

"Guarantee Obligation": as to any Person (the "guaranteeing person"), any obligation, contingent or otherwise, of the guaranteeing person guaranteeing or having the economic effect of guaranteeing any Indebtedness, leases, dividends or other obligations (the "primary obligations") of any other third Person (the "primary obligor") in any manner, whether directly or indirectly, including any obligation of the guaranteeing person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (1) for the purchase or payment of any such primary obligation or (2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, securities or services primarily for the purpose of assuring the obligee of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof; provided, however, that the term Guarantee Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Guarantee Obligation of any guaranteeing person shall be deemed to be the lower of (a) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee Obligation is made and (b) the maximum amount for which such guaranteeing person may be liable pursuant to the terms of the instrument embodying such

Guarantee Obligation, unless such primary obligation and the maximum amount for which such guaranteeing person may be liable are not stated or determinable, in which case the amount of such Guarantee Obligation shall be such guaranteeing person's maximum reasonably anticipated liability in respect thereof as determined by the Company or the Borrower in good faith.

"Guarantors": the collective reference to the Company and the Subsidiary Guarantors.

"Hedge Agreement": any (a) agreement (including each confirmation entered into under a master agreement) providing for options, swaps, floors, caps, collars, forward sales or forward purchases involving interest rates, commodities or commodity prices, equities, currencies, bonds, or indexes based on any of the foregoing, (b) option, futures or forward contract traded on an exchange, and (c) other derivative agreement or other similar agreement or arrangement.

"Hedging Support Credit Facility": means an agreement governing and securing only Indebtedness in respect of certain of the Hedge Agreements permitted under Section 7.2(g) which agreement, all amendments, supplements and modifications thereto, all documents executed in connection therewith, and all Liens securing the Indebtedness thereunder comply substantially with the requirements and limitations set forth on Exhibit K. (We propose to attach the DB term sheet as Exhibit K)

"Increase": as defined in Section 10.6A.

"Indebtedness": of any Person at any date, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of property or services (other than current trade payables incurred in the ordinary course of such Person's business and other obligations to the extent such obligations may be satisfied at such Person's sole discretion by the issuance of common stock of such Person), (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all Capital Lease Obligations of such Person, (f) all obligations of such Person, contingent or otherwise, as an account party or applicant under or in respect of acceptances, letters of credit, surety bonds or similar arrangements, (g) all Guarantee Obligations of such Person in respect of obligations of the kind referred to in clauses (a) through (f) above, (h) all obligations of the kind referred to in clauses (a) through (f) above secured by (or for which the holder of such obligation has an existing right, contingent or otherwise, to be secured by) any Lien on property (including accounts and contract rights) owned by such Person, whether or not such Person has assumed or become liable for the payment of such obligation, (i) liabilities with respect to payments received in consideration of oil, gas, or other minerals yet to be acquired or produced at the time of payment (including obligations under "take-or-pay" contracts to deliver gas in return for payments already received and the undischarged balance of any production payment created by such Person or for the creation of which such Person directly or indirectly received payment), and (j) for the purposes of Sections 7.2, 7.3 and 8(e) only, all



obligations of such Person in respect of Hedge Agreements. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness expressly provide that such Person is not liable therefor.

“Indemnified Liabilities”: as defined in Section 10.5.

“Indemnitee”: as defined in Section 10.5.

“Indentures”: to the extent that the senior notes issued thereunder remain outstanding, (a) the Indenture, dated as of April 6, 2001, among the Company, certain subsidiary guarantors and The Bank of New York, as Trustee pursuant to which the Company's 8-1/8% senior notes due 2011 were issued, (b) the Indenture, dated as of November 5, 2001, among the Company, certain subsidiary guarantors and The Bank of New York, as Trustee, pursuant to which the Company's 8-3/8% senior notes due 2008 were issued, (c) the Indenture, dated as of August 12, 2002, among the Company, certain subsidiary guarantors and The Bank of New York, as Trustee pursuant to which the Company's 9% senior notes due 2012 were issued, (d) the Indenture, dated as of December 20, 2002, among the Company, certain subsidiary guarantors and The Bank of New York, as Trustee, pursuant to which the Company's 7-3/4% senior notes due 2015 were issued, (e) the Indenture, dated as of March 5, 2003, among the Company, certain subsidiary guarantors and The Bank of New York, as Trustee, pursuant to which the Company's 7-1/2% senior notes due 2013 were issued, (f) the Indenture, dated as of November 26, 2003, among the Company, certain subsidiary guarantors and The Bank of New York, as Trustee, pursuant to which the Company's 6 – 7/8% senior notes due 2016 were used and (g) each other Indenture governing the Company's senior notes issued from time to time hereafter as permitted under Section 7.2.

“Independent Report”: as defined in Section 6.2(d).

“Initial Engineering Report”: the collective reference to the following engineering reports concerning oil and gas properties of the Company and its Subsidiaries: (i) Report dated December 31, 2003 prepared by Lee Keeling and Associates, (ii) Report dated December 31, 2003 prepared by Ryder Scott Company; (iii) Report dated December 31, 2003 prepared by Netherland Sewell and Associates; and (iv) Report dated December 31, 2003 prepared by the Company's employee engineers.

“Insolvency”: with respect to any Multiemployer Plan, the condition that such Plan is insolvent within the meaning of Section 4245 of ERISA.

“Insolvent”: pertaining to a condition of Insolvency.

“Intellectual Property”: the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, multinational or foreign laws or otherwise, including copyrights, copyright licenses, patents, patent licenses, trademarks, trademark licenses, technology, know-how and processes, and all rights to sue at law

or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

“Interest Payment Date”: (a) as to any Base Rate Loan, the last day of each March, June, September and December to occur while such Base Rate Loan is outstanding and the final maturity date of such Base Rate Loan, (b) as to any Eurodollar Loan having an Interest Period of three months or less, the last day of such Interest Period, (c) as to any Eurodollar Loan having an Interest Period longer than three months, each day that is three months, or a whole multiple thereof, after the first day of such Interest Period and the last day of such Interest Period and (d) as to any Eurodollar Loan, the date of any repayment or prepayment made in respect thereof.

“Interest Period”: as to any Eurodollar Loan, (a) initially, the period commencing on the borrowing or conversion date, as the case may be, with respect to such Eurodollar Loan and ending one, two, three or six months thereafter, as selected by the Borrower in its notice of borrowing or notice of conversion, as the case may be, given with respect thereto; and (b) thereafter, each period commencing on the last day of the next preceding Interest Period applicable to such Eurodollar Loan and ending one, two, three or six months thereafter, as selected by the Borrower by irrevocable notice to the Administrative Agent no later than 9:00 A.M., Los Angeles, California time, three Business Days prior to the last day of the then current Interest Period with respect thereto; provided that, all of the foregoing provisions relating to Interest Periods are subject to the following:

(i) if any Interest Period would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless the result of such extension would be to carry such Interest Period into another calendar month in which event such Interest Period shall end on the immediately preceding Business Day;

(ii) the Borrower may not select an Interest Period that would extend beyond the Revolving Termination Date;

(iii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of a calendar month; and

(iv) the Borrower shall select Interest Periods so as not to require a payment or prepayment of any Eurodollar Loan during an Interest Period for such Eurodollar Loan.

“Investments”: as defined in Section 7.7.

“Issuing Lender”: Union Bank of California, N.A., in its capacity as issuer of any Letter of Credit. The Administrative Agent may, with the consent of the Borrower and the

relevant Lender, appoint such Lender hereunder as the Issuing Lender in place of or in addition to Union Bank of California, N.A.

“L/C Commitment”: \$300,000,000.

“L/C Fee Payment Date”: the last day of each March, June, September and December and the last day of the Revolving Commitment Period.

“L/C Obligations”: at any time, an amount equal to the sum of (a) the aggregate then undrawn and unexpired amount of the then outstanding Letters of Credit and (b) the aggregate amount of drawings under Letters of Credit that have not then been reimbursed pursuant to Section 2.9.

“L/C Participants”: the collective reference to all the Lenders other than the Issuing Lender.

“Lender Affiliate”: (a) any Affiliate of any Lender, (b) any Person that is administered or managed by any Lender and that is engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business and (c) with respect to any Lender which is a fund that invests in commercial loans and similar extensions of credit, any other fund that invests in commercial loans and similar extensions of credit and is managed or advised by the same investment advisor as such Lender or by an Affiliate of such Lender or investment advisor.

“Lender Hedge Agreement”: a Hedge Agreement between the Company or the Borrower and a Lender or an affiliate of a Lender (including each confirmation or modification in respect of such Hedge Agreement).

“Lenders”: as defined in the preamble hereto; provided, that unless the context otherwise requires, each reference herein to the Lenders shall be deemed to include any Conduit Lender.

“Letters of Credit”: as defined in Section 2.5(a).

“Lien”: any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge or other security interest or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement and any capital lease having substantially the same economic effect as any of the foregoing).

“Loan Documents”: this Agreement, the Security Documents, the Guarantee Agreement and the Notes.

“Loan Parties”: each Group Member that is a party to a Loan Document.

“**Majority Lenders**”: at any time, the holders of more than 50% of the Total Revolving Commitments then in effect or, if the Revolving Commitments have been terminated, the Total Revolving Extensions of Credit then outstanding.

“**Material Adverse Effect**”: a material adverse effect on (a) the business, property, operations, condition (financial or otherwise), results of operations or prospects of the Company and its Subsidiaries taken as a whole or (b) the validity or enforceability of this Agreement or any of the other Loan Documents or the rights or remedies of the Agents or the Lenders hereunder or thereunder.

“**Materials of Environmental Concern**”: any gasoline or petroleum (including crude oil or any fraction thereof) or petroleum products or any hazardous or toxic substances, materials or wastes, defined or regulated as such in or under any Environmental Law, including asbestos, polychlorinated biphenyls and urea-formaldehyde insulation.

“**Mortgaged Properties**”: the properties listed on Schedule 1.1B, as to which the Administrative Agent for the benefit of the Lenders shall be granted a Lien pursuant to the Mortgages.

“**Mortgages**”: each of the mortgages and deeds of trust made by any Loan Party in favor of, or for the benefit of, the Administrative Agent for the benefit of the Lenders, substantially in the form of Exhibit D (with such changes thereto as shall be advisable under the law of the jurisdiction in which such mortgage or deed of trust is to be recorded), including, without limitation, the Existing Mortgages.

“**Multiemployer Plan**”: a Plan that is a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

“**Net Cash Proceeds**”: in connection with any Disposition, the proceeds thereof in the form of cash and Cash Equivalents (including any such proceeds received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or by the Disposition of any non-cash consideration received in connection therewith or otherwise, but only as and when received), net of attorneys’ fees, accountants’ fees, investment banking fees, amounts required to be applied to the repayment of Indebtedness secured by a Lien expressly permitted hereunder on any asset that is the subject of such Disposition (other than any Lien pursuant to a Security Document) and other customary fees and expenses actually incurred in connection therewith and net of taxes paid or reasonably estimated to be payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements).

“**Non-Excluded Taxes**”: as defined in Section 3.10(a).

“**Non-U.S. Lender**”: as defined in Section 3.10(d).

“**Notes**”: the collective reference to any promissory note evidencing Revolving Loans.

“**Obligations**”: the unpaid principal of and interest on (including interest accruing after the maturity of the Revolving Loans and Reimbursement Obligations and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Borrower, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) the Revolving Loans, the Reimbursement Obligations, Pari Passu Hedging Obligations and all other obligations and liabilities of the Borrower and the other Loan Parties to any Agent or to any Lender, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with, this Agreement, any other Loan Document, the Letters of Credit or any other document made, delivered or given in connection herewith or therewith, whether on account of principal, interest, reimbursement obligations, fees, indemnities, costs, expenses (including all fees, charges and disbursements of counsel to any Agent or to any Lender that are required to be paid by the Borrower and the other Loan Parties pursuant hereto) or otherwise. It is expressly agreed that Pari Passu Hedging Obligations shall be limited to the maximum aggregate amount and to the allocations thereof as set forth in Section 3.8(f), but that Pari Passu Hedging Obligations shall not be treated as Obligations for purposes of the provisions for acceleration in Section 8 and for adjustments and set-off in Section 10.7.

“**Other Taxes**”: any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

“**Pari Passu Hedging Obligation Allocation**”: as defined in Section 3.8(f).

“**Pari Passu Hedging Obligation Notice**”: a notice delivered pursuant to Section 3.8(f), substantially in the form of Exhibit J.

“**Pari Passu Hedging Obligations**”: obligations arising from time to time under any Lender Hedge Agreement if an effective Lender Pari Passu Hedging Obligation Allocation has been made in respect of such Lender and its Affiliate, limited to the amount of such Lender’s Pari Passu Hedging Obligation Allocation.

“**Participant**”: as defined in Section 10.6(b).

“**PBGC**”: the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA (or any successor).

“**Permitted Preferred Stock**”: Preferred Stock of the Company either (a) outstanding on the Closing Date or (b) issued or modified after the Closing Date as permitted by Section 7.17.

“**Person**”: an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity of whatever nature.

“Plan”: at a particular time, any employee benefit plan that is covered by ERISA and in respect of which the Borrower or a Commonly Controlled Entity is (or, if such plan were terminated at such time, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Preferred Stock”: as applied to the Capital Stock of any Person, means Capital Stock of any class or classes (however designated), which is preferred as to the payment of dividends, or upon any voluntary or involuntary liquidation or dissolution of such Person, over shares of Capital Stock of any other class of such Person.

“Pro Forma Incurrence Tests”: on the date of the transaction giving rise to the need to calculate the Pro Forma Incurrence Tests (the “Transaction Date”), each of the following shall be true on a pro forma basis after giving effect to such transaction: (a) the ratio of Consolidated Indebtedness to Consolidated EBITDA for the period of four consecutive fiscal quarters of the Company most recently ended prior to the Transaction Date (the “Reference Period”) does not exceed 3.50 to 1.0, (b) the ratio of Consolidated EBITDA for the Reference Period to Consolidated Fixed Charges for the Reference Period is not less than 2.5 to 1.0, and (c) the ratio of Consolidated Indebtedness to Consolidated Total Capitalization is not greater than .65 to 1.0. In calculating Consolidated EBITDA and Consolidated Fixed Charges on a pro forma basis (i) acquisitions, sales or dispositions that occurred during the Reference Period or subsequent to the Reference Period and on or prior to the Transaction Date shall be assumed to have occurred on the first day of the Reference Period, (ii) the incurrence of any Indebtedness or issuance of any Preferred Stock during the Reference Period or subsequent to the Reference Period and on or prior to the Transaction Date shall be assumed to have occurred on the first day of such Reference Period, (iii) all dividends on Preferred Stock outstanding or assumed to be outstanding during the Reference Period are assumed to have been paid, (iv) any Indebtedness or Preferred Stock that had been outstanding during the Reference Period that has been repaid, repurchased or redeemed on or prior to the Transaction Date shall be assumed to have been repaid, repurchased or redeemed as of the first day of such Reference Period, (v) the Consolidated Interest Expense attributable to interest on any Indebtedness or dividends on any Preferred Stock bearing a floating interest (or dividend) rate shall be computed on a pro forma basis as if the rate in effect on the Transaction Date were the average rate in effect during the entire Reference Period and (v) to the extent the net proceeds from the incurrence or issuance of Indebtedness or Preferred Stock are used to retire Indebtedness, the application of the proceeds therefrom shall be assumed to have occurred on the first day of the Reference Period. For purposes of this definition, “Consolidated Total Capitalization” means Consolidated Indebtedness plus stockholders equity of the Loan Parties as determined on a consolidated basis in accordance with GAAP.

“Projections”: as defined in Section 6.2(c).

“Properties”: as defined in Section 4.17(a).

“Property”: any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, including, without limitation, Capital Stock.

“Proved Developed Properties”: as defined in the Indentures.

“Proved” and “Producing”: the meaning given under the Definitions for Oil and Gas Reserves promulgated by the Society of Petroleum Engineers (or any generally recognized successors).

“PV”: as of any date of determination, the calculation of the present value (utilizing the discount rate customarily utilized by Administrative Agent for collateral valuation purposes, which, on the Closing Date, is 9%) of the projected future net revenues attributable to SPE Basis Projected Production as such production is projected in the most recent report delivered pursuant to Section 6.2(d), utilizing the average of the applicable price assumptions used by the Reference Lenders in evaluating their oil and gas loans generally as determined by the Administrative Agent, adjusted to give effect to applicable commodity prices (or caps or floors) under the Loan Parties’ Hedge Agreements.

“Rating Agencies”: the collective reference to S&P and Moody’s (each as defined in the definition of Cash Equivalents).

“Reference Lenders”: the Administrative Agent and two other Lenders approved by the Required Lenders from time to time, which shall initially be Calyon New York Branch and Bank of Scotland.

“Register”: as defined in Section 10.6(d).

“Regulation U”: Regulation U of the Board as in effect from time to time.

“Reimbursement Obligation”: the obligation of the Borrower to reimburse the Issuing Lender pursuant to Section 2.9 for amounts drawn under Letters of Credit.

“Reorganization”: with respect to any Multiemployer Plan, the condition that such plan is in reorganization within the meaning of Section 4241 of ERISA.

“Reportable Event”: any of the events set forth in Section 4043(b) of ERISA, other than those events as to which the thirty day notice period is waived under subsections .27, .28, .29, .30, .31, .32, .34 or .35 of PBGC Reg. § 4043.

“Required Lenders”: at any time, the holders of more than 75% of the Total Revolving Commitments then in effect or, if the Revolving Commitments have been terminated, the Total Revolving Extensions of Credit then outstanding.

“Requirement of Law”: as to any Person, the Certificate of Incorporation and By-Laws or other organizational or governing documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Responsible Officer”: the chief executive officer, president, chief financial officer or treasurer of the Company or the Borrower, but in any event, with respect to financial matters, the chief financial officer or treasurer of the Company or the Borrower.

“Restricted Payments”: as defined in Section 7.6.

“Revolving Commitment”: as to any Lender, the obligation of such Lender, if any, to make Revolving Loans and participate in Letters of Credit in an aggregate principal and/or face amount not to exceed the amount set forth under the heading “Revolving Commitment” opposite such Lender’s name on Schedule 1.1A or in the Assignment and Acceptance pursuant to which such Lender became a party hereto, as the same may be changed from time to time pursuant to the terms hereof. The amount of the Total Revolving Commitments as of the Closing Date is \$500,000,000.

“Revolving Commitment Period”: the period from and including the Closing Date to the Revolving Termination Date.

“Revolving Extensions of Credit”: as to any Lender at any time, an amount equal to the sum of (a) the aggregate principal amount of all Revolving Loans held by such Lender then outstanding and (b) such Lender’s Revolving Percentage of the L/C Obligations then outstanding.

“Revolving Loans”: as defined in Section 2.1(a).

“Revolving Percentage”: as to any Lender at any time, the percentage which such Lender’s Revolving Commitment then constitutes of the Total Revolving Commitments (or, at any time after the Revolving Commitments shall have expired or terminated, the percentage which the aggregate principal amount of such Lender’s Revolving Extensions of Credit then outstanding constitutes of the aggregate principal amount of the Revolving Extensions of Credit then outstanding).

“Revolving Termination Date”: June 30, 2008.

“SEC”: the Securities and Exchange Commission, any successor thereto and any analogous Governmental Authority.

“Security Documents”: the collective reference to the Mortgages and all other security documents hereafter delivered to the Administrative Agent granting a Lien on any property of any Person to secure the obligations and liabilities of any Loan Party under any Loan Document.

“Senior Debt Limit”: the maximum amount of Indebtedness that the Company and its Subsidiaries may incur and secure pursuant to the terms of clause (i) of the definition of “Permitted Indebtedness” and clause (ii) of the definition of “Permitted Liens” under the Indentures, minus the amount of Indebtedness (other than Indebtedness under this Agreement) that the Company or any of its Subsidiaries have incurred and/or secured by Liens as of such day that counts against the restrictions on the maximum amount of Indebtedness referred to in such



clause (i). For purposes of this definition, the term “Indebtedness” shall have the meaning given in the Indentures.

“Single Employer Plan”: any Plan that is covered by Title IV of ERISA, but that is not a Multiemployer Plan.

“Solvent”: when used with respect to any Person, means that, as of any date of determination, (a) the amount of the “present fair saleable value” of the assets of such Person will, as of such date, exceed the amount of all “liabilities of such Person, contingent or otherwise”, as of such date, as such quoted terms are determined in accordance with applicable federal and state laws governing determinations of the insolvency of debtors, (b) the present fair saleable value of the assets of such Person will, as of such date, be greater than the amount that will be required to pay the liability of such Person on its debts as such debts become absolute and matured, (c) such Person will not have, as of such date, an unreasonably small amount of capital with which to conduct its business, and (d) such Person will be able to pay its debts as they mature. For purposes of this definition, (i) “debt” means liability on a “claim”, and (ii) “claim” means any (x) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (y) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, disputed, undisputed, secured or unsecured.

“SPE Basis Projected Production” means, at any time of determination, the projected production of oil or gas (measured by volume unit or BTU equivalent, not sales price) from properties and interests owned by any Group Member which are located in or offshore of the United States and Canada attributable to the portion of the reserves categorized as “Proved”, as such production is projected in the most recent report delivered pursuant to Section 6.2(d), after deducting projected production from any properties or interests sold or under contract for sale that had been included in such report and after adding projected production from any properties or interests that had not been reflected in such report but that are reflected in a separate or supplemental report which is satisfactory to the Administrative Agent.

“Specified Change of Control”: a “Change of Control” (or any other defined term having a similar purpose) as defined in any instrument governing any Indebtedness of the Company or any of its Subsidiaries including, without limitation, the Indentures.

“Subsidiary”: as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise qualified, all references to a “Subsidiary” or to “Subsidiaries” in this Agreement shall refer to a Subsidiary or Subsidiaries of the Company.

“Subsidiary Guarantor”: each Subsidiary of the Company (other than the Borrower and, subject to Section 6.9, the CEMI Group).

“Synthetic Purchase Agreement”: any agreement pursuant to which any Group Member is or may become obligated to make (a) any payment in connection with the purchase by any third party from a Person other than a Group Member of any Capital Stock of any Group Member or (b) any payment (except as otherwise expressly permitted by Section 7.6) the amount of which is determined by reference to the price or value at any time of any such Capital Stock or Indebtedness; provided, that no phantom stock or similar plan providing for payments only to current or former directors, officers or employees of any Group Member (or to their heirs or estates) shall be deemed to be a Synthetic Purchase Agreement.

“Total Revolving Commitments”: at any time, the aggregate amount of the Revolving Commitments then in effect.

“Total Revolving Extensions of Credit”: at any time, the aggregate amount of the Revolving Extensions of Credit of the Lenders outstanding at such time.

“Transferee”: any Assignee or Participant.

“Type”: as to any Revolving Loan, its nature as a Base Rate Loan or a Eurodollar Loan.

“United States”: the United States of America.

“Unrestricted Subsidiary Investment”: (a) in connection with the designation of a Subsidiary Guarantor or any newly created or acquired Subsidiary as an “Unrestricted Subsidiary” under the Indentures, an amount equal to the greater of (x) the book value (determined in accordance with GAAP) at the date of such designation of the aggregate Investments made by the Company and its other Subsidiary Guarantors in such Subsidiary Guarantor or newly created or acquired Subsidiary and (y) the fair market value of such Investments in such Subsidiary Guarantor or newly created or acquired Subsidiary at the time of such designation and (b) in connection with the designation of an “Unrestricted Subsidiary” as a “Restricted Subsidiary” under the Indentures and a Subsidiary Guarantor hereunder, an amount equal to the lesser of (x) the book value (determined in accordance with GAAP) at the date of such designation of the aggregate Investments made by the Company and its other Subsidiary Guarantors in such Subsidiary and (y) the fair market value of such Investments in such Subsidiary at the time of such designation.

“Unused Commitments”: at any time, the excess of (i) the lesser of the Borrowing Base, if applicable, at such time and the Total Revolving Commitments at such time over (ii) the Total Revolving Extensions of Credit at such time.

## 1.2. Other Definitional Provisions

(a) Unless otherwise specified therein, all terms defined in this Agreement shall have the defined meanings when used in the other Loan Documents or any certificate or other document made or delivered pursuant hereto or thereto.

(b) As used herein and in the other Loan Documents, and any certificate or other document made or delivered pursuant hereto or thereto, (i) accounting terms relating to any Group Member not defined in Section 1.1 and accounting terms partly defined in Section 1.1, to the extent not defined, shall have the respective meanings given to them under GAAP, (ii) the words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”, (iii) the word “incur” shall be construed to mean incur, create, issue, assume, become liable in respect of or suffer to exist (and the words “incurred” and “incurrence” shall have correlative meanings), and (iv) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, Capital Stock, securities, revenues, accounts, leasehold interests and contract rights, and (v) references to agreements or other Contractual Obligations shall, unless otherwise specified, be deemed to refer to such agreements or Contractual Obligations as amended, supplemented, restated or otherwise modified from time to time.

(c) The words “hereof”, “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section, Schedule and Exhibit references are to this Agreement unless otherwise specified.

(d) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

## SECTION 2. AMOUNT AND TERMS OF REVOLVING COMMITMENTS

### 2.1. Revolving Commitments

(a) Subject to the terms and conditions hereof, each Lender severally agrees to make revolving credit loans (“Revolving Loans”) to the Borrower from time to time during the Revolving Commitment Period in an aggregate principal amount at any one time outstanding which, when added to such Lender’s Revolving Percentage of the L/C Obligations then outstanding, does not exceed such Lender’s Revolving Commitment; provided, that, after giving effect thereto, the aggregate amount of Revolving Extensions of Credit then outstanding shall not exceed the lesser of (i) Senior Debt Limit at such time, (ii) if the Borrowing Base is in effect on the date the Revolving Loan is made, the Borrowing Base on such date or (iii) the Total Revolving Commitments at such time. During the Revolving Commitment Period, the Borrower may use the Revolving Commitments by borrowing, prepaying and reborrowing the Revolving Loans, in whole or in part, all in accordance with the terms and conditions hereof. The Revolving Loans may from time to time be Eurodollar Loans or Base Rate Loans, as determined by the Borrower and notified to the Administrative Agent in accordance with Sections 2.2 and 3.3.

(b) The Borrower shall repay all outstanding Revolving Loans on the Revolving Termination Date.

(c) The Borrower shall have the right to increase the aggregate Revolving Commitments in the manner and subject to the conditions set forth in Section 10.6A.

2.2. Procedure for Revolving Loan Borrowing. The Borrower may borrow under the Revolving Commitments during the Revolving Commitment Period on any Business Day, provided that the Borrower shall give the Administrative Agent irrevocable notice (which notice must be received by the Administrative Agent prior to 9:00 A.M., Los Angeles, California time, (a) three Business Days prior to the requested Borrowing Date, in the case of Eurodollar Loans, or (b) on the day of the requested Borrowing Date, in the case of Base Rate Loans), specifying (i) the amount and Type of Revolving Loans to be borrowed, (ii) the requested Borrowing Date and (iii) in the case of Eurodollar Loans, the respective amounts of each such Type of Revolving Loan and the respective lengths of the initial Interest Period therefor. Each borrowing under the Revolving Commitments shall be in an amount equal to \$5,000,000 or whole multiples of \$1,000,000 in excess thereof (or, if the Unused Commitments of the Lenders is less than \$5,000,000, such lesser amount). Upon receipt of any such notice from the Borrower, the Administrative Agent shall promptly notify each Lender thereof. Each Lender will make the amount of its pro rata share of each borrowing available to the Administrative Agent for the account of the Borrower at the Funding Office prior to 11:00 a.m., Los Angeles, California time, on the Borrowing Date requested by the Borrower in funds immediately available to the Administrative Agent. Such borrowing will then be made available to the Borrower by the Administrative Agent crediting the account of the Borrower on the books of such office with the aggregate of the amounts made available to the Administrative Agent by the Lenders and in like funds as received by the Administrative Agent.

2.3. Commitment Fees, etc.

(a) The Borrower agrees to pay to the Administrative Agent for the account of each Lender a commitment fee for the period from and including the Closing Date to the last day of the Revolving Commitment Period, computed at the Commitment Fee Rate on the daily amount of such Lender's Revolving Percentage of the Unused Commitments during the period for which payment is made, payable quarterly in arrears on the last day of each March, June, September and December and on the Revolving Termination Date, commencing on June 30, 2004.

(b) The Borrower agrees to pay to the Administrative Agent the fees in the amounts and on the dates previously agreed to in writing by the Borrower and the Administrative Agent.

2.4. Termination or Reduction of Revolving Commitments. The Borrower shall have the right, upon not less than three Business Days' notice to the Administrative Agent, to terminate the Revolving Commitments or, from time to time, to reduce the amount of the Revolving Commitments; provided that no such termination or reduction of Revolving Commitments shall be permitted if, after giving effect thereto and to any prepayments of the

Revolving Loans made on the effective date thereof, the Total Revolving Extensions of Credit would exceed the Total Revolving Commitments. Any such reduction shall be in an amount equal to \$5,000,000, or whole multiples of \$1,000,000 in excess thereof, and shall reduce permanently the Revolving Commitments then in effect.

#### 2.5. L/C Commitment

(a) Subject to the terms and conditions hereof, the Issuing Lender, in reliance on the agreements of the other Lenders set forth in Section 2.8(a), agrees to issue letters of credit (such letters of credit and amendments thereto herein called "Letters of Credit") for the account of the Borrower on any Business Day during the Revolving Commitment Period in such form as may be approved from time to time by the Issuing Lender; provided that the Issuing Lender shall have no obligation to issue any Letter of Credit if, after giving effect to such issuance, (i) the L/C Obligations would exceed the L/C Commitment, or (ii) the Total Revolving Extensions of Credit then outstanding would exceed the lesser of (A) the Senior Debt Limit at such time, (B) if the Borrowing Base is in effect on the date the Letter of Credit is issued, the Borrowing Base on such date, and (C) the Total Revolving Commitments at such time. All Letters of Credit outstanding under the Existing Credit Agreement as of the Closing Date shall be deemed to be issued and outstanding under this Agreement as of the Closing Date.

(b) The Issuing Lender shall not issue any Letter of Credit hereunder if such Letter of Credit expires or could expire on a date later than the earlier of (i) 13 months or (ii) thirty days prior to the Revolving Termination Date, except Letters of Credit not to exceed an aggregate amount at any one time outstanding of \$75,000,000 that are automatically renewed annually and that may be terminated by notice not more than ninety days prior to such Letter of Credit's annual renewal date, provided that such Letters of Credit are so terminated prior to the Revolving Termination Date.

(c) The Issuing Lender shall not at any time be obligated to issue any Letter of Credit hereunder if such issuance would conflict with, or cause the Issuing Lender or any L/C Participant to exceed any limits imposed by, any applicable Requirement of Law.

2.6. Procedure for Issuance of Letter of Credit. The Borrower may from time to time request that the Issuing Lender issue a Letter of Credit by delivering to the Issuing Lender at its address for notices specified herein an Application therefor (including by telecopy), completed to the satisfaction of the Issuing Lender, and such other certificates, documents and other papers and information as the Issuing Lender may request. Upon receipt of any Application, the Issuing Lender will notify the Administrative Agent of the amount, the beneficiary and the requested expiration of the requested Letter of Credit, and upon receipt of confirmation from the Administrative Agent that after giving effect to the requested issuance, the (i) Total Revolving Extensions of Credit would not exceed the lesser of (A) Senior Debt Limit at such time, (B) if the Borrowing Base is in effect on the date the Letter of Credit is issued, the Borrowing Base on such date or (C) the Total Revolving Commitments at such time, the Issuing Lender will process such Application and the certificates, documents and other papers and information delivered to it in connection therewith in accordance with its customary procedures and shall promptly issue the Letter of Credit requested thereby; provided, however, the Issuing Lender shall not be required to

issue any Letter of Credit earlier than (a) three Business Days in the case of a new Letter of Credit or (b) one Business Day in the case of an amendment of an existing Letter of Credit, in each case after its receipt of the Application therefor and all such other certificates, documents and other papers and information relating thereto) by issuing the original of such Letter of Credit to the beneficiary thereof or as otherwise may be agreed to by the Issuing Lender and the Borrower. The Issuing Lender shall furnish a copy of such Letter of Credit to the Borrower (with a copy to the Administrative Agent) promptly following the issuance thereof. The Issuing Lender shall promptly furnish to the Administrative Agent, which shall in turn promptly furnish to the Lenders, notice of the issuance of each Letter of Credit (including the amount thereof).

#### 2.7. Fees and Other Charges

(a) The Borrower will pay a fee on all outstanding Letters of Credit at a per annum rate equal to the Applicable Margin then in effect with respect to Eurodollar Loans, shared ratably among the Lenders and payable quarterly in arrears on each L/C Fee Payment Date after the issuance date (but in no event less than \$500 per annum). In addition, the Borrower shall pay to the Issuing Lender for its own account a fronting fee at a rate equal to 0.125% per annum times the face amount of such Letter of Credit (but in no event less than \$250 per annum). The letter of credit fee and the letter of credit fronting fee will be calculated on the face amount of each Letter of Credit outstanding on each day at the above-applicable rates and will be due and payable in arrears on each L/C Fee Payment Date.

(b) In addition to the foregoing fees, the Borrower shall pay or reimburse the Issuing Lender for such normal and customary costs and expenses as are incurred or charged by the Issuing Lender in issuing, negotiating, effecting payment under, amending or otherwise administering any Letter of Credit.

#### 2.8. L/C Participations

(a) The Issuing Lender irrevocably agrees to grant and hereby grants to each L/C Participant, and, to induce the Issuing Lender to issue Letters of Credit hereunder, each L/C Participant irrevocably agrees to accept and purchase and hereby accepts and purchases from the Issuing Lender, on the terms and conditions set forth below, for such L/C Participant's own account and risk an undivided interest equal to such L/C Participant's Revolving Percentage in the Issuing Lender's obligations and rights under and in respect of each Letter of Credit issued hereunder and the amount of each draft paid by the Issuing Lender thereunder. Each L/C Participant unconditionally and irrevocably agrees with the Issuing Lender that, if a draft is paid under any Letter of Credit for which the Issuing Lender is not reimbursed in full by the Borrower in accordance with the terms of this Agreement, such L/C Participant shall pay to the Administrative Agent upon demand of the Issuing Lender an amount equal to such L/C Participant's Revolving Percentage of the amount of such draft, or any part thereof, that is not so reimbursed. The Administrative Agent shall promptly forward such amounts to the Issuing Lender.

(b) If any amount required to be paid by any L/C Participant to the Administrative Agent for the account of the Issuing Lender pursuant to Section 2.8(a) in respect

of any unreimbursed portion of any payment made by the Issuing Lender under any Letter of Credit is paid to the Administrative Agent for the account of the Issuing Lender within three Business Days after the date such payment is due, such L/C Participant shall pay to the Administrative Agent for the account of the Issuing Lender on demand an amount equal to the product of (i) such amount, times (ii) the daily average Federal Funds Effective Rate during the period from and including the date such payment is required to the date on which such payment is immediately available to the Issuing Lender, times (iii) a fraction the numerator of which is the number of days that elapse during such period and the denominator of which is 360. If any such amount required to be paid by any L/C Participant pursuant to Section 2.8(a) is not made available to the Administrative Agent for the account of the Issuing Lender by such L/C Participant within three Business Days after the date such payment is due, the Issuing Lender shall be entitled to recover from such L/C Participant, on demand, such amount with interest thereon calculated from such due date at the rate per annum applicable to Base Rate Loans. A certificate of the Issuing Lender submitted to any L/C Participant with respect to any amounts owing under this Section shall be conclusive in the absence of manifest error.

(c) Whenever, at any time after the Issuing Lender has made payment under any Letter of Credit and has received from any L/C Participant its pro rata share of such payment in accordance with Section 2.8(a), the Administrative Agent or the Issuing Lender receives any payment related to such Letter of Credit (whether directly from the Borrower or otherwise, including proceeds of collateral applied thereto by the Issuing Lender), or any payment of interest on account thereof, the Administrative Agent or the Issuing Lender, as the case may be, will distribute to such L/C Participant its pro rata share thereof; provided, however, that in the event that any such payment received by Administrative Agent or the Issuing Lender, as the case may be, shall be required to be returned by the Administrative Agent or the Issuing Lender, such L/C Participant shall return to the Administrative Agent for the account of the Issuing Lender the portion thereof previously distributed by the Administrative Agent or the Issuing Lender, as the case may be, to it.

2.9. Reimbursement Obligation of the Borrower. The Borrower agrees to reimburse the Issuing Lender on the Business Day on which the Issuing Lender notifies the Borrower of the date and amount of a draft presented under any Letter of Credit and paid by the Issuing Lender for the amount of (a) such draft so paid and (b) any taxes, fees, charges or other costs or expenses incurred by the Issuing Lender in connection with such payment. Each such payment shall be made to the Issuing Lender at its address for notices referred to herein in Dollars and in immediately available funds. Interest shall be payable on any such amounts from the date on which the relevant draft is paid until payment in full at the rate set forth in (i) Section 3.5(b) until the Business Day next succeeding the date of the relevant notice and (ii) Section 3.5(c) thereafter. Each drawing under any Letter of Credit shall (unless an event of the type described in clause (i) or (ii) of Section 8(f) shall have occurred and be continuing with respect to the Borrower, in which case the procedures specified in Section 2.8 for funding by L/C Participants shall apply) constitute a request by the Borrower to the Administrative Agent for a borrowing pursuant to Section 2.2 of Base Rate Loans in the amount of such drawing (and the minimum borrowing amount in such Section shall not apply to such borrowing). The Borrowing Date with respect to such borrowing shall be the first date on which a borrowing of Revolving Loans could

be made, pursuant to Section 2.2, if the Administrative Agent had received a notice of such borrowing at the time the Administrative Agent receives notice from the relevant Issuing Lender of such drawing under such Letter of Credit.

#### 2.10. Obligations Absolute

(a) The Borrower's obligations under Section 2.9 shall be absolute and unconditional under any and all circumstances and irrespective of any setoff, counterclaim or defense to payment that the Borrower may have or have had against the Issuing Lender, any beneficiary of a Letter of Credit or any other Person. The Borrower also agrees with the Issuing Lender that the Issuing Lender shall not be responsible for, and the Borrower's Reimbursement Obligations under Section 2.9 shall not be affected by, among other things, the validity or genuineness of documents or of any endorsements thereon, even though such documents shall in fact prove to be invalid, fraudulent or forged, or any dispute between or among the Borrower and any beneficiary of any Letter of Credit or any other party to which such Letter of Credit may be transferred or any claims whatsoever of the Borrower against any beneficiary of such Letter of Credit or any such transferee. The Issuing Lender shall not be liable for any error, omission, interruption or delay in transmission, dispatch or delivery of any message or advice, however transmitted, in connection with any Letter of Credit, except for errors or omissions found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of the Issuing Lender. The Borrower agrees that any action taken or omitted by the Issuing Lender under or in connection with any Letter of Credit or the related drafts or documents, if done in the absence of gross negligence or willful misconduct and in accordance with the standards of care specified in the Uniform Commercial Code of the State of New York, shall be binding on the Borrower and shall not result in any liability of the Issuing Lender to the Borrower.

(b) The Issuing Lender is authorized and instructed to accept and pay drafts and demands for payment under any Letter of Credit without requiring, and without responsibility for, any determination as to the existence of any event giving rise to said draft, either at the time of acceptance or payment or thereafter. The Issuing Lender is under no duty to determine the proper identity of anyone presenting such a draft or making such a demand (whether by tested telex or otherwise) as the officer, representative or agent of any beneficiary under any Letter of Credit, and payment by the Issuing Lender to any such beneficiary when requested by any such purported officer, representative or agent is hereby authorized and approved. The Borrower agrees to hold the Issuing Lender and each other Lender harmless and indemnified against any liability or claim in connection with or arising out of the subject matter of this section, **WHICH INDEMNITY SHALL APPLY WHETHER OR NOT ANY SUCH LIABILITY OR CLAIM IS IN ANY WAY OR TO ANY EXTENT CAUSED, IN WHOLE OR IN PART, BY ANY NEGLIGENT ACT OR OMISSION OF ANY KIND BY ANY LENDER**, provided only that no Lender shall be entitled to indemnification for that portion, if any, of any liability or claim which is proximately caused by its own individual gross negligence or willful misconduct, as determined in a final judgment.

(c) If the maturity of any Letter of Credit is extended by its terms or by law or governmental action, if any extension of the maturity or time for presentation of drafts or any other modification of the terms of any Letter of Credit is made at the request of the Borrower, or



if the amount of any Letter of Credit is increased at the request of the Borrower, this Agreement shall be binding upon the Loan Parties with respect to drafts and property covered thereby, and with respect to any action taken by the Issuing Lender, the Issuing Lender's correspondents, or any Lender in accordance with such extension, increase or other modification.

(d) If any Letter of Credit provides that it is transferable, the Issuing Lender shall have no duty to determine the proper identity of anyone appearing as transferee of such Letter of Credit, nor shall the Issuing Lender be charged with responsibility of any nature or character for the validity or correctness of any transfer or successive transfers, and payment by the Issuing Lender to any purported transferee or transferees as determined by the Issuing Lender is hereby authorized and approved, and the Borrower further agrees to hold the Issuing Lender and each other Lender harmless and indemnified against any liability or claim in connection with or arising out of the foregoing, **WHICH INDEMNITY SHALL APPLY WHETHER OR NOT ANY SUCH LIABILITY OR CLAIM IS IN ANY WAY OR TO ANY EXTENT CAUSED, IN WHOLE OR IN PART, BY ANY NEGLIGENT ACT OR OMISSION OF ANY KIND BY ANY LENDER**, provided only that no Lender shall be entitled to indemnification for that portion, if any, of any liability or claim which is proximately caused by its own individual gross negligence or willful misconduct, as determined in a final judgment.

2.11. Letter of Credit Payments. If any draft shall be presented for payment under any Letter of Credit, the Issuing Lender shall promptly notify the Borrower of the date and amount thereof. The responsibility of the Issuing Lender to the Borrower in connection with any draft presented for payment under any Letter of Credit shall, in addition to any payment obligation expressly provided for in such Letter of Credit, be limited to determining that the documents (including each draft) delivered under such Letter of Credit in connection with such presentment are substantially in conformity with such Letter of Credit.

2.12. Applications. To the extent that any provision of any Application related to any Letter of Credit is inconsistent with the provisions of this Section 2, the provisions of this Section 2 shall apply.

2.13. Borrowing Base and Collateral Value Determination

(a) The Borrowing Base will not be in effect if the Applicable Rating Level is Level IV and the Borrower has provided the Administrative Agent and the Lenders written notice of its election to have availability under this Agreement governed without reference to the Borrowing Base no later than 30 days prior to the effective date of such election, except during any period as the Borrower has otherwise elected in accordance with Section 2.13(b) to have availability under this Agreement governed by the Borrowing Base. If the Borrowing Base shall not be in effect, availability under this Agreement shall be determined with reference to the Senior Debt Limit and the Total Revolving Commitments.

(b) If the Borrower has previously elected to have availability under this Agreement governed without reference to the Borrowing Base, the Borrower may from time to time elect to have availability under this Agreement governed by the Borrowing Base for the period between the next two successive scheduled Determination Dates (a "Borrowing Base

Period”) by giving the Administrative Agent and the Lenders written notice of its election no later than 30 days prior to the delivery under Section 6.2(d) of the next scheduled semi-annual Engineering Report. Once such election is made, the Borrower may elect to opt out of such election only at the end of any Borrowing Base Period, if the Borrowing Base is not required to be in effect under Section 2.13(a), by giving the Administrative Agent and the Lenders written notice of its election to opt out of its election no later than 30 days prior to the delivery under subsection 6.2(d) of the next scheduled semi-annual Engineering Report prior to the end of such Borrowing Base Period.

(c) During the period from the Closing Date to the first Determination Date following the Closing Date redetermining the Borrowing Base, the Borrowing Base shall be \$600,000,000. During the period from the Closing Date to the first Determination Date redetermining the Collateral Value, the Collateral Value shall be \$750,000,000.

(d) Within 45 days after receiving the relevant Engineering Reports with respect to any Evaluation Date and the respective accompanying reports and information thereto required to be furnished pursuant to Section 6.2(d), or as promptly thereafter as practicable, the Required Lenders (or, in the case of any increase in the Borrowing Base all the Lenders) shall agree upon an amount for the Collateral Value or the Borrowing Base, as the case may be, as applicable with respect to such Evaluation Date, and the Administrative Agent shall by notice to the Borrower designate such amounts as the new Collateral Value and Borrowing Base, respectively, which designation shall take effect immediately on the date of such notice (herein called a “**Determination Date**”) and shall remain in effect until but not including the next date as of which the Collateral Value or the Borrowing Base, as the case may be, are redetermined. If the Borrower does not furnish all such information, reports and data by the date specified in Section 6.2(d), the Administrative Agent may nonetheless designate the Collateral Value or the Borrowing Base, as the case may be, at any amount which the Required Lenders determine and may redesignate the Collateral Value or the Borrowing Base, as the case may be, from time to time thereafter in a similar manner until each Lender receives all information, reports and data, whereupon the Required Lenders shall designate the Collateral Value or the Borrowing Base, as the case may be, as described above. The Required Lenders shall determine the Collateral Value based on the reports delivered pursuant to Section 6.2(d) and the average of the applicable price assumptions used by the Reference Lenders in evaluating their oil and gas loans generally as determined by the Administrative Agent and such determination of the Collateral Value shall deduct the net present value of the reserves projected to be produced on or prior to the next scheduled Evaluation Date. The Required Lenders shall determine the amount of the Borrowing Base based (i) upon the total debt of the Company and its Subsidiaries and upon the loan value which they in their discretion assign to the various oil and gas properties of the Company and its Subsidiaries at such time and (ii) upon such other credit factors (including, without limitation, (A) the assets, liabilities, cash flow, hedged and unhedged exposure to price, agreements affecting reserves, business, properties, prospects, production history of reserves, nature of the ownership of the reserves, Liens affecting properties, management and ownership of the Company and its Subsidiaries, (B) foreign exchange rate changes and interest rate changes, (C) the general policies of the Required Lenders from time to time with respect to the prices used in evaluating their oil and gas loans generally and (D) the Collateral) as they in their discretion

deem significant. It is expressly understood that the Lenders and the Administrative Agent have no obligation to agree upon or designate the Collateral Value or the Borrowing Base at any particular amount. It is further expressly understood that no determinations or designations of the Borrowing Base will be made or will be effective, and the references to the Borrowing Base in this Section 2.13(d) shall be disregarded, at any time that the Borrowing Base is not in effect as provided in Section 2.13(a).

(e) For the period from the effective date of an Increase in the Revolving Commitments pursuant to Section 10.6A until the next determination of the Collateral Value pursuant to Section 2.13(d), the Administrative Agent may, upon written request by Borrower, make a determination of the Collateral Value attributable to any additional Collateral granted and not reflected in the most recent determination of the Collateral Value by Required Lenders. Such determination with respect to such additional Collateral shall be made with the same assumptions and parameters that were used in the most recent determination of the Collateral Value and using the same reserve reports and accompanying reports and information furnished to Required Lenders in connection with the most recent determination of the Collateral Value. Such determination shall comply with the definition of Collateral Value, including limitation on the portion of the Collateral Value attributable to Mortgaged Properties owned by Guarantors. Administrative Agent will provide notice to the Borrower and the Lenders of any such increase in the Collateral Value determined by Administrative Agent. From and after such determination the "Collateral Value" shall be the amount of the Collateral Value as of the most recent determination increased by the Collateral Value of such additional Collateral.

(f) Until the termination of the Revolving Commitment Period, the Borrower may, during the 15-day period beginning on each Determination Date, reduce the Borrowing Base, when in effect, from the amount designated by the Administrative Agent to any lesser amount by delivering a notice during such period to the Administrative Agent to that effect, with such reduction to be effective as of the date such notice is received by the Administrative Agent and shall continue in effect until such time as the Borrowing Base is redetermined in accordance with Sections 2.13(d) or not in effect in accordance with Section 2.13(a).

(g) Concurrently with the delivery of the notice by the Borrower of its election to have availability under this Agreement governed without reference to the Borrowing Base and with each delivery of an Engineering Report pursuant to Section 6.2 thereafter so long as the Applicable Rating Level is Level IV, the Borrower will provide to the Administrative Agent and Lenders a certificate of a Responsible Officer of the Company and the Borrower reflecting in reasonable detail the calculation of PV.

### SECTION 3. GENERAL PROVISIONS APPLICABLE TO REVOLVING LOANS AND LETTERS OF CREDIT

3.1. Optional Prepayments. The Borrower may at any time and from time to time prepay the Revolving Loans, in whole or in part, without premium or penalty, upon irrevocable notice delivered to the Administrative Agent at least three Business Days prior thereto in the case

of Eurodollar Loans and at least one Business Day prior thereto in the case of Base Rate Loans, which notice shall specify the date and amount of prepayment and whether the prepayment is of Eurodollar Loans or Base Rate Loans; provided, that if a Eurodollar Loan is prepaid on any day other than the last day of the Interest Period applicable thereto, the Borrower shall also pay any amounts owing pursuant to Section 3.11. Upon receipt of any such notice the Administrative Agent shall promptly notify each Lender thereof. If any such notice is given, the amount specified in such notice shall be due and payable on the date specified therein, together with (except in the case of Revolving Loans that are Base Rate Loans) accrued interest to such date on the amount prepaid. Partial prepayments of Revolving Loans shall be in an aggregate principal amount of \$5,000,000 or whole multiples of \$1,000,000 in excess thereof.

### 3.2. Mandatory Prepayments

(a) If at any time (the "Collateral Deficiency Date"), the Collateral Coverage Ratio is less than 1.5 to 1.0, the Borrower shall either:

(i) Give notice to the Administrative Agent that it elects to reduce the Borrowing Base, if applicable, or the Total Revolving Commitments and prepay the Revolving Loans to the extent necessary to comply with the Collateral Coverage Ratio at such time whereupon the Borrowing Base, if applicable, or the Total Revolving Commitments shall be so reduced with immediate effect and the Borrower shall make such prepayment on or before the date that is 30 days after the related Collateral Deficiency Date and to the extent such prepayment of the aggregate principal amount of Revolving Loans then outstanding is insufficient to result in compliance with the Collateral Coverage Ratio, the Borrower shall, to the extent of such insufficiency, replace outstanding Letters of Credit and/or deposit an amount in cash in a cash collateral account established with the Administrative Agent for the benefit of the Lenders on terms and conditions satisfactory to the Administrative Agent; or

(ii) Certify to the Administrative Agent that the Borrower has good and defensible title, free of any Liens, to Proved Developed Properties in an amount which, if subject to one or more Mortgages, would result in the Borrower being in compliance with such Collateral Coverage Ratio, and provide to each Lender the same information regarding such Proved Developed Properties as would be required for an evaluation of the Collateral Value attributable thereto by the Required Lenders under Section 2.13. Within 10 days after such certification, the Required Lenders shall either (x) determine that such properties, if subject to a Mortgage, would result in the Borrower being in compliance with such Collateral Coverage Ratio, in which case, the Borrower shall within 20 days of such certification, and in any event, no later than within 30 days of the Collateral Deficiency Date, deliver a Mortgage (or a satisfactory amendment to an Existing Mortgage) to the Administrative Agent with respect to each such Proved Developed Property, executed and delivered by a duly authorized officer of each party thereto and accompanied by such other documentation as the Administrative Agent shall reasonably request (including, without limitation, legal opinions in form and substance satisfactory to the Administrative Agent relating thereto) or (y) determine that such properties, if subject to a Mortgage, would not result in the Borrower being in compliance

with such Collateral Coverage Ratio, in which case, the Borrower shall make the prepayments specified in subsection (i) of this Section 3.2(a) within 30 days of the Collateral Deficiency Date.

(b) If at any time the Borrowing Base is in effect (A) the Total Revolving Extensions of Credit exceed (B) the Borrowing Base at such time (such excess, the "Borrowing Base Deficiency") the Administrative Agent shall give notice thereof to the Borrower (a "Borrowing Base Deficiency Notice") and within 30 days after the date of such Borrowing Base Deficiency Notice, the Borrower shall either:

(i) Give notice to the Administrative Agent that it elects to prepay the Revolving Loans in an amount at least equal to the Borrowing Base Deficiency whereupon the Borrower shall make such prepayment on or before the date that is 60 days after the date of the Borrowing Base Deficiency and, to the extent such prepayment of the aggregate principal amount of Revolving Loans then outstanding is less than such Borrowing Base Deficiency, the Borrower shall, to the extent of such shortfall, replace outstanding Letters of Credit and/or deposit an amount in cash in a cash collateral account established with the Administrative Agent for the benefit of the Lenders on terms and conditions satisfactory to the Administrative Agent; or

(ii) Give notice to the Administrative Agent that it elects to prepay the Revolving Loans in an aggregate amount equal to the Borrowing Base Deficiency (or, to the extent such prepayments of the aggregate principal amount of Revolving Loans then outstanding are less than the Borrowing Base Deficiency, replace outstanding Letters of Credit and/or deposit an amount in cash in a cash collateral account established with the Administrative Agent for the benefit of the Lenders on terms and conditions satisfactory to the Administrative Agent) in six consecutive equal monthly installments, whereupon the Borrower shall pay the first such installment 30 days after the date of the Borrowing Base Deficiency and the next five such installments on the same day of each consecutive month thereafter; or

(iii) (A) Certify to the Administrative Agent that the Borrower has good and defensible title, free of any Liens, to oil and gas properties not included in the determination of the Borrowing Base then in effect in an amount which, if taken into account in such determination, would eliminate the Borrowing Base Deficiency, and (B) provide to each Lender the same information regarding such properties as would be required for an evaluation of the value attributable thereto by the Required Lenders under Section 2.13 in calculating the Borrowing Base. Within 30 days after such certification, if the Required Lenders shall determine that taking into account such properties in the determination of the Borrowing Base would not be sufficient to result in the elimination of the Borrowing Base Deficiency, the Borrower shall either (x) make the prepayments specified in subsection (i) of this Section 3.2(b) immediately or (y) make the installment prepayments specified in subsection (ii) of this Section 3.2(b) with the first such installment due immediately.

(c) The Total Revolving Commitments shall be reduced by an amount equal to any Excess Amount and shall be accompanied by prepayment of the Revolving Loans to the extent, if any, that the Total Revolving Extensions of Credit exceed the Total Revolving Commitments as so reduced, provided that if the aggregate amount of Revolving Loans then outstanding is less than the amount of such Excess Amount (because L/C Obligations constitute a portion of the Total Revolving Extensions of Credit), the Borrower shall, to the extent of the balance of such Excess Amount, replace outstanding Letters of Credit and/or deposit an amount in cash in a cash collateral account established with the Administrative Agent for the benefit of the Lenders on terms and conditions satisfactory to the Administrative Agent.

### 3.3. Conversion and Continuation Options

(a) The Borrower may elect from time to time to convert Eurodollar Loans to Base Rate Loans by giving the Administrative Agent prior irrevocable notice of such election by 9:00 A.M., Los Angeles, California time, three Business Days preceding the day on which such conversion is to occur, provided that any such conversion of Eurodollar Loans may only be made on the last day of an Interest Period with respect thereto. The Borrower may elect from time to time to convert Base Rate Loans to Eurodollar Loans by giving prior irrevocable notice to the Administrative Agent by 9:00 A.M., Los Angeles, California time, three Business Days prior to such conversion (which notice shall specify the length of the initial Interest Period therefor), provided that no Base Rate Loan may be converted into a Eurodollar Loan when any Event of Default has occurred and is continuing and the Administrative Agent or the Majority Lenders have determined in its or their sole discretion not to permit such conversions. Upon receipt of any such notice the Administrative Agent shall promptly notify each Lender thereof.

(b) Any Eurodollar Loan may be continued as such upon the expiration of the then current Interest Period with respect thereto by the Borrower giving irrevocable notice to the Administrative Agent, in accordance with the applicable provisions of the term "Interest Period" set forth in Section 1.1, of the length of the next Interest Period to be applicable to such Eurodollar Loans, provided that no Eurodollar Loan may be continued as such when any Event of Default has occurred and is continuing and the Administrative Agent has or the Majority Lenders have determined in its or their sole discretion not to permit such continuations, and provided, further, that if the Borrower shall fail to give any required notice as described above in this paragraph or if such continuation is not permitted pursuant to the preceding proviso such Eurodollar Loans shall be automatically converted to Base Rate Loans on the last day of such then expiring Interest Period. Upon receipt of any such notice the Administrative Agent shall promptly notify each Lender thereof.

3.4. Limitations on Eurodollar Tranches. Notwithstanding anything to the contrary in this Agreement, all borrowings, conversions and continuations of Eurodollar Loans hereunder and all selections of Interest Periods hereunder shall be in such amounts and be made pursuant to such elections so that, (a) after giving effect thereto, the aggregate principal amount of the Eurodollar Loans comprising each Eurodollar Tranche shall be equal to \$5,000,000 or whole multiples of \$1,000,000 in excess thereof and (b) no more than five Eurodollar Tranches shall be outstanding at any one time.

### 3.5. Interest Rates and Payment Dates

(a) Each Eurodollar Loan shall bear interest for each day during each Interest Period with respect thereto at a rate per annum equal to the Eurodollar Rate determined for such day plus the Applicable Margin.

(b) Each Base Rate Loan shall bear interest at a rate per annum equal to the Base Rate plus the Applicable Margin.

(c) (i) If all or a portion of the principal amount of any Revolving Loan or Reimbursement Obligation shall not be paid when due (whether at the stated maturity, by acceleration or otherwise), such overdue amount shall bear interest at a rate per annum equal to (x) in the case of the Revolving Loans, the rate that would otherwise be applicable thereto pursuant to the foregoing provisions of this Section plus 2% or (y) in the case of Reimbursement Obligations, the rate applicable to Base Rate Loans plus 2%, and (ii) if all or a portion of any interest payable on any Revolving Loan or Reimbursement Obligation or any commitment fee or other amount payable hereunder shall not be paid when due (whether at the stated maturity, by acceleration or otherwise), such overdue amount shall bear interest at a rate per annum equal to the rate then applicable to Base Rate Loans plus 2%, in each case, with respect to clauses (i) and (ii) above, from the date of such non-payment until such amount is paid in full (as well after as before judgment).

(d) Interest shall be payable in arrears on each Interest Payment Date, provided that interest accruing pursuant to paragraph (c) of this Section shall be payable from time to time on demand.

### 3.6. Computation of Interest and Fees

(a) Interest and fees payable pursuant hereto shall be calculated on the basis of a 360-day year for the actual days elapsed, except that, with respect to Base Rate Loans the rate of interest on which is calculated on the basis of the Reference Rate, the interest thereon shall be calculated on the basis of a 365- (or 366-, as the case may be) day year for the actual days elapsed. The Administrative Agent shall as soon as practicable notify the Borrower and the Lenders of each determination of a Eurodollar Rate. Any change in the interest rate on a Revolving Loan resulting from a change in the Base Rate or the Eurocurrency Reserve Requirements shall become effective as of the opening of business on the day on which such change becomes effective. The Administrative Agent shall as soon as practicable notify the Borrower and the Lenders of the effective date and the amount of each such change in interest rate.

(b) Each determination of an interest rate by the Administrative Agent pursuant to any provision of this Agreement shall be conclusive and binding on the Borrower and the Lenders in the absence of manifest error. The Administrative Agent shall, at the request of the Borrower, deliver to the Borrower a statement showing the quotations used by the Administrative Agent in determining any interest rate pursuant to Section 3.5(a).

3.7. Inability to Determine Interest Rate. If prior to the first day of any Interest Period:

(a) the Administrative Agent shall have determined (which determination shall be conclusive and binding upon the Borrower) that, by reason of circumstances affecting the relevant market, adequate and reasonable means do not exist for ascertaining the Eurodollar Rate for such Interest Period, or

(b) the Administrative Agent shall have received notice from the Majority Lenders that the Eurodollar Rate determined or to be determined for such Interest Period will not adequately and fairly reflect the cost to such Lenders (as conclusively certified by such Lenders) of making or maintaining their affected Revolving Loans during such Interest Period, the Administrative Agent shall give telefacsimile, email or telephonic notice thereof to the Borrower and the Lenders as soon as practicable thereafter. If such notice is given (x) any Eurodollar Loans requested to be made on the first day of such Interest Period shall be made as Base Rate Loans, (y) any Revolving Loans that were to have been converted on the first day of such Interest Period to Eurodollar Loans shall be continued as Base Rate Loans and (z) any outstanding Eurodollar Loans shall be converted, on the last day of the then-current Interest Period, to Base Rate Loans. Until such notice has been withdrawn by the Administrative Agent, no further Eurodollar Loans shall be made or continued as such, nor shall the Borrower have the right to convert Revolving Loans to Eurodollar Loans.

3.8. Pro Rata Treatment and Payments

(a) Each borrowing by the Borrower from the Lenders hereunder, each payment by the Borrower on account of any commitment fee and any reduction of the Revolving Commitments of the Lenders shall be made pro rata according to the Revolving Percentages of the Lenders.

(b) Each payment (including each prepayment) by the Borrower on account of principal of and interest on the Revolving Loans shall be made pro rata according to the respective outstanding principal amounts of the Revolving Loans then held by the Lenders.

(c) All payments (including prepayments) to be made by the Borrower hereunder, whether on account of principal, interest, fees or otherwise, shall be made without setoff or counterclaim and shall be made prior to 11:00 A.M., Los Angeles, California time, on the due date thereof to the Administrative Agent, for the account of the Lenders, at the Funding Office, in Dollars and in immediately available funds. The Administrative Agent shall distribute such payments to the Lenders promptly upon receipt in like funds as received. If any payment hereunder (other than payments on the Eurodollar Loans) becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day. If any payment on a Eurodollar Loan becomes due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day unless the result of such extension would be to extend such payment into another calendar month, in which event such payment shall be made on the immediately preceding Business Day. In the case of any extension of any payment of principal pursuant to the preceding two sentences, interest thereon shall be payable at the then applicable rate during such extension.



(d) Unless the Administrative Agent shall have been notified in writing by any Lender prior to a borrowing that such Lender will not make the amount that would constitute its share of such borrowing available to the Administrative Agent, the Administrative Agent may assume that such Lender is making such amount available to the Administrative Agent, and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower a corresponding amount. If such amount is not made available to the Administrative Agent by the required time on the Borrowing Date therefor, such Lender shall pay to the Administrative Agent, on demand, such amount with interest thereon at a rate equal to the daily average Federal Funds Effective Rate for the period until such Lender makes such amount immediately available to the Administrative Agent. A certificate of the Administrative Agent submitted to any Lender with respect to any amounts owing under this paragraph shall be conclusive in the absence of manifest error. If such Lender's share of such borrowing is not made available to the Administrative Agent by such Lender within three Business Days of such Borrowing Date, the Administrative Agent shall also be entitled to recover such amount with interest thereon at the rate per annum applicable to Base Rate Loans, on demand, from the Borrower.

(e) Unless the Administrative Agent shall have been notified in writing by the Borrower prior to the date of any payment due to be made by the Borrower hereunder that the Borrower will not make such payment to the Administrative Agent, the Administrative Agent may assume that the Borrower is making such payment, and the Administrative Agent may, but shall not be required to, in reliance upon such assumption, make available to the Lenders their respective pro rata shares of a corresponding amount. If such payment is not made to the Administrative Agent by the Borrower within three Business Days after such due date, the Administrative Agent shall be entitled to recover, on demand, from each Lender to which any amount which was made available pursuant to the preceding sentence, such amount with interest thereon at the rate per annum equal to the daily average Federal Funds Effective Rate. Nothing herein shall be deemed to limit the rights of the Administrative Agent or any Lender against the Borrower.

(f) The Borrower and any Lender shall have the option, from time to time, to execute and deliver to the Administrative Agent a Pari Passu Hedging Obligation Notice designating a fixed dollar amount as the allocation of the maximum amount of Pari Passu Hedging Obligations for a stated Lender and its Affiliates (a "Pari Passu Hedging Obligation Allocation"), and the Pari Passu Hedging Obligation Allocation of any Lender and its Affiliates may be terminated, increased or decreased from time to time by a subsequent Pari Passu Hedging Obligation Notice executed by the Borrower and such Lender; provided that (i) the maximum aggregate amount of all Pari Passu Hedge Obligation Allocations at any one time shall not exceed \$75,000,000 and (ii) no such Pari Passu Hedging Obligation Notice shall be effective until the Administrative Agent shall have executed and delivered to the Borrower and such Lender such notice confirming such Pari Passu Hedging Obligation Allocation. The Administrative Agent shall maintain a register to record all Pari Passu Hedging Obligation Allocations. The obligations under the Lender Hedge Agreements with such Lender and its Affiliates that exceed such Lender's Pari Passu Hedging Obligation Allocation shall not be Pari Passu Hedging Obligations. The aggregate amount of Pari Passu Hedging Obligations outstanding from time to time shall be considered Obligations for purposes of each of the

Security Documents and shall be secured by all the Collateral granted thereunder in accordance with the following Section 3.8(g).

(g) Notwithstanding anything in this Section 3.8 or in any of the Loan Documents to the contrary, in the event that the Revolving Loans shall have become due and payable, and the Revolving Commitments shall have been terminated, pursuant to Section 8, any amounts received by the Administrative Agent from the Loan Parties or their Subsidiaries or from the Collateral in respect of the Borrower's Obligations shall be applied in the following order of priority:

(i) First, to reimburse the Administrative Agent for its fees, costs and expenses pursuant to the Loan Documents;

(ii) Second, to pay unpaid interest accrued on the Revolving Loans;

(iii) Third, (A) to pay all other outstanding Obligations (whether or not contingent) under, out of, or in connection with any of the Loan Documents or Letters of Credit, including the outstanding principal of the Revolving Loans and, after the payment of the outstanding principal of the Revolving Loans, to cash collateralize outstanding Letters of Credit (as contemplated pursuant to Section 8) and (B) to pay Pari Passu Hedging Obligations (applied ratably to (A) and to (B) based upon the total outstanding Obligations under (A) and the lesser of the total outstanding Pari Passu Hedging Obligations under (B) or \$75,000,000); and

(iv) Fourth, once all of the foregoing Obligations (whether or not contingent) and Pari Passu Hedging Obligations have been indefeasibly paid in full and all Letters of Credit have been terminated or cash collateralized (as contemplated pursuant to Section 8), to the Borrower.

Administrative Agent shall have no responsibility to determine the existence or amount of Pari Passu Hedging Obligations and may reserve from the application of amounts under this paragraph (g) amounts distributable in respect of Pari Passu Hedging Obligations until it has received evidence satisfactory to it of the existence and amount of such Pari Passu Hedging Obligations.

### 3.9. Requirements of Law

(a) If the adoption of or any change in any Requirement of Law or in the interpretation or application thereof or compliance by any Lender with any request or directive (whether or not having the force of law) from any central bank or other Governmental Authority made subsequent to the date hereof:

(i) shall subject any Lender to any tax of any kind whatsoever with respect to this Agreement, any Letter of Credit, any Application or any Eurodollar Loan made by it, or change the basis of taxation of payments to such Lender in respect thereof

(except for Non-Excluded Taxes covered by Section 3.10 and changes in the rate of tax on the overall net income of such Lender);

(ii) shall impose, modify or hold applicable any reserve, special deposit, compulsory loan or similar requirement against assets held by, deposits or other liabilities in or for the account of, advances, loans or other extensions of credit by, or any other acquisition of funds by, any office of such Lender that is not otherwise included in the determination of the Eurodollar Rate hereunder; or

(iii) shall impose on such Lender any other condition;

and the result of any of the foregoing is to increase the cost to such Lender, by an amount that such Lender deems to be material, of making, converting into, continuing or maintaining Eurodollar Loans or issuing or participating in Letters of Credit, or to reduce any amount receivable hereunder in respect thereof, then, in any such case, the Borrower shall promptly pay such Lender, upon its demand, any additional amounts necessary to compensate such Lender for such increased cost or reduced amount receivable. If any Lender becomes entitled to claim any additional amounts pursuant to this paragraph, it shall promptly notify the Borrower (with a copy to the Administrative Agent) of the event by reason of which it has become so entitled.

(b) If any Lender shall have determined that the adoption of or any change in any Requirement of Law regarding capital adequacy or in the interpretation or application thereof or compliance by such Lender or any corporation controlling such Lender with any request or directive regarding capital adequacy (whether or not having the force of law) from any Governmental Authority made subsequent to the date hereof shall have the effect of reducing the rate of return on such Lender's or such corporation's capital as a consequence of its obligations hereunder or under or in respect of any Letter of Credit to a level below that which such Lender or such corporation could have achieved but for such adoption, change or compliance (taking into consideration such Lender's or such corporation's policies with respect to capital adequacy) by an amount deemed by such Lender to be material, then from time to time, after submission by such Lender to the Borrower (with a copy to the Administrative Agent) of a written request therefor, the Borrower shall pay to such Lender such additional amount or amounts as will compensate such Lender or such corporation for such reduction.

(c) A certificate as to any additional amounts payable pursuant to this Section submitted by any Lender to the Borrower (with a copy to the Administrative Agent) shall be conclusive in the absence of manifest error. The obligations of the Borrower pursuant to this Section shall survive the termination of this Agreement and the payment of the Revolving Loans and all other amounts payable hereunder.

### 3.10. Taxes

(a) All payments made by the Borrower under this Agreement shall be made free and clear of, and without deduction or withholding for or on account of, any present or future income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings, now or hereafter imposed, levied, collected, withheld or assessed by any Governmental

Authority, excluding net income taxes and franchise taxes (imposed in lieu of net income taxes) imposed on any Agent or any Lender as a result of a present or former connection between such Agent or such Lender and the jurisdiction of the Governmental Authority imposing such tax or any political subdivision or taxing authority thereof or therein (other than any such connection arising solely from such Agent or such Lender having executed, delivered or performed its obligations or received a payment under, or enforced, this Agreement or any other Loan Document). If any such non-excluded taxes, levies, imposts, duties, charges, fees, deductions or withholdings (“Non-Excluded Taxes”) or Other Taxes are required to be withheld from any amounts payable to any Agent or any Lender hereunder, the amounts so payable to such Agent or such Lender shall be increased to the extent necessary to yield to such Agent or such Lender (after payment of all Non-Excluded Taxes and Other Taxes) interest or any such other amounts payable hereunder at the rates or in the amounts specified in this Agreement, provided, however, that the Borrower shall not be required to increase any such amounts payable to any Lender with respect to any Non-Excluded Taxes (i) that are attributable to such Lender’s failure to comply with the requirements of paragraph (d) or (e) of this Section or (ii) that are United States withholding taxes imposed on amounts payable to such Lender at the time such Lender becomes a party to this Agreement, except to the extent that such Lender’s assignor (if any) was entitled, at the time of assignment, to receive additional amounts from the Borrower with respect to such Non-Excluded Taxes pursuant to this paragraph.

(b) In addition, the Borrower shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Whenever any Non-Excluded Taxes or Other Taxes are payable by the Borrower, as promptly as possible thereafter the Borrower shall send to the Administrative Agent for its own account or for the account of the relevant Agent or Lender, as the case may be, a certified copy of an original official receipt received by the Borrower showing payment thereof. If the Borrower fails to pay any Non-Excluded Taxes or Other Taxes when due to the appropriate taxing authority or fails to remit to the Administrative Agent the required receipts or other required documentary evidence, the Borrower shall indemnify the Agents and the Lenders for any incremental taxes, interest or penalties that may become payable by any Agent or any Lender as a result of any such failure.

(d) Each Lender (or Transferee) that is not a “U.S. Person” as defined in Section 7701(a)(30) of the Code (a “Non-U.S. Lender”) shall deliver to the Borrower and the Administrative Agent (or, in the case of a Participant, to the Lender from which the related participation shall have been purchased) two copies of either U.S. Internal Revenue Service Form W-8BEN or Form W-89ECI, or, in the case of a Non-U.S. Lender claiming exemption from U.S. federal withholding tax under Section 871(h) or 881(c) of the Code with respect to payments of “portfolio interest”, a statement substantially in the form of Exhibit G and a Form W-8BEN, or any subsequent versions thereof or successors thereto, properly completed and duly executed by such Non-U.S. Lender claiming complete exemption from, or a reduced rate of, U.S. federal withholding tax on all payments by the Borrower under this Agreement and the other Loan Documents. Such forms shall be delivered by each Non-U.S. Lender on or before the date it becomes a party to this Agreement (or, in the case of any Participant, on or before the date such Participant purchases the related participation). In addition, each Non-U.S. Lender shall

deliver such forms promptly upon the obsolescence or invalidity of any form previously delivered by such Non-U.S. Lender. Each Non-U.S. Lender shall promptly notify the Borrower at any time it determines that it is no longer in a position to provide any previously delivered certificate to the Borrower (or any other form of certification adopted by the U.S. taxing authorities for such purpose). Notwithstanding any other provision of this paragraph, a Non-U.S. Lender shall not be required to deliver any form pursuant to this paragraph that such Non-U.S. Lender is not legally able to deliver.

(e) A Lender that is entitled to an exemption from or reduction of non-U.S. withholding tax under the law of the jurisdiction in which the Borrower is located, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement shall deliver to the Borrower (with a copy to the Administrative Agent), at the time or times prescribed by applicable law or reasonably requested by the Borrower, such properly completed and executed documentation prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate, provided that such Lender is legally entitled to complete, execute and deliver such documentation and in such Lender's judgment such completion, execution or submission would not materially prejudice the legal position of such Lender.

(f) The agreements in this Section shall survive the termination of this Agreement and the payment of the Revolving Loans and all other amounts payable hereunder.

3.11. Indemnity. The Borrower agrees to indemnify each Lender and the Administrative Agent and to hold each Lender and the Administrative Agent harmless from any loss or expense that such Lender may sustain or incur as a consequence of (a) default by the Borrower in making a borrowing of, conversion into or continuation of Eurodollar Loans after the Borrower has given a notice requesting the same in accordance with the provisions of this Agreement, (b) default by the Borrower in making any prepayment of or conversion from Eurodollar Loans after the Borrower has given a notice thereof in accordance with the provisions of this Agreement or (c) the making of a prepayment of Eurodollar Loans on a day that is not the last day of an Interest Period with respect thereto. Such indemnification may include an amount equal to the excess, if any, of (i) the amount of interest that would have accrued on the amount so prepaid, or not so borrowed, converted or continued, for the period from the date of such prepayment or of such failure to borrow, convert or continue to the last day of such Interest Period (or, in the case of a failure to borrow, convert or continue, the Interest Period that would have commenced on the date of such failure) in each case at the applicable rate of interest for such Eurodollar Loans provided for herein (excluding, however, the Applicable Margin included therein, if any) over (ii) the amount of interest (as reasonably determined by such Lender) that would have accrued to such Lender on such amount by placing such amount on deposit for a comparable period with leading banks in the interbank eurodollar market. A certificate as to any amounts payable pursuant to this Section submitted to the Borrower by any Lender shall be conclusive in the absence of manifest error. This covenant shall survive the termination of this Agreement and the payment of the Revolving Loans and all other amounts payable hereunder.

3.12. Change of Lending Office. Each Lender agrees that, upon the occurrence of any event giving rise to the operation of Section 3.9 or 3.10(a) with respect to such Lender, it will, if requested by the Borrower, use reasonable efforts (subject to overall policy considerations of

such Lender) to designate another lending office for any Revolving Loans affected by such event with the object of avoiding the consequences of such event; provided, that such designation is made on terms that, in the sole judgment of such Lender, cause such Lender and its lending office(s) to suffer no economic, legal or regulatory disadvantage, and provided, further, that nothing in this Section shall affect or postpone any of the obligations of the Borrower or the rights of any Lender pursuant to Section 3.9 or 3.10(a).

3.13. Replacement of Lenders. The Borrower shall be permitted to replace any Lender that (a) requests reimbursement for amounts owing pursuant to Section 3.9 or 3.10(a) or (b) defaults in its obligation to make Revolving Loans hereunder, with a replacement financial institution; provided that (i) such replacement does not conflict with any Requirement of Law, (ii) no Event of Default shall have occurred and be continuing at the time of such replacement, (iii) prior to any such replacement, such Lender shall have taken no action under Section 3.12 so as to eliminate the continued need for payment of amounts owing pursuant to Section 3.9 or 3.10(a), (iv) the replacement financial institution shall purchase, at par, all Revolving Loans and other amounts owing to such replaced Lender on or prior to the date of replacement, (v) the Borrower shall be liable to such replaced Lender under Section 3.11 if any Eurodollar Loan owing to such replaced Lender shall be purchased other than on the last day of the Interest Period relating thereto, (vi) the replacement financial institution, if not already a Lender, shall be reasonably satisfactory to the Administrative Agent, (vii) the replaced Lender shall be obligated to make such replacement in accordance with the provisions of Section 10.6 (provided that the Borrower shall be obligated to pay the registration and processing fee referred to therein), (viii) until such time as such replacement shall be consummated, the Borrower shall pay all additional amounts (if any) required pursuant to Section 3.9 or 3.10(a), as the case may be, and (ix) any such replacement shall not be deemed to be a waiver of any rights that the Borrower, the Administrative Agent or any other Lender shall have against the replaced Lender.

#### 3.14. Evidence of Debt

(a) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing indebtedness of the Borrower to such Lender resulting from each Revolving Loan of such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement.

(b) The Administrative Agent, on behalf of the Borrower, shall maintain the Register pursuant to Section 10.6(d), and a subaccount therein for each Lender, in which shall be recorded (i) the amount of each Revolving Loan made hereunder and any Note evidencing such Revolving Loan, the Type of such Revolving Loan and each Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) both the amount of any sum received by the Administrative Agent hereunder from the Borrower and each Lender's share thereof.

(c) The entries made in the Register and the accounts of each Lender maintained pursuant to Section 3.14(a) shall, to the extent permitted by applicable law, be prima facie evidence of the existence and amounts of the obligations of the Borrower therein recorded; provided, however, that the failure of any Lender or the Administrative Agent to maintain the

Register or any such account, or any error therein, shall not in any manner affect the obligation of the Borrower to repay (with applicable interest) the Revolving Loans made to the Borrower by such Lender in accordance with the terms of this Agreement.

(d) The Borrower agrees that, upon the request to the Administrative Agent by any Lender, the Borrower will execute and deliver to such Lender a promissory note of the Borrower evidencing any Revolving Loan of such Lender, substantially in the form of Exhibit H, with appropriate insertions as to date and principal amount.

3.15. Illegality. Notwithstanding any other provision herein, if the adoption of or any change in any Requirement of Law or in the interpretation or application thereof shall make it unlawful for any Lender to make or maintain Eurodollar Loans as contemplated by this Agreement, (a) the commitment of such Lender hereunder to make Eurodollar Loans, continue Eurodollar Loans as such and convert Base Rate Loans to Eurodollar Loans shall forthwith be canceled and (b) such Lender's Revolving Loans then outstanding as Eurodollar Loans, if any, shall be converted automatically to Base Rate Loans on the respective last days of the then current Interest Periods with respect to such Revolving Loans or within such earlier period as required by law. If any such conversion of a Eurodollar Loan occurs on a day which is not the last day of the then current Interest Period with respect thereto, the Borrower shall pay to such Lender such amounts, if any, as may be required pursuant to Section 3.11.

#### SECTION 4. REPRESENTATIONS AND WARRANTIES

To induce the Agents and the Lenders to enter into this Agreement and to make the Revolving Loans and issue or participate in the Letters of Credit, the Company and the Borrower hereby jointly and severally represent and warrant to each Agent and each Lender that:

4.1. Financial Condition. The audited consolidated balance sheets of the Company as at December 31, 2001, December 31, 2002 and December 31, 2003, and the related consolidated statements of operations and of cash flows for the fiscal years ended on such dates, reported on by and accompanied by an unqualified report from PriceWaterhouseCoopers, present fairly the consolidated financial condition of the Company as at such dates, and their respective consolidated results of operations and consolidated cash flows for the respective fiscal years then ended. All such financial statements, including the related schedules and notes thereto, have been prepared in accordance with GAAP applied consistently throughout the periods involved (except as approved by the aforementioned firm of accountants and disclosed therein). Except as set forth on Schedule 4.1(b), no Group Member has any material Guarantee Obligations, contingent liabilities or liabilities for taxes, or any long-term leases or unusual forward or long-term commitments, including any interest rate or foreign currency swap or exchange transaction or other obligation in respect of derivatives, that are not reflected in the most recent financial statements referred to in this paragraph. During the period from December 31, 2003, to and including the date hereof there has been no Disposition by the Company of any material part of its business or property.

4.2. No Change. Since December 31, 2003, there has been no development or event that has had or could reasonably be expected to have a Material Adverse Effect.

4.3. Existence; Compliance with Law. Each Group Member (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (b) has the power and authority, and the legal right, to own and operate its property, to lease the property it operates as lessee and to conduct the business in which it is currently engaged, (c) is duly qualified as a foreign corporation, partnership or limited liability company and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification and (d) is in compliance with all Requirements of Law except to the extent that the failure to comply therewith could not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.4. Power; Authorization; Enforceable Obligations. Each Loan Party has the power and authority, and the legal right, to make, deliver and perform the Loan Documents to which it is a party and, in the case of the Borrower, to obtain extensions of credit hereunder. Each Loan Party has taken all necessary organizational action to authorize the execution, delivery and performance of the Loan Documents to which it is a party and, in the case of the Borrower, to authorize the extensions of credit on the terms and conditions of this Agreement. No consent or authorization of, filing with, notice to or other act by or in respect of, any Governmental Authority or any other Person is required in connection with the transactions contemplated hereby and the extensions of credit hereunder or with the execution, delivery, performance, validity or enforceability of this Agreement or any of the Loan Documents, except (i) consents, authorizations, filings and notices described in Schedule 4.4, which consents, authorizations, filings and notices have been obtained or made and are in full force and effect and (ii) the filings referred to in Section 4.19. Each Loan Document has been duly executed and delivered on behalf of each Loan Party thereto. This Agreement constitutes, and each other Loan Document upon execution will constitute, a legal, valid and binding obligation of each Loan Party thereto, enforceable against each such Loan Party in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

4.5. No Legal Bar. The execution, delivery and performance of this Agreement and the other Loan Documents, the issuance of Letters of Credit, the borrowings hereunder and the use of the proceeds thereof will not violate any Requirement of Law or any Contractual Obligation of the Company, the Borrower or any of their respective Subsidiaries and will not result in, or require, the creation or imposition of any Lien on any of their respective properties or revenues pursuant to any Requirement of Law or any such Contractual Obligation (other than the Liens created by the Security Documents). No Requirement of Law or Contractual Obligation applicable to the Company, the Borrower or any of their respective Subsidiaries could reasonably be expected to have a Material Adverse Effect.

4.6. Litigation. No litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of the Company or the Borrower, threatened by or against the Company, the Borrower or any of their respective Subsidiaries or against any of their respective properties or revenues (a) with respect to any of the Loan Documents or any of the transactions contemplated hereby or thereby or (b) that, except as set forth on Schedule 4.6, could reasonably be expected to have a Material Adverse Effect.



4.7. No Default. Neither the Company, the Borrower nor any of their respective Subsidiaries is in default under or with respect to any of its Contractual Obligations in any respect that could reasonably be expected to have a Material Adverse Effect. No Default or Event of Default has occurred and is continuing.

4.8. Ownership of Property; Liens. Each Group Member has good and defensible title to all of its material properties and assets, free and clear of all Liens other than Liens permitted under Section 7.3 and of all impediments to the use of such properties and assets in such Group Member's business, except that no representation or warranty is made with respect to any oil, gas or mineral property or interest to which no proved oil or gas reserves are properly attributed. Except for Liens permitted under Section 7.3, each Group Member will respectively own in the aggregate, in all material respects, the net interests in production attributable to all material wells and units owned by the Group Members. The ownership of such properties shall not in the aggregate in any material respect obligate such Group Member to bear the costs and expenses relating to the maintenance, development and operations of such properties in an amount materially in excess of the working interest of such properties. Each Group Member has paid all royalties payable under the oil and gas leases to which it is operator, except those contested in accordance with the terms of the applicable joint operating agreement or otherwise contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided on the books of the Company, the Borrower or its Subsidiaries, as the case may be.

4.9. Intellectual Property. The Company, the Borrower and each of their respective Subsidiaries owns, or is licensed to use, all Intellectual Property necessary for the conduct of its business as currently conducted. No material claim has been asserted and is pending by any Person challenging or questioning the use of any Intellectual Property or the validity or effectiveness of any Intellectual Property, nor does the Company or the Borrower know of any valid basis for any such claim. The use of Intellectual Property by the Company, the Borrower and their respective Subsidiaries does not infringe on the rights of any Person in any material respect.

4.10. Taxes. Each of the Company, the Borrower and each of their respective Subsidiaries has filed or caused to be filed all Federal, state and other material tax returns that are required to be filed and has paid all taxes shown to be due and payable on said returns or on any assessments made against it or any of its property and all other taxes, fees or other charges imposed on it or any of its property by any Governmental Authority (other than any the amount or validity of which are currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided on the books of the Company, the Borrower or its Subsidiaries, as the case may be); no tax Lien has been filed, and, to the knowledge of the Company and the Borrower, no claim is being asserted, with respect to any such tax, fee or other charge.

4.11. Federal Regulations. No part of the proceeds of any Revolving Loans, and no other extensions of credit hereunder, will be used for "buying" or "carrying" any "margin stock" within the respective meanings of each of the quoted terms under Regulation U as now and from time to time hereafter in effect or for any purpose that violates the provisions of the Regulations

of the Board. If requested by any Lender or the Administrative Agent, the Borrower will furnish to the Administrative Agent and each Lender a statement to the foregoing effect in conformity with the requirements of FR Form G-3 or FR Form U-1, as applicable, referred to in Regulation U.

4.12. Labor Matters. Except as, in the aggregate, could not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes or other labor disputes against any Group Member pending or, to the knowledge of the Company or the Borrower, threatened; (b) hours worked by and payment made to employees of each Group Member have not been in violation of the Fair Labor Standards Act or any other applicable Requirement of Law dealing with such matters; and (c) all payments due from any Group Member on account of employee health and welfare insurance have been paid or accrued as a liability on the books of the relevant Group Member.

4.13. ERISA. Neither a Reportable Event nor an “accumulated funding deficiency” (within the meaning of Section 412 of the Code or Section 302 of ERISA) has occurred during the five-year period prior to the date on which this representation is made or deemed made with respect to any Plan, and each Plan has complied in all material respects with the applicable provisions of ERISA and the Code. No termination of a Single Employer Plan has occurred, and no Lien in favor of the PBGC or a Plan has arisen, during such five-year period. The present value of all accrued benefits under each Single Employer Plan (based on those assumptions used to fund such Plans) did not, as of the last annual valuation date prior to the date on which this representation is made or deemed made, exceed the value of the assets of such Plan allocable to such accrued benefits by a material amount. Neither the Company nor any Commonly Controlled Entity has had a complete or partial withdrawal from any Multiemployer Plan that has resulted or could reasonably be expected to result in a material liability under ERISA, and neither the Company nor any Commonly Controlled Entity would become subject to any material liability under ERISA if the Company or any such Commonly Controlled Entity were to withdraw completely from all Multiemployer Plans as of the valuation date most closely preceding the date on which this representation is made or deemed made. No such Multiemployer Plan is in Reorganization or Insolvent.

4.14. Investment Company Act; Other Regulations. No Loan Party is an “investment company”, or a company “controlled” by an “investment company”, within the meaning of the Investment Company Act of 1940, as amended. No Loan Party is subject to regulation under any Requirement of Law (other than Regulation X of the Board) that limits its ability to incur Indebtedness.

4.15. Subsidiaries. Except as disclosed to the Administrative Agent by the Borrower in writing from time to time after the Closing Date, (a) Schedule 4.15(a) sets forth the name and jurisdiction of incorporation, organization or formation of each Subsidiary and, as to each such Subsidiary, the percentage of each class of Capital Stock owned by any Loan Party and (b) except as set forth on Schedule 4.15(b), there are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than stock options granted to employees or directors and directors’ qualifying shares) of any nature relating to any Capital Stock of the Company or any Subsidiary. As of the Closing Date, Chesapeake Energy Marketing, Inc.,

Mayfield Processing, L.L.C. and MidCon Compression, L.P. are “Unrestricted Subsidiaries” under the Indentures.

4.16. Use of Proceeds. The proceeds of the Revolving Loans shall be used for general corporate purposes of the Company, the Borrower and their Subsidiaries. The Letters of Credit shall be used for the general corporate purposes of the Company, the Borrower and their Subsidiaries.

4.17. Environmental Matters

(a) The facilities and properties owned, leased or operated by any Group Member (the “Properties”) do not contain, and have not previously contained, any Materials of Environmental Concern in amounts or concentrations or under circumstances that constitute or constituted a violation of, or could give rise to material liability under, any Environmental Law.

(b) No Group Member has received or is aware of any notice of violation, alleged violation, non-compliance, liability or potential liability regarding environmental matters or compliance with Environmental Laws with regard to any of the Properties or the business operated by any Group Member (the “Business”), nor does the Company or the Borrower have knowledge or reason to believe that any such notice will be received or is being threatened.

(c) Materials of Environmental Concern have not been transported or disposed of from the Properties in violation of, or in a manner or to a location that could give rise to liability under, any Environmental Law, nor have any Materials of Environmental Concern been generated, treated, stored or disposed of at, on or under any of the Properties in violation of, or in a manner that could give rise to liability under, any applicable Environmental Law.

(d) Except as set forth on Schedule 4.17(d), no judicial proceeding or governmental or administrative action is pending or, to the knowledge of the Company and the Borrower, threatened, under any Environmental Law to which any Group Member is or will be named as a party with respect to the Properties or the Business, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other administrative or judicial requirements outstanding under any Environmental Law with respect to the Properties or the Business.

(e) There has been no release or threat of release of Materials of Environmental Concern at or from the Properties, or arising from or related to the operations of any Group Member in connection with the Properties or otherwise in connection with the Business, in violation of or in amounts or in a manner that could give rise to material liability under Environmental Laws.

(f) Except as set forth on Schedule 4.17(f), the Properties and all operations at the Properties are in compliance, and have in the last five years been in compliance, in all material respects with all applicable Environmental Laws, and there is no contamination at, under or about the Properties or violation of any Environmental Law with respect to the Properties or the Business.

(g) No Group Member has assumed any liability of any other Person under Environmental Laws, other than as a result of a merger or consolidation of such Person into a Group Member or in connection with an asset acquisition, and then only with respect to the acquired assets, in each case where the transaction did not result in the assumption of any known material liabilities.

4.18. Accuracy of Information, etc. No statement or information contained in this Agreement, any other Loan Document or any other document, certificate or statement furnished by or on behalf of any Loan Party to the Administrative Agent or the Lenders, or any of them, for use in connection with the transactions contemplated by this Agreement or the other Loan Documents, contained as of the date such statement, information, document or certificate was so furnished, any untrue statement of a material fact or omitted to state a material fact necessary to make the statements contained herein or therein not misleading. The projections and pro forma financial information contained in the materials referenced above are based upon good faith estimates and assumptions believed by management of the Company to be reasonable at the time made, it being recognized by the Lenders that such financial information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount. There is no fact known to any Loan Party that could reasonably be expected to have a Material Adverse Effect that has not been expressly disclosed herein, in the other Loan Documents or in any other documents, certificates and statements furnished to the Administrative Agent and the Lenders for use in connection with the transactions contemplated hereby and by the other Loan Documents.

4.19. Security Documents. Each of the Mortgages is effective to create in favor of the Administrative Agent, for the benefit of the Lenders, a legal, valid and enforceable Lien on the Mortgaged Properties described therein and proceeds thereof, and when the Mortgages (or amendments to the relevant Existing Mortgages as contemplated by Section 5.1(j)) are filed in the offices specified on Schedule 4.19, each such Mortgage shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in the Mortgaged Properties and the proceeds thereof, as security for the Obligations (as defined in the relevant Mortgage), in each case prior and superior in right to any other Person.

4.20. Solvency. Each Loan Party is, and after giving effect to the incurrence of all Indebtedness and obligations being incurred in connection herewith will be, and will continue to be, Solvent.

4.21. Senior Debt Limit. The aggregate amount of Revolving Extensions of Credit outstanding at any time does not exceed the Senior Debt Limit at such time.

4.22. Proved Developed Properties. Each of the Mortgaged Properties is a Proved Developed Property.

4.23. Subsidiary Guarantors. Each "Restricted Subsidiary" under the Indentures is a Subsidiary Guarantor.

## SECTION 5. CONDITIONS PRECEDENT

5.1. Conditions to Initial Extension of Credit. The agreement of each Lender to make the initial extension of credit requested to be made by it is subject to the satisfaction of, among other things, the following conditions precedent (the date upon which all such conditions precedent shall be satisfied, the "Closing Date").

(a) Credit Agreement; Guarantee Agreement. The Administrative Agent shall have received (i) this Agreement, or, in the case of the Lenders, an Addendum, executed and delivered by each Agent, the Company and the Borrower and each Person listed on Schedule 1.1A, and (ii) the Guarantee Agreement, executed and delivered by the Company and each Subsidiary Guarantor.

(b) Approvals. All governmental and third party approvals necessary or, in the discretion of the Administrative Agent, advisable in connection with the transactions contemplated hereby and the continuing operations of the Company and its subsidiaries shall have been obtained and be in full force and effect, and all applicable waiting periods shall have expired without any action being taken or threatened by any competent authority which would restrain, prevent or otherwise impose adverse conditions on the transactions contemplated hereby.

(c) Lien Searches. The Administrative Agent shall have received the results of a recent lien search in the central filing office (and, to the extent requested by the Administrative Agent, the local filing offices) of each of the jurisdictions where assets of the Loan Parties are located, and such search shall reveal no liens on any of the assets of the Loan Parties except for liens permitted by Section 7.3 or discharged on or prior to the Closing Date pursuant to documentation satisfactory to the Administrative Agent.

(d) Reports; Officer's Certificate. The Company shall have delivered to the Administrative Agent, prior to the Closing Date, (i) reports satisfying the requirements of the definition of Adjusted Consolidated Net Tangible Assets in order to calculate such amount as of December 31, 2003, (ii) the Initial Engineering Reports and (iii) a certificate of the chief financial officer or the treasurer of the Company certifying (A) the calculation of Adjusted Consolidated Net Tangible Assets as of December 31, 2003, (B) that the liens securing the Collateral are permitted under the Indentures, (C) the calculation of the Senior Debt Limit as of December 31, 2003, and (D) the calculation of the Collateral Value (based upon the Initial Engineering Reports and deducting the reserves projected to be produced on or prior to the next Evaluation Date), which certificate shall attach all reports and appraisals used to make such calculations.

(e) Fees. The Lenders and the Agents shall have received all fees required to be paid, and all expenses for which invoices have been presented (including the reasonable fees and expenses of legal counsel), on or before the Closing Date. All such amounts will be paid with proceeds of Revolving Loans made on the Closing Date and will be reflected in the funding instructions given by the Borrower to the Administrative Agent on or before the Closing Date.

(f) Closing Certificate. The Administrative Agent shall have received a certificate of each Loan Party, dated the Closing Date, substantially in the form of Exhibit C, with appropriate insertions and attachments.

(g) Legal Opinions. The Administrative Agent shall have received the following executed legal opinions:

- (i) the legal opinion of Commercial Law Group, P.C., counsel to the Company and its Subsidiaries, substantially in the form of Exhibit F; and
- (ii) the legal opinion of Thompson & Knight and such other special and local counsel as may be required by the Administrative Agent.

Each such legal opinion shall cover such other matters incident to the transactions contemplated by this Agreement as the Administrative Agent may reasonably require.

(h) Filings, Registrations and Recordings. Each document (including any Uniform Commercial Code financing statement) required by the Security Documents or under law or reasonably requested by the Administrative Agent to be filed, registered or recorded in order to create in favor of the Administrative Agent, for the benefit of the Lenders, a perfected Lien on the Collateral described therein, prior and superior in right to any other Person (other than with respect to Liens expressly permitted by Section 7.3), shall be in proper form for filing, registration or recordation.

(i) Mortgages, etc.

(i) The Administrative Agent shall have received a Mortgage (together with any other documents requested to be delivered thereunder) to be filed in each county in which the Mortgaged Properties are located or satisfactory amendments to each Existing Mortgage, executed and delivered by a duly authorized officer of each party thereto. The aggregate Collateral Value of such Mortgaged Properties as of the Closing Date shall be sufficient to cause the Collateral Coverage Ratio to be at least 1.5 to 1.0 on the Closing Date. Upon receipt of the Mortgages, the Administrative Agent will be responsible for, and arrange for, the recording thereof.

(ii) If requested by the Administrative Agent, the Administrative Agent shall have received (A) copies of all material contracts relating to the Mortgaged Properties and (B) copies of satisfactory legal opinions as to title to the Mortgaged Properties representing not more than 50% of the Collateral Value.

(j) Solvency Certificate. Each of the Lenders shall have received and shall be satisfied with a solvency certificate of a Responsible Officer of the Company which shall document the solvency of the Company and its subsidiaries after giving effect to the transactions contemplated hereby.

(k) Insurance. The Administrative Agent shall have received insurance certificates satisfying the requirements of this Agreement.

(l) Exiting Lenders. The Administrative Agent shall have received evidence satisfactory to it that (i) all Loans (as defined in the Existing Credit Agreement) of the Lenders (as defined in the Existing Credit Agreement) which will not execute and deliver an Addendum (and will not have a Revolving Commitment hereunder) with respect to this Agreement ("Exiting Lenders") shall have been or shall concurrently be repaid in full, together with any accrued interest thereon and any accrued fees payable to such Exiting Lenders under the Existing Credit Agreement to but excluding the Closing Date, and (ii) the commitments under the Existing Credit Agreement of such Exiting Lenders shall have been or shall concurrently be terminated.

5.2. Conditions to Each Extension of Credit. The agreement of each Lender to make any extension of credit requested to be made by it on any date (including its initial extension of credit) is subject to the satisfaction of the following conditions precedent:

(a) Representations and Warranties. Each of the representations and warranties made by any Loan Party in or pursuant to the Loan Documents shall be true and correct on and as of such date as if made on and as of such date.

(b) No Default. No Default or Event of Default shall have occurred and be continuing on such date or after giving effect to the extensions of credit requested to be made on such date.

(c) Senior Debt Limit. The Total Revolving Extensions of Credit do not exceed the Senior Debt Limit after giving effect to the extensions of credit requested to be made on such date.

Each borrowing by and issuance of a Letter of Credit on behalf of the Borrower hereunder shall constitute a representation and warranty by the Borrower as of the date of such extension of credit that the conditions contained in this Section 5.2 have been satisfied.

## SECTION 6. AFFIRMATIVE COVENANTS

The Company and the Borrower hereby jointly and severally agree that, so long as the Revolving Commitments remain in effect, any Letter of Credit remains outstanding or any Revolving Loan or other amount is owing to any Lender or Agent hereunder, each of the Company and the Borrower shall and shall cause each of its Subsidiaries to:

6.1. Financial Statements. Furnish to the Administrative Agent and each Lender:

(a) as soon as available, but in any event within 95 days after the end of each fiscal year of the Company, (i) a copy of the audited consolidated balance sheet of the Company and its consolidated Subsidiaries as at the end of such year and the related audited consolidated statements of operations and cash flows for such year, setting forth in each case in comparative form the figures for the previous year, reported on without a "going concern" or like

qualification or exception, or qualification arising out of the scope of the audit, by PricewaterhouseCoopers or another of the nationally recognized firms, or other independent certified public accountants selected by the Company and acceptable to the Administrative Agent and (ii) the unaudited consolidating balance sheets of the Company and its consolidated Subsidiaries as at the end of such fiscal year and the related unaudited consolidating statements of operations and cash flows for such year setting forth in each case in comparative form the figures for the previous year certified by a Responsible Officer as being fairly stated in all material respects;

(b) as soon as available, but in any event not later than 50 days after the end of each of the first three quarterly periods of each fiscal year of the Company, the unaudited consolidated and consolidating balance sheet of the Company and its consolidated Subsidiaries as at the end of such quarter and the related unaudited consolidated and consolidating statements of operations and cash flows for such quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year, certified by a Responsible Officer as being fairly stated in all material respects (subject to normal year-end audit adjustments); and

All such financial statements shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP applied consistently throughout the periods reflected therein and with prior periods (except as approved by such accountants or officer, as the case may be, and disclosed therein).

6.2. Certificates; Other Information. Furnish to the Administrative Agent who will forward to each Lender (or, in the case of clause (f), to the relevant Lender):

(a) concurrently with the delivery of the financial statements referred to in Section 6.1(a), a certificate of the independent certified public accountants reporting on such financial statements stating that in making the examination necessary therefore no knowledge was obtained of any Default or Event of Default, except as specified in such certificate;

(b) concurrently with the delivery of any financial statements pursuant to Section 6.1, (i) a certificate of a Responsible Officer of the Company and the Borrower stating that, to the best of such Responsible Officer's knowledge, each Loan Party during such period has observed or performed all of its covenants and other agreements, and satisfied every condition, contained in this Agreement and the other Loan Documents to which it is a party to be observed, performed or satisfied by it, and that such Responsible Officer has obtained no knowledge of any Default or Event of Default except as specified in such certificate and (ii) in the case of quarterly or annual financial statements, a Compliance Certificate (A) containing all information and calculations necessary for determining compliance by each Group Member with the provisions of this Agreement (including, without limitation, Section 7.1) referred to therein as of the last day of the fiscal quarter or fiscal year of the Company, as the case may be, and, if applicable, for determining the Applicable Margins and Commitment Fee Rate, (B) certifying the calculation of the Senior Debt Limit as of the last day of the fiscal quarter or fiscal year of the Company, as the case may be, and (C) certifying the value of the oil and gas properties of the Company and its Subsidiaries over which a Lien has been created pursuant to Section 7.3(k) and such certificate



shall set forth such calculation based on the applicable Engineering Reports delivered pursuant to Section 6.2(e) and the average of the applicable price assumptions used by the Reference Lenders in the most recent determination of the Collateral Value pursuant to Section 2.13;

(c) concurrently with the delivery of any financial statements pursuant to Section 6.1, a detailed consolidated budget for the following fiscal year (including a projected consolidated balance sheet of the Company and its Subsidiaries as of the end of the following fiscal year, the related consolidated statements of projected cash flow, projected changes in financial position and projected income)(collectively, the “Projections”), which Projections shall in each case be accompanied by a certificate of a Responsible Officer stating that such Projections are based on reasonable estimates, information and assumptions and that such Responsible Officer has no reason to believe that such Projections are incorrect or misleading in any material respect;

(d) within (i) 120 days of each Evaluation Date occurring on December 31 and (ii) 75 days of each other Evaluation Date, one or more engineering reports, prepared by the Company’s engineers and certified by a Responsible Officer as to the accuracy and completeness thereof (each, a “Company Report”) or, in the case of each Evaluation Date occurring on December 31, prepared with respect to not less than 70% of the reserve volume of the Company and its Subsidiaries (but in any event, not less than 90% of the reserve volume used in the determination of the Collateral Value with respect to such Evaluation Date) by independent petroleum engineers chosen by the Company and acceptable to the Majority Lenders (each such report, an “Independent Report”, the Independent Reports collectively with the Company Reports, the “Engineering Reports”) together with all other information, reports and data which the Administrative Agent has requested in connection therewith, which shall set forth for each oil and gas property or interest of the Company and its Subsidiaries the separate categories of proved developed producing reserves, proved developed nonproducing reserves and proved undeveloped reserves attributable to such properties together with a projection of the rate of production with respect thereto as of the date that is (A) with respect to any Evaluation Date that is December 31 and June 30, such Evaluation Date and (B) with respect to any other Evaluation Date, the last day of the fiscal quarter immediately preceding such Evaluation Date for which the Engineering Reports so required may be reasonably prepared, which report(s), in any case, shall distinguish (or shall be delivered together with a certificate from an appropriate officer of the Borrower which distinguishes) those properties treated in the report which are Collateral, from those properties treated in the report which are not Collateral. Each Engineering Report shall be satisfactory to the Administrative Agent and, without limitation, shall (i) contain sufficient information to enable the Borrower to meet the reporting requirements concerning oil and gas reserves contained in Regulations S-K and S-X promulgated by the SEC and to ascertain projected future production attributable to the portion of the reserves of the Mortgaged Properties categorized as “Producing”, (ii) take into account any “over-produced” status under gas balancing arrangements, and (iii) contain information and analysis comparable in scope to that contained in the Initial Engineering Reports. Accompanying each Engineering Report, the Borrower shall deliver a report reflecting the occurrence of the following events since the date of the most recent Engineering Report: (i) all property sales and pending property sales identifying the property and sale price therefor, (ii) all property purchases and pending property purchases

(unless such disclosure will in the reasonable judgment of counsel to the Borrower violate a confidentiality agreement) identifying the property and the purchase price therefor, and (iii) changes in the categories of proved developed producing reserves, proved developed nonproducing reserves and proved undeveloped reserves attributable to each oil and gas property or interest of the Company and its Subsidiaries;

(e) concurrently with the delivery of the budgets and projections referred to in Section 6.2(c), a report of the Budget Basis Projected Production on a month by month basis for each of the next 36 months, together with such supporting detail as Administrative Agent may request, which report shall in each case be accompanied by a certificate of a Responsible Officer stating that such Budget Basis Projected Production is based on reasonable estimates, information and assumptions and that such Responsible Officer has no reason to believe that such Budget Basis Projected Production is incorrect or misleading in any material respect; and

(f) promptly, such additional financial and other information as any Lender may from time to time reasonably request.

6.3. Payment of Obligations. Pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all its material obligations of whatever nature, except where the amount or validity thereof is currently being contested in good faith by appropriate proceedings and reserves in conformity with GAAP with respect thereto have been provided on the books of the relevant Group Member.

6.4. Maintenance of Existence; Compliance. (a) (i) Preserve, renew and keep in full force and effect its existence and (ii) take all reasonable action to maintain all rights, privileges and franchises necessary or desirable in the normal conduct of its business, except, in each case, as otherwise permitted by Section 7.4 and except, in the case of clause (ii) above, to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (b) comply with all Contractual Obligations and Requirements of Law except to the extent that failure to comply therewith could not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

6.5. Maintenance of Property; Insurance

(a) (i) Do or cause to be done all things reasonably necessary to preserve and keep in good repair, working order and efficiency (ordinary wear and tear excepted) all of the properties owned by each Group Member, including without limitation, all equipment, machinery and facilities, and (ii) make all the reasonably necessary repairs, renewals and replacements so that at all times the state and condition of the properties owned by each Group Member will be fully preserved and maintained, except to the extent a portion of such properties are oil and gas properties no longer capable of producing hydrocarbons in economically reasonable amounts.

(b) Promptly pay and discharge or cause to be paid and discharged all delay rentals, royalties, expenses and indebtedness accruing under, and perform or cause to be performed each and every act, matter or thing required by, each and all of the assignments,

deeds, leases, sub-leases, contracts and agreements affecting its interests in its properties and will do all other things necessary to keep unimpaired each Group Member's rights with respect thereto and prevent any forfeiture thereof or a default thereunder, except to the extent a portion of oil and gas properties is no longer capable of producing hydrocarbons in economically reasonable amounts.

(c) Operate its properties or cause or use commercially reasonable efforts to cause such properties to be operated in a careful and efficient manner in accordance with the practices of the industry and in compliance with all applicable contracts and agreements and in compliance in all material respects with all laws.

(d) Maintain with financially sound and reputable insurance companies insurance on all its property in at least such amounts and against at least such risks (but including in any event general liability) as are usually insured against in the same general area by companies engaged in the same or a similar business and in any case no less comprehensive in scope than that maintained by the Company and its Subsidiaries as of the Closing Date.

6.6. Inspection of Property; Books and Records; Discussions. Keep proper books of records and account in which full, true and correct entries in conformity with GAAP and all Requirements of Law shall be made of all dealings and transactions in relation to its business and activities and permit representatives of any Lender (coordinated through the Administrative Agent) to visit and inspect any of its properties and examine and make abstracts from any of its books and records at any reasonable time and as often as may reasonably be desired and to discuss the business, operations, properties and financial and other condition of the Group Members with officers and employees of the Group Members and with their independent certified public accountants.

6.7. Notices. Promptly give notice to the Administrative Agent and each Lender of:

(a) the occurrence of any Default or Event of Default;

(b) any (i) default or event of default under any Contractual Obligation of any Group Member or (ii) litigation, investigation or proceeding that may exist at any time between any Group Member and any Governmental Authority, that in either case, if not cured or if adversely determined, as the case may be, could reasonably be expected to have a Material Adverse Effect;

(c) any litigation or proceeding affecting any Group Member (i) in which the amount involved is \$10,000,000 or more and not covered by insurance, (ii) in which injunctive or similar relief is sought which, if granted, could reasonably be expected to have a Material Adverse Effect or (iii) which relates to any Loan Document;

(d) the following events, as soon as possible and in any event within 30 days after the Borrower knows or has reason to know thereof: (i) the occurrence of any Reportable Event with respect to any Plan, a failure to make any required contribution to a Plan, the creation of any Lien in favor of the PBGC or a Plan or any withdrawal from, or the termination,

Reorganization or Insolvency of, any Multiemployer Plan or (ii) the institution of proceedings or the taking of any other action by the PBGC or the Borrower or any Commonly Controlled Entity or any Multiemployer Plan with respect to the withdrawal from, or the termination, Reorganization or Insolvency of, any Plan; and

(e) any development or event that has had or could reasonably be expected to have a Material Adverse Effect.

Each notice pursuant to this Section 6.7 shall be accompanied by a statement of a Responsible Officer setting forth details of the occurrence referred to therein and stating what action the Company, the Borrower or the relevant Subsidiary proposes to take with respect thereto.

#### 6.8. Environmental Laws

(a) Comply in all material respects with, and ensure compliance in all material respects by all tenants and subtenants, if any, with, all applicable Environmental Laws, and obtain and comply in all material respects with and maintain, and ensure that all tenants and subtenants obtain and comply in all material respects with and maintain, any and all licenses, approvals, notifications, registrations or permits required by applicable Environmental Laws as well as all contractual obligations and agreements with respect to environmental remediation or other environmental matters.

(b) Conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions required under Environmental Laws and promptly comply in all material respects with all lawful orders and directives of all Governmental Authorities regarding Environmental Laws.

(c) Promptly furnish to the Administrative Agent all written notices of violation, orders, claims, citations, complaints, penalty assessments, suits or other proceedings received by any Group Member, or of which it has notice, pending or threatened against any Group Member, by any governmental authority with respect to any alleged violation of or non-compliance in any material respect with any Environmental Laws or any permits, licenses or authorizations in connection with its ownership or use of its properties or the operation of its business.

(d) Promptly furnish to the Administrative Agent all requests for information, notices of claim, demand letters, and other notifications, received by any Group Member in connection with its ownership or use of its properties or the conduct of its business, relating to potential responsibility which could if adversely determined result in fines or liability of a material amount with respect to any investigation or clean-up of Hazardous Material at any location.

#### 6.9. Collateral Coverage and Guarantees

(a) Maintain a Collateral Coverage Ratio at all times of at least 1.5 to 1.0 in accordance with the provisions set forth in Section 3.2(a).

(b) Subject to Section 10.14(b), with respect to any new Subsidiary created or acquired after the Closing Date by any Group Member (which, for the purposes of this paragraph (b), shall include any existing Subsidiary that ceases to be an “Unrestricted Subsidiary” under the Indentures), promptly (i) cause such new Subsidiary (A) to become a party to the Guarantee Agreement and (B) to deliver to the Administrative Agent a certificate of such Subsidiary, substantially in the form of Exhibit C, with appropriate insertions and attachments, and (ii) if requested by the Administrative Agent, deliver to the Administrative Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent.

6.10. Further Assurances. From time to time execute and deliver, or cause to be executed and delivered, such additional mortgages, deeds of trust, chattel mortgages, security agreements, financing statements, reports (including reports of the type described in Section 6.2(d)), instruments, legal opinions, certificates or documents (including, without limitation, documents of the type described in Section 5.1(i)), all in form and substance satisfactory to the Administrative Agent, and take all such actions as may be requested hereunder (including, without limitation, in order to comply with Section 6.9) or as the Administrative Agent may reasonably request for the purposes of implementing or effectuating the provisions of this Agreement and the other Loan Documents (including, without limitation, Section 6.9), or of more fully perfecting or renewing the rights of the Administrative Agent and the Lenders with respect to the Collateral (or with respect to any additions thereto or replacements or proceeds thereof or with respect to any other property or assets hereafter acquired by the Borrower or any Subsidiary which may be deemed to be part of the Collateral) pursuant hereto or thereto. Upon the exercise by the Administrative Agent or any Lender of any power, right, privilege or remedy pursuant to this Agreement or the other Loan Documents which requires any consent, approval, recording qualification or authorization of any Governmental Authority, the Company and the Borrower will execute and deliver, or will cause the execution and delivery of, all applications, certifications, instruments and other documents and papers that the Administrative Agent or such Lenders may be required to obtain from the Company, the Borrower or any of their respective Subsidiaries for such governmental consent, approval, recording, qualification or authorization.

## SECTION 7. NEGATIVE COVENANTS

The Company and the Borrower hereby jointly and severally agree that, so long as the Revolving Commitments remain in effect, any Letter of Credit remains outstanding or any Revolving Loan or other amount is owing to any Lender or Agent hereunder, each of the Company and the Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly:

### 7.1. Financial Condition Covenants

(a) Current Ratio. Permit the Current Ratio at the end of any fiscal quarter of the Company (beginning with the quarter ended March 31, 2004) to be less than 1.0 to 1.0.

(b) Consolidated Fixed Charge Coverage Ratio. Permit the Consolidated Fixed Charge Coverage Ratio for any period of four consecutive fiscal quarters of the Company then

most recently ended (beginning with the quarter ended March 31, 2004) to be less than 2.5 to 1.0.

(c) Consolidated Indebtedness to Consolidated EBITDA Ratio. At all times while availability under this Agreement is not then being governed by a Borrowing Base as provided in Section 2.13(a), permit the ratio of (i) Consolidated Indebtedness to (ii) Consolidated EBITDA for the period of four consecutive fiscal quarters of the Company then most recently ended to be greater than 3.5 to 1.0.

(d) Present Value to Consolidated Indebtedness Ratio. At all times while availability under this Agreement is not then being governed by a Borrowing Base as provided in Section 2.13(a), permit the ratio of (i) PV to (ii) Consolidated Indebtedness to be less than 1.33 to 1.0.

7.2. Indebtedness. Create, issue, incur, assume, become liable in respect of or suffer to exist any Indebtedness, except:

(a) Indebtedness of any Loan Party pursuant to any Loan Document;

(b) Indebtedness (i) of the Borrower to the Company or to any Subsidiary of the Company, (ii) of the Company or any Subsidiary Guarantor to the Borrower (except in the event that there has been an acceleration of the maturity of any Obligation) or to any other Subsidiary of the Company, (iii) of any Subsidiary of the Company (other than the Borrower or a Subsidiary Guarantor) to any Subsidiary of the Company (other than the Borrower or a Subsidiary Guarantor), and (iv) subject to Section 7.7(g), of any Subsidiary (other than the Borrower or a Subsidiary Guarantor) to the Borrower or any Subsidiary Guarantor;

(c) Guarantee Obligations incurred in the ordinary course of business by the Borrower and the Company or any of its Subsidiaries of obligations of the Borrower, any Subsidiary Guarantor and, subject to Section 7.7(g), of any Subsidiary (other than the Borrower or a Subsidiary Guarantor);

(d) Indebtedness outstanding on the date hereof and listed on Schedule 7.2(d) and any refinancings, refundings, renewals or extensions thereof (without increasing, or shortening the maturity of, the principal amount thereof);

(e) Indebtedness (including, without limitation, Capital Lease Obligations) secured by Liens permitted by Section 7.3(g) in an aggregate principal amount not to exceed \$75,000,000 at any one time outstanding;

(f) Indebtedness under the Indentures as of the Closing Date;

(g) Hedge Agreements entered into with the purpose and effect of hedging price risk on oil or gas expected to be produced by Group Members, provided that at all times: (i) no such contract has, or fixes a price for, a term including any month later than 60 months from the date such Hedge Agreement is entered into (except Hedge Agreements hedging only basis differential risk); (ii) the aggregate notional amount covered by all such Hedge Agreements

(except Hedge Agreements hedging only basis differential risk) for each single future month (determined, in the case of Hedge Agreements that are not settled on a monthly basis, by a monthly proration acceptable to the Administrative Agent) does not exceed (A) if such month is or is prior to the 36<sup>th</sup> month after the month in which such determination is being made, 100% of Budget Basis Projected Production projected to be produced during such month, and (B) if such month is later than the 36<sup>th</sup> month after the month in which such determination is being made, 100% of Adjusted SPE Basis Projected Production projected to be produced during such month, and (iii) each such contract is with a counterparty or has a guarantor of the obligation of the counterparty who (unless such counterparty is a Lender or one of its Affiliates) is a nationally recognized, well-capitalized hedging counterparty or is an investment grade-rated industry participant;

(h) Hedge Agreements entered into by a Group Member with the purpose and effect of fixing interest rates on a principal amount of Indebtedness of such Group Member that is accruing interest at a variable rate, provided that the aggregate notional amount of such contracts never exceeds 75% of the anticipated outstanding principal balance of the Indebtedness to be hedged by such contracts or an average of such principal balances calculated using a generally accepted method of matching interest swap contracts to declining principal balances, and the floating rate index of each such contract generally matches the index used to determine the floating rates of interest on the corresponding indebtedness to be hedged by such contract; and the fixed rate index of each such contract generally matches the interest on the corresponding obligation to be hedged by such contract; provided further that each such contract is with a counterparty or has a guarantor of the obligation of the counterparty who (unless such counterparty is a Lender or one of its Affiliates) is a nationally recognized, well-capitalized hedging counterparty;

(i) Indebtedness of the CEMI Group in an aggregate principal amount at any one time outstanding not to exceed \$50,000,000;

(j) liabilities with respect to accrued revenues and royalties due to others during the period the payment thereof has been properly suspended in accordance with applicable agreements and applicable law;

(k) Hedging Agreements entered into by the Company with the purpose and effect of contracting for variable interest rates on a principal amount of Indebtedness of the Company (which, for purposes of this subsection only, shall include the liquidation preference on preferred stock of the Company) that is accruing interest or dividends at a fixed rate, provided that (1) the ratio of fixed rate Indebtedness of the Company to total Indebtedness of the Company (excluding Indebtedness outstanding under this Agreement) remains at least seventy percent (70%), and (2) each such contract is with a counterparty or has a guarantor of the obligation of the counterparty who (unless such counterparty is a Lender or one of its Affiliates) is a nationally recognized well capitalized hedging counterparty or is an investment grade industry participant; plus the Guarantee Obligations of one or more of the Group Members of the obligations of the Company permitted to be incurred under this Section 7.2(k);

(l) additional Indebtedness of the Company or any of its Subsidiaries in an aggregate principal amount (for the Company and all Subsidiaries) not to exceed \$75,000,000 at any one time outstanding, plus, the lesser of (i) for a period limited to 90 days after an acquisition permitted under Section 7.7(h), the amount of indebtedness secured by Liens upon any property so acquired or owing by the Person so acquired and existing at the time of such acquisition and not incurred in contemplation thereof, and, after the end of such 90 day period, zero, and (ii) \$50,000,000; and

(m) Indebtedness evidenced by senior or subordinated notes issued by the Company, and Guarantees thereof by the Borrower and the Subsidiary Guarantors; provided that (i) such Indebtedness is unsecured, (ii) such notes are issued in a public offering under a registration statement, or are issued to accredited institutional investors pursuant to Rule 144A or Regulation S of the Securities Exchange Commission with a covenant to exchange such notes for substantially identical notes offered under such a registration statement (and the issuance of such registered notes upon such exchange shall not be considered a new incurrence of Indebtedness under this Section 7.2(m)), (iii) at the time of such issuance and after giving effect thereto, each of the Pro Forma Incurrence Tests are met, (iv) no principal amount of such Indebtedness matures earlier than two (2) years after the Revolving Termination Date, (v) at the time of such issuance and after giving effect thereto, no Default or Event of Default shall exist or would occur, (vi) such Indebtedness is governed by an Indenture where none of the covenants and events of default are more restrictive on the Company and its Subsidiaries than the covenants and events of default under the Indenture dated as of November 26, 2003, (vii) at the time of such issuance and after giving effect thereto, each of Moody's and S&P maintains its rating applicable to the Company's senior unsecured long-term debt equal to or more favorable than its rating of such debt in effect on the Closing Date and equal to or more favorable than its most favorable rating of such debt during the 180 days preceding the issuance of such notes, and (viii) the Company shall have delivered to the Administrative Agent a certificate in reasonable detail reflecting compliance with each of the forgoing requirements of this Section 7.2(m), including calculations with supporting detail regarding each of the Pro Forma Incurrence Tests, together with such other evidence of compliance with the forgoing requirements of this Section 7.2(m) as the Administrative Agent may reasonably request.

7.3. Liens. Create, incur, assume or suffer to exist any Lien upon any of its property, whether now owned or hereafter acquired, except for:

(a) Liens for taxes not yet due or that are being contested in good faith by appropriate proceedings, provided that adequate reserves with respect thereto are maintained on the books of the Company or its Subsidiaries, as the case may be, in conformity with GAAP;

(b) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business that are not overdue for a period of more than 30 days or that are being contested in good faith by appropriate proceedings;

(c) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation;



(d) deposits to secure the performance of bids, trade contracts (other than for borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(e) easements, rights-of-way, restrictions and other similar encumbrances incurred in the ordinary course of business that, in the aggregate, are not substantial in amount and that do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the Borrower or any of its Subsidiaries;

(f) Liens in existence on the date hereof listed on Schedule 7.3(f), securing Indebtedness permitted by Section 7.2(d), provided that no such Lien is spread to cover any additional property after the Closing Date and that the amount of Indebtedness secured thereby is not increased;

(g) Liens securing Indebtedness of the Company or any other Subsidiary incurred pursuant to Section 7.2(e) to finance the acquisition of fixed or capital assets, provided that (i) such Liens shall be created substantially simultaneously with the acquisition of such fixed or capital assets, (ii) such Liens do not at any time encumber any property other than the property financed by such Indebtedness and (iii) the amount of Indebtedness secured thereby is not increased;

(h) Liens created pursuant to the Security Documents;

(i) any interest or title of a lessor under any lease entered into by the Company or any Subsidiary in the ordinary course of its business and covering only the assets so leased;

(j) Liens on assets of the CEMI Group securing Indebtedness permitted by Section 7.2(i);

(k) Liens on oil and gas properties (that are not Collateral) of the Company and its Subsidiaries the aggregate value of which does not exceed, at any time, \$50,000,000 securing Indebtedness under any Hedge Agreement with any Lender or any affiliate thereof (not otherwise permitted under 7.3(n));

(l) any (i) pledge of cash to secure the obligations of the Company and its Subsidiaries with respect to any Hedge Agreement or (ii) issuance of letters of credit (other than Letters of Credit issued under this Agreement) to secure such obligations or other obligations arising in the ordinary course of business (which letters of credit shall be deemed to not be Indebtedness for purposes of Section 7.2), in the case of both (i) and (ii) not to exceed, at any time, an amount of cash and face amount of letters of credit equal to \$50,000,000 in the aggregate;

(m) for a period limited to 90 days after an acquisition permitted under Section 7.7(h), Liens upon property so acquired, existing at the time of such acquisition and not incurred

in contemplation thereof, and not upon any other property, securing only Indebtedness permitted by Section 7.2 (l);

(n) Liens securing the Indebtedness under the Hedging Support Credit Facility on oil and gas properties (that are not Collateral) of the Company and its Subsidiaries, the aggregate value of which does not materially exceed, at the time any such Lien is created or modified, the collateral coverage terms set forth on Exhibit K as determined in accordance with the oil and gas pricing parameter used under the Hedging Support Credit Facility.

7.4. Fundamental Changes. Enter into any merger, consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or Dispose of, all or substantially all of its property or business, except that:

(a) any Subsidiary of the Borrower may be merged or consolidated with or into the Borrower (provided that the Borrower shall be the continuing or surviving entity) or with or into any Subsidiary of the Borrower that is a Subsidiary Guarantor (provided that the Subsidiary Guarantor shall be the continuing or surviving entity) or, subject to Section 7.7(g), with or into any other Subsidiary of the Borrower;

(b) any Subsidiary of the Borrower may Dispose of any or all of its assets (upon voluntary liquidation or otherwise) to the Borrower, to any Subsidiary of the Borrower that is a Subsidiary Guarantor or, subject to Section 7.7(g), to any other Subsidiary of the Borrower;

(c) any Subsidiary of the Company (other than the Borrower and its Subsidiaries) may be consolidated with or into the Company (provided that the Company shall be the continuing or surviving entity) or with or into any Subsidiary Guarantor (other than the Borrower or any of its Subsidiaries) (provided that the Subsidiary Guarantor shall be the continuing or surviving entity) or, subject to Section 7.7(g), any Subsidiary (other than the Borrower or any of its Subsidiaries and any Subsidiary Guarantor); and

(d) any Subsidiary of the Company (other than the Borrower and its Subsidiaries) may Dispose of any or all of its assets (upon voluntary liquidation or otherwise) to the Company or any Subsidiary Guarantor (other than the Borrower or any of its Subsidiaries) or, subject to Section 7.7(g), any Subsidiary (other than the Borrower or any of its Subsidiaries and any Subsidiary Guarantor).

7.5. Disposition of Property. Dispose of any of its property, whether now owned or hereafter acquired, or, in the case of any Subsidiary of the Company, issue or sell any shares of such Subsidiary's Capital Stock to any Person, except:

(a) the Disposition of obsolete or worn out property in the ordinary course of business;

(b) inventory (including oil and gas sold as produced and seismic data) which is sold in the ordinary course of business on ordinary trade terms;

(c) interests in oil and gas properties, or portions thereof, to which no proved reserves of oil, gas or other liquid or gaseous hydrocarbons are properly attributed;

(d) Dispositions permitted by Section 7.4(b) or 7.4(d); and

(e) other property that is sold for fair consideration to a Person who is not an Affiliate; provided that (i) at all times while availability under this Agreement is then being governed by a Borrowing Base as provided in Section 2.13(a), the maximum amount of Proved properties sold in the period between any two regular annual Determination Dates on which the Borrowing Base is designated (or the period between the last regular annual Determination Date on which the Borrowing Base is designated in the Revolving Commitment Period and the Revolving Termination Date) shall not exceed 5% of the Proved properties of the Company and its Subsidiaries as of the December 31 Evaluation Date with respect of the first such Determination Date and based upon the value set forth in the Engineering Report with respect to the first such Determination Date, (ii) at the time of such sale and after giving effect thereto on a pro forma basis no Default or Event of Default shall exist or would result and (iii) the maximum amount of Collateral sold in the period between any two regular semi-annual Determination Dates on which the Collateral Value is designated (or the period between the last regular semi-annual Determination Date on which the Collateral Value is designated in the Revolving Commitment Period and the Revolving Termination Date) shall not exceed the sum of (A) the amount, if any, by which the Collateral Value most recently designated exceeded 150% of the greater of the Total Revolving Commitments and, if applicable, the Borrowing Base plus (B) \$20,000,000; provided that to the extent the aggregate Net Cash Proceeds of all such Dispositions after the date of this Agreement exceeds \$15,000,000 (i) so long as no Default or Event of Default shall have occurred and be continuing, within six months following the receipt of such proceeds by the Group Member the amount of such excess shall be either applied to permanently repay outstanding Indebtedness of any Group Member or to pay the purchase price of proved oil and gas properties acquired by a Group Member or to pay development costs with respect to proved oil and gas properties then owned by a Group Member, or (ii) if a Default or Event of Default shall have occurred and be continuing at the time of such Disposition, the amount of such excess (any such excess, the “Excess Amount”) shall be applied in accordance with Section 3.2(c).

7.6. Restricted Payments. Declare or pay any dividend (other than dividends payable solely in common stock of the Person making such dividend) on, or make any payment on account of, or set apart assets for a sinking or other analogous fund for, the purchase, redemption, defeasance, retirement or other acquisition of, any Capital Stock of any Group Member (or enter into or be party to, or make any payment under, any Synthetic Purchase Agreement with respect to any such Capital Stock if the purchase, redemption, defeasance, retirement or other acquisition thereof by the Company and its Subsidiaries would otherwise be prohibited under this Section 7.6), whether now or hereafter outstanding, or make any other distribution in respect thereof, either directly or indirectly, whether in cash or property or in obligations of the Company, the Borrower or any Subsidiary of the Company, or enter into any derivatives or other transaction with any financial institution, commodities or stock exchange or clearinghouse (a “Derivatives Counterparty”) obligating any Group Member to make payments

to such Derivatives Counterparty as a result of any change in market value of any such Capital Stock (collectively, "Restricted Payments"), except that:

(a) any Subsidiary of the Company may pay cash dividends or distributions on its Capital Stock to the Company or any of its Subsidiaries;

(b) so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom, the Company may (i) purchase the Company's common stock or common stock options from present or former officers or employees of any Group Member upon the death, disability or termination of employment of such officer or employee, provided, that the aggregate amount of payments under this clause (b)(i) after the Closing Date shall not exceed \$5,000,000, or (ii) purchase the Company's common stock, other than from present or former officers or employees of any Group Member in the circumstance set forth in the preceding clause (b)(i), provided, that the aggregate amount of payments under this clause (b)(ii) after the Closing Date shall not exceed \$50,000,000; and

(c) so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom at the time such dividends are declared (determined on a pro forma basis as if such dividends were paid in cash on the date so declared), the Company may pay cash dividends on its Permitted Preferred Stock and its common stock.

7.7. Investments. Make any advance, loan, extension of credit (by way of guaranty or otherwise) or capital contribution to, or purchase any Capital Stock, bonds, notes, debentures or other debt securities of, or any assets constituting a business unit of, or make any other investment in, any Person (all of the foregoing, "Investments"), except:

(a) extensions of trade credit in the ordinary course of business;

(b) investments in Cash Equivalents;

(c) Guarantee Obligations permitted by Section 7.2;

(d) loans and advances to employees of any Group Member of the Company in the ordinary course of business (including for travel, entertainment and relocation expenses) in an aggregate amount for all Group Members not to exceed \$1,000,000 at any one time outstanding;

(e) the purchase by the Company of its outstanding senior notes to the extent permitted by Section 7.8;

(f) intercompany Investments by any Group Member in the Borrower or any Person that, prior to such Investment, is a Subsidiary Guarantor (and, in the case of Investments by the Borrower or any of its Subsidiaries, a Subsidiary of the Borrower);

(g) intercompany Investments by the Company or any of its Subsidiaries in any Person, that, prior to such Investment, is a Subsidiary but not a Subsidiary Guarantor (including, without limitation, Guarantee Obligations with respect to obligations of any such Subsidiary,

loans made to any such Subsidiary and Investments resulting from mergers with or sales of assets to any such Subsidiary) plus any Unrestricted Subsidiary Investments in connection with the designation of a Subsidiary Guarantor or any newly created or acquired Subsidiary as an "Unrestricted Subsidiary" under the Indentures (minus any Unrestricted Subsidiary Investment in connection with the designation of a Subsidiary that is not a Subsidiary Guarantor as a "Restricted Subsidiary" under the Indentures and a Subsidiary Guarantor hereunder) in an aggregate outstanding amount (valued at cost) not to exceed at any time, together with any Investment pursuant to paragraph (k) of this Section that results in the creation or acquisition of a Subsidiary that is not a Subsidiary Guarantor or the acquisition of assets by, or the contribution or transfer of assets to, a Subsidiary that is not a Subsidiary Guarantor, \$75,000,000 in the aggregate (except to the extent the Investment is made in the form of the common stock of the Company);

(h) acquisitions of oil and gas properties and oil and gas exploration and extraction assets and assets directly related thereto and acquisitions of all the Capital Stock of any Person whose assets consist primarily of oil and gas properties and oil and gas exploration and extraction assets and assets directly related thereto the consideration for which is in the form of cash or Capital Stock of the Company;

(i) the entry into operating agreements, processing agreements, farm-out agreements, development agreements, area of mutual interest agreements, contracts for the transportation or exchange of oil and natural gas, unitization agreements, pooling arrangements, joint bidding agreements, service contracts, or other similar customary agreements, transactions, properties, interests or arrangements, in each case made or entered into in the ordinary course of business as conducted by the Company and its Subsidiaries as of the Closing Date;

(j) Investments pursuant to the employment agreements between each of Aubrey K. McClendon and Tom L. Ward and the Company as are in effect as of the Closing Date;

(k) Investments resulting from Indebtedness permitted under Section 7.2(b);

(l) Investments set forth on Schedule 7.7(l);

(m) Investments by the Company or any of its Subsidiaries in any publicly traded securities of a company whose business consists primarily of oil and gas exploration, development, production, drilling or field services; and

(n) in addition to Investments otherwise expressly permitted by this Section, Investments by the Company or any of its Subsidiaries (including, without limitation, joint ventures and partnerships) in an aggregate outstanding amount at any time (valued at cost) not to exceed \$25,000,000 during the term of this Agreement (except to the extent such consideration is in the form of the common stock of the Company);

provided that, with respect to any Investment under clauses 7.7(c), (g), (h), (m) or (n), no Default or Event of Default shall have occurred and be continuing or would result therefrom.

7.8. Optional Payments and Modifications of Certain Debt Instruments. (a) Make or offer to make any optional or voluntary payment, prepayment, repurchase or redemption of or otherwise optionally or voluntarily defease or segregate funds with respect to Indebtedness under any Indenture or enter into any derivative or other transaction with any Derivatives Counterparty obligating the Company, the Borrower or any Subsidiary to make payments to such Derivatives Counterparty as a result of any change in market value of any such Indebtedness; (b) amend, modify, waive or otherwise change, or consent or agree to any amendment, modification, waiver or other change to, any of the terms of Indebtedness under the Indentures (other than any such amendment, modification, waiver or other change that (i) would extend the maturity or reduce the amount of any payment of principal thereof or reduce the rate or extend any date for payment of interest thereon and (ii) does not involve the payment of a consent fee); or (c) enter into or be party to, or make any payment under, any Synthetic Purchase Agreement with respect to any Indebtedness the making or offering to make of any optional or voluntary payment or prepayment thereon, or any repurchase or redemption thereof, or the optional or voluntary defeasance or segregation of funds with respect thereto, the Company and its Subsidiaries are otherwise prohibited from doing under this Section 7.8; except optional or voluntary payments, prepayments, exchanges, redemptions, or repurchases in market transactions of Indebtedness under any Indenture if before and, on a proforma basis after giving effect to such purchase, no Default or Event of Default shall exist.

7.9. Transactions with Affiliates. Enter into any transaction, including any purchase, sale, lease or exchange of property, the rendering of any service or the payment of any management, advisory or similar fees, with any Affiliate (other than the Company, the Borrower or any Subsidiary Guarantor) unless such transaction is (a) otherwise permitted under this Agreement, (b) in the ordinary course of business of the relevant Group Member, and (c) upon fair and reasonable terms no less favorable to the relevant Group Member, than it would obtain in a comparable arm's length transaction with a Person that is not an Affiliate.

7.10. Sales and Leasebacks. Enter into any arrangement with any Person providing for the leasing by any Group Member of real or personal property that has been or is to be sold or transferred by such Group Member to such Person or to any other Person to whom funds have been or are to be advanced by such Person on the security of such property or rental obligations of such Group Member (including, without limitation, any Sale/Leaseback Transaction as defined in each of the Indentures) unless the proceeds received by any Group Member therefrom (i) in the aggregate for all such arrangements after the date hereof does not exceed \$25,000,000 and (ii) for each such arrangement is certified by a Responsible Officer to be at least equal to the fair market value of the property sold under such arrangement.

7.11. Changes in Fiscal Periods. Permit the fiscal year of the Company to end on a day other than December 31 or change the Company's method of determining fiscal quarters.

7.12. Negative Pledge Clauses. Enter into or suffer to exist or become effective any agreement that prohibits or limits the ability of any Group Member to create, incur, assume or suffer to exist any Lien upon any of its property or revenues, whether now owned or hereafter acquired, other than (a) this Agreement and the other Loan Documents, (b) the Indentures, (c) any agreements governing any purchase money Liens or Capital Lease Obligations otherwise

permitted hereby (in which case, any prohibition or limitation shall only be effective against the assets financed thereby), (d) any agreements governing Indebtedness permitted under Section 7.2(i) (in which case, any prohibition or limitation shall only be effective against the assets of the CEMI Group), and (e) any Hedging Support Credit Facility (in which case, any prohibition or limitation shall comply with the limitations set forth on Exhibit K).

7.13. Clauses Restricting Subsidiary Distributions. Enter into or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any Subsidiary of the Company or the Borrower to (a) make Restricted Payments in respect of any Capital Stock of such Subsidiary held by, or pay any Indebtedness owed to, the Company, the Borrower or any other Subsidiary of the Company or the Borrower, as the case may be, (b) make loans or advances to, or other Investments in, the Company or the Borrower or any other Subsidiary of the Company or the Borrower, as the case may be, or (c) transfer any of its assets to the Company or the Borrower or any other Subsidiary of the Company or the Borrower, as the case may be, except for such encumbrances or restrictions existing under or by reason of (i) any restrictions existing under the Loan Documents, (ii) any restrictions with respect to a Subsidiary imposed pursuant to an agreement that has been entered into in connection with the Disposition of all or substantially all of the Capital Stock or assets of such Subsidiary, (iii) any restrictions under the Indentures applicable to the CEMI Group so long as such entities remain "Unrestricted Subsidiaries" thereunder, and (iv) any restrictions under agreements governing Indebtedness of the CEMI Group permitted under Section 7.2(i).

7.14. Take-or-Pay Contracts. No Group Member will enter into any "take-or-pay" contract or other contract or arrangement for the purchase of goods or services which obligates it to pay for such goods or service regardless of whether they are delivered or furnished to it other than from oil and natural gas fixed transportation arrangements.

7.15. Lines of Business. Enter into any business, either directly or through any Subsidiary, except for the marketing, exploration and extraction of oil and gas and services related thereto which constitutes the business the Company and its Subsidiaries are engaged in as of the date of this Agreement.

7.16. Senior Debt Limit. Permit the Total Revolving Extensions of Credit at any time to exceed the Senior Debt Limit at such time.

7.17. Preferred Stock Issuance. Create, issue, incur, assume, become liable in respect of or suffer to exist any Preferred Stock other than Preferred Stock outstanding on the Closing Date, unless: (i) at the time of such issuance and after giving effect thereto, the portion of the Pro Forma Incurrence Tests set forth in clause (b) of the definition of Pro Forma Incurrence Tests is met, (ii) by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event or with the passage of time, no amount, other than quarterly cash dividends, is payable, matures, is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is exchangeable or convertible at the option of the holder thereof, in whole or in part, on or prior to the date that is two (2) years after the Revolving Termination Date other than any redemption, exchange or conversion only into common stock of the Company or any other redemption, exchange or conversion rights that cannot be exercised

prior to the date that is two (2) years after the Revolving Termination Date, (iii) at the time of such issuance and after giving effect thereto, no Default or Event of Default shall exist or would exist, and (iv) the Company shall have delivered to the Administrative Agent a certificate in reasonable detail reflecting compliance with each of the forgoing requirements of this Section 7.17, including calculation with supporting detail regarding the portion of the Pro Forma Incurrence Tests set forth in clause (b) of the definition of Pro Forma Incurrence Tests is met, together with such other evidence of compliance with the forgoing requirements of this Section 7.17 as the Administrative Agent may reasonably request.

#### SECTION 8. EVENTS OF DEFAULT

If any of the following events shall occur and be continuing:

(a) the Borrower shall fail to pay any principal of any Revolving Loan or Reimbursement Obligation when due in accordance with the terms hereof; or the Borrower shall fail to pay any interest on any Revolving Loan or Reimbursement Obligation, or any other amount payable hereunder or under any other Loan Document, within five days after any such interest or other amount becomes due in accordance with the terms hereof; or

(b) any representation or warranty made or deemed made by any Loan Party herein or in any other Loan Document or that is contained in any certificate, document or financial or other statement furnished by it at any time under or in connection with this Agreement or any such other Loan Document shall prove to have been inaccurate in any material respect on or as of the date made or deemed made; or

(c) (i) any Loan Party shall default in the observance or performance of any agreement contained in Section 6.2(d), clause (i) or (ii) of Section 6.4(a) (with respect to the Company and the Borrower only), Section 6.7(a), 6.9 or Section 7 of this Agreement or (ii) a “default” under and as defined in any Mortgage shall have occurred and be continuing; or

(d) any Loan Party shall default in the observance or performance of any other agreement contained in this Agreement or any other Loan Document (other than as provided in paragraphs (a) through (c) of this Section), and such default shall continue unremedied for a period of 30 days after notice to the Borrower from the Administrative Agent; or

(e) any Group Member (i) defaults in making any payment of any principal of any Indebtedness (including any Guarantee Obligation, but excluding the Revolving Loans) on the scheduled or original due date with respect thereto; or (ii) defaults in making any payment of any interest on any such Indebtedness beyond the period of grace, if any, provided in the instrument or agreement under which such Indebtedness was created; or (iii) defaults in the observance or performance of any other agreement or condition relating to any such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or beneficiary of such Indebtedness (or a trustee or agent on behalf of such holder or beneficiary) to cause, with the giving of notice if required, such Indebtedness to become due prior to its stated maturity or to become subject to a



mandatory offer to purchase by the obligor thereunder or (in the case of any such Indebtedness constituting a Guarantee Obligation) to become payable; provided, that a default, event or condition described in clause (i), (ii) or (iii) of this paragraph (e) shall not at any time constitute an Event of Default unless, at such time, one or more defaults, events or conditions of the type described in clauses (i), (ii) and (iii) of this paragraph (e) shall have occurred and be continuing with respect to Indebtedness the outstanding principal amount of which exceeds in the aggregate \$35,000,000; or

(f) (i) any Group Member shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or any Group Member shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against any Group Member any case, proceeding or other action of a nature referred to in clause (i) above that (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of 60 days; or (iii) there shall be commenced against any Group Member any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets that results in the entry of an order for any such relief that shall not have been vacated, discharged, or stayed or bonded pending appeal within 60 days from the entry thereof; or (iv) any Group Member shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) any Group Member shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; or

(g) (i) any Person shall engage in any "prohibited transaction" (as defined in Section 406 of ERISA or Section 4975 of the Code) involving any Plan, (ii) any "accumulated funding deficiency" (as defined in Section 302 of ERISA), whether or not waived, shall exist with respect to any Plan or any Lien in favor of the PBGC or a Plan shall arise on the assets of the Company or any Commonly Controlled Entity, (iii) a Reportable Event shall occur with respect to, or proceedings shall commence to have a trustee appointed, or a trustee shall be appointed, to administer or to terminate, any Single Employer Plan, which Reportable Event or commencement of proceedings or appointment of a trustee is, in the reasonable opinion of the Majority Lenders, likely to result in the termination of such Plan for purposes of Title IV of ERISA, (iv) any Single Employer Plan shall terminate for purposes of Title IV of ERISA, (v) the Borrower or any Commonly Controlled Entity shall, or in the reasonable opinion of the Majority Lenders is likely to, incur any liability in connection with a withdrawal from, or the Insolvency or Reorganization of, a Multiemployer Plan or (vi) any other event or condition shall occur or exist with respect to a Plan; and in each case in clauses (i) through (vi) above, such event or condition, together with all other such events or conditions, if any, could, in the sole judgment of the Majority Lenders, reasonably be expected to have a Material Adverse Effect; or

(h) one or more judgments or decrees shall be entered against any Group Member involving in the aggregate a liability (not paid or fully covered by insurance as to which the relevant insurance company has acknowledged coverage) of \$25,000,000 or more, and all such judgments or decrees shall not have been vacated, discharged, stayed or bonded pending appeal within 30 days from the entry thereof; or

(i) any of the Security Documents shall cease, for any reason, to be in full force and effect, or any Loan Party or any Affiliate of any Loan Party shall so assert, or any Lien created by any of the Security Documents with respect to Mortgaged Properties with an aggregate value in excess of \$5,000,000 shall cease to be enforceable and of the same effect and priority purported to be created thereby; or

(j) the guarantee contained in Section 2 of the Guarantee Agreement shall cease, for any reason, to be in full force and effect or any Loan Party or any Affiliate of any Loan Party shall so assert; or

(k) (i) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")), shall become, or obtain rights (whether by means of warrants, options or otherwise) to become, the "beneficial owner" (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act), directly or indirectly, of more than 35% of the outstanding common stock of the Company; (ii) the board of directors of the Company shall cease to consist of a majority of Continuing Directors; (iii) the Company shall cease to own and control, of record and beneficially, directly or indirectly, 100% of each class of outstanding Capital Stock of the Borrower and each Guarantor free and clear of all Liens; or (iv) a Specified Change of Control shall occur;

then, and in any such event, (A) if such event is an Event of Default specified in clause (i) or (ii) of paragraph (f) above with respect to the Borrower, automatically the Revolving Commitments shall immediately terminate and the Revolving Loans hereunder (with accrued interest thereon) and all other amounts owing under this Agreement and the other Loan Documents (including all amounts of L/C Obligations, whether or not the beneficiaries of the then outstanding Letters of Credit shall have presented the documents required thereunder) shall immediately become due and payable, and (B) if such event is any other Event of Default, either or both of the following actions may be taken: (i) with the consent of the Majority Lenders, the Administrative Agent may, or upon the request of the Majority Lenders, the Administrative Agent shall, by notice to the Borrower declare the Revolving Commitments to be terminated forthwith, whereupon the Revolving Commitments shall immediately terminate; and (ii) with the consent of the Majority Lenders, the Administrative Agent may, or upon the request of the Majority Lenders, the Administrative Agent shall, by notice to the Borrower, declare the Revolving Loans hereunder (with accrued interest thereon) and all other amounts owing under this Agreement and the other Loan Documents (including all amounts of L/C Obligations, whether or not the beneficiaries of the then outstanding Letters of Credit shall have presented the documents required thereunder) to be due and payable forthwith, whereupon the same shall immediately become due and payable. With respect to all Letters of Credit with respect to which presentment for honor shall not have occurred at the time of an acceleration pursuant to this paragraph, the Borrower shall at such time deposit in a cash collateral account opened by the Administrative Agent an amount equal to

the aggregate then undrawn and unexpired amount of such Letters of Credit. Amounts held in such cash collateral account shall be applied by the Administrative Agent to the payment of drafts drawn under such Letters of Credit, and the unused portion thereof after all such Letters of Credit shall have expired or been fully drawn upon, if any, shall be applied to repay other Obligations of the Borrower hereunder and under the other Loan Documents. After all such Letters of Credit shall have expired or been fully drawn upon, all Reimbursement Obligations shall have been satisfied and all other Obligations of the Borrower hereunder and under the other Loan Documents shall have been paid in full, the balance, if any, in such cash collateral account shall be returned to the Borrower (or such other Person as may be lawfully entitled thereto). Except as expressly provided above in this Section, presentment, demand, protest and all other notices of any kind are hereby expressly waived by the Borrower.

#### SECTION 9. THE AGENTS

9.1. Appointment. Each Lender hereby irrevocably designates and appoints each Agent as the agent of such Lender under this Agreement and the other Loan Documents, and each such Lender irrevocably authorizes such Agent, in such capacity, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to such Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Agreement, no Agent shall have any duties or responsibilities, except those expressly set forth herein, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against any Agent.

9.2. Delegation of Duties. Each Agent may execute any of its duties under this Agreement and the other Loan Documents by or through agents or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. No Agent shall be responsible for the negligence or misconduct of any agents or attorneys in-fact selected by it with reasonable care.

9.3. Exculpatory Provisions. Neither any Agent nor any of their respective officers, directors, employees, agents, attorneys-in-fact or affiliates shall be (i) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with this Agreement or any other Loan Document (except to the extent that any of the foregoing are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from its or such Person's own gross negligence or willful misconduct) or (ii) responsible in any manner to any of the Lenders for any recitals, statements, representations or warranties made by any Loan Party or any officer thereof contained in this Agreement or any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Agents under or in connection with, this Agreement or any other Loan Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document or for any failure of any Loan Party a party thereto to perform its obligations hereunder or thereunder. The Agents shall not be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the

agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party or to request an additional Evaluation Date unless instructed in writing by the Majority Lenders.

9.4. Reliance by Agents. Each Agent shall be entitled to rely, and shall be fully protected in relying, upon any instrument, writing, resolution, notice, consent, certificate, affidavit, letter, telecopy, telex or teletype message, statement, order or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including counsel to the Company or the Borrower), independent accountants and other experts selected by such Agent. The Administrative Agent may deem and treat the payee of any Note as the owner thereof for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with the Administrative Agent. Each Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Majority Lenders (or, if so specified by this Agreement, all Lenders) as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. The Agents shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Documents in accordance with a request of the Majority Lenders (or, if so specified by this Agreement, all Lenders), and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the Revolving Loans. Upon receipt by the Administrative Agent from the Borrower of any communication calling for action on the part of the Lenders or upon notice from any other Lender to the Administrative Agent of any Default or Event of Default, the Administrative Agent shall promptly notify each other Lender thereof.

9.5. Notice of Default. No Agent shall be deemed to have knowledge or notice of the occurrence of any Default or Event of Default hereunder unless such Agent has received notice from a Lender, the Company or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". In the event that the Administrative Agent receives such a notice, the Administrative Agent shall give notice thereof to the Lenders. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Majority Lenders (or, if so specified by this Agreement, all Lenders or any other instructing group of Lenders specified by this Agreement); provided that unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders.

9.6. Non-Reliance on Agents and Other Lenders. Each Lender expressly acknowledges that neither the Agents nor any of their respective officers, directors, employees, agents, attorneys-in-fact or affiliates have made any representations or warranties to it and that no act by any Agent hereafter taken, including any review of the affairs of a Loan Party or any affiliate of a Loan Party, shall be deemed to constitute any representation or warranty by any Agent to any Lender. Each Lender represents to the Agents that it has, independently and without reliance upon any Agent or any other Lender, and based on such documents and information as it has

deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their affiliates and made its own decision to make its Revolving Loans hereunder and enter into this Agreement. Each Lender also represents that it will, independently and without reliance upon any Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their affiliates. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent hereunder, the Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of any Loan Party or any affiliate of a Loan Party that may come into the possession of the Administrative Agent or any of its officers, directors, employees, agents, attorneys-in-fact or affiliates.

9.7. Indemnification. The Lenders agree to indemnify each Agent which indemnity shall apply whether or not any such liability or claim is in any way or to any extent caused, in whole or in part, by any negligent act or omission of any kind by such agent, in its capacity as such (to the extent not reimbursed by the Company or the Borrower within ten days after demand and without limiting the obligation of the Company or the Borrower to do so), ratably according to their respective Aggregate Exposure Percentages in effect on the date on which indemnification is sought under this Section (or, if indemnification is sought after the date upon which the Revolving Commitments shall have terminated and the Revolving Loans shall have been paid in full, ratably in accordance with such Aggregate Exposure Percentages immediately prior to such date), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Revolving Loans) be imposed on, incurred by or asserted against such Agent in any way relating to or arising out of, the Revolving Commitments, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Agent under or in connection with any of the foregoing (whether arising in contract or in tort or otherwise and including any violation or noncompliance with any Environmental Laws by any Person or any liabilities or duties of any Person with respect to Hazardous Materials found in or released into the environment), provided that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from such Agent's gross negligence or willful misconduct. The agreements in this Section shall survive the payment of the Revolving Loans and all other amounts payable hereunder. As used in this Section the term "Agent" shall refer not only to the Person designated as such in Section 1.1 but also to each director, officer, agent, attorney, employee, representative and Affiliate of such Person.

9.8. Agent in Its Individual Capacity. Each Agent and its affiliates may make loans to, accept deposits from and generally engage in any kind of business with any Loan Party as though such Agent were not an Agent. With respect to its Revolving Loans made or renewed by it and with respect to any Letter of Credit issued or participated in by it, each Agent shall have the same rights and powers under this Agreement and the other Loan Documents as any Lender and may exercise the same as though it were not an Agent, and the terms “Lender” and “Lenders” shall include each Agent in its individual capacity.

9.9. Successor Administrative Agent. The Administrative Agent may resign as Administrative Agent upon 10 days’ notice to the Lenders and the Borrower. If the Administrative Agent shall resign as Administrative Agent under this Agreement and the other Loan Documents, then the Majority Lenders shall appoint from among the Lenders a successor agent for the Lenders, which successor agent shall (unless an Event of Default under Section 8(a) or Section 8(f) with respect to the Borrower shall have occurred and be continuing) be subject to approval by the Borrower (which approval shall not be unreasonably withheld or delayed), whereupon such successor agent shall succeed to the rights, powers and duties of the Administrative Agent, and the term “Administrative Agent” shall mean such successor agent effective upon such appointment and approval, and the former Administrative Agent’s rights, powers and duties as Administrative Agent shall be terminated, without any other or further act or deed on the part of such former Administrative Agent or any of the parties to this Agreement or any holders of the Revolving Loans. If no successor agent has accepted appointment as Administrative Agent by the date that is 10 days following a retiring Administrative Agent’s notice of resignation, the retiring Administrative Agent’s resignation shall nevertheless thereupon become effective and the Lenders shall assume and perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Majority Lenders appoint a successor agent as provided for above. After any retiring Administrative Agent’s resignation as Administrative Agent, the provisions of this Section 9 shall inure to the Administrative Agent’s benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Agreement and the other Loan Documents.

9.10. Agents Generally. No Agent shall have any duties or responsibilities hereunder in its capacity as such, other than the Administrative Agent and then only as expressly set forth herein.

## SECTION 10. MISCELLANEOUS

10.1. Amendments and Waivers. Neither this Agreement, any other Loan Document, nor any terms hereof or thereof may be amended, supplemented or modified except in accordance with the provisions of this Section 10.1. The Majority Lenders and each Loan Party to the relevant Loan Document may, or, with the written consent of the Majority Lenders, the Administrative Agent and each Loan Party to the relevant Loan Document may, from time to time, (a) enter into written amendments, supplements or modifications hereto and to the other Loan Documents for the purpose of adding any provisions to this Agreement or the other Loan Documents or changing in any manner the rights of the Lenders or of the Loan Parties hereunder or thereunder or (b) waive, on such terms and conditions as the Majority Lenders or the Administrative Agent, as the case may be, may specify in such instrument, any of the

requirements of this Agreement or the other Loan Documents or any Default or Event of Default and its consequences; provided, however, that no such waiver and no such amendment, supplement or modification shall (i) forgive the principal amount or extend the final scheduled date of maturity of any Revolving Loan, reduce the stated rate of any interest or fee payable hereunder (except in connection with the waiver of applicability of any post-default increase in interest rates, which waiver shall be effective with the consent of the Majority Lenders) or extend the scheduled date of any payment thereof, or increase the amount or extend the expiration date of any Lender's Revolving Commitment, in each case without the written consent of each Lender directly affected thereby; (ii) eliminate or reduce the voting rights of any Lender under this Section 10.1 without the written consent of such Lender; (iii) reduce any percentage specified in the definition of Required Lenders, Majority Lenders, consent to the assignment or transfer by the Borrower of any of its rights and obligations under this Agreement and the other Loan Documents, release all or substantially all of the Collateral or release all or substantially all of the Guarantors from their obligations under the Guarantee Agreement, in each case without the written consent of all Lenders; (iv) (A) increase the Borrowing Base without the consent of all Lenders, (B) reduce the Borrowing Base or change the Collateral Coverage Ratio required under Section 3.2(a), in each case, without the consent of the Required Lenders or (C) otherwise amend or waive any other provision of Section 2.13 or 3.2 without the consent of the Required Lenders; (v) amend, modify or waive any provision of Section 9 without the written consent of each Agent adversely affected thereby; (vi) amend, modify or waive any provision of Sections 2.5 to 2.12 without the written consent of the Issuing Lender; or (vii) amend, modify or waive any provisions of Section 10.7(a) with out the written consent of each affected Lender. Any such waiver and any such amendment, supplement or modification shall apply equally to each of the Lenders and shall be binding upon the Loan Parties, the Lenders, the Agents and all future holders of the Revolving Loans. In the case of any waiver, the Loan Parties, the Lenders and the Agents shall be restored to their former position and rights hereunder and under the other Loan Documents, and any Default or Event of Default waived shall be deemed to be cured and not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon. Administrative Agent may, without the consent of any Lender, enter into any Security Document or any amendment, waiver, or release to the extent necessary to provide for additional Collateral as contemplated by any provision of this Agreement or to provide for the release of Collateral to the extent permitted by the terms of this Agreement.

10.2. Notices. All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by telecopy), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered, or three Business Days after being deposited in the mail, postage prepaid, or, in the case of telecopy notice, when received, addressed as follows in the case of the Company, the Borrower and the Agents, and as set forth in an administrative questionnaire delivered to the Administrative Agent in the case of the Lenders, or to such other address as may be hereafter notified by the respective parties hereto:

Company: 6100 North Western Avenue  
Oklahoma City, Oklahoma 73118  
Attention: Treasurer  
Telecopy: (405) 879-9587  
Telephone: (405) 848-8000

The Borrower: 6100 North Western Avenue  
Oklahoma City, Oklahoma 73118  
Attention: Treasurer  
Telecopy: (405) 879-9587  
Telephone: (405) 848-8000

With a copy to: Commercial Law Group, P.C.  
2725 Oklahoma Tower  
210 Park Avenue  
Oklahoma City, Oklahoma 73102  
Attention: C. Ray Lees, Esq.  
Telecopy: (405) 232-5553  
Telephone: (405) 232-3001

The Administrative Agent: Union Bank of California, N.A.  
500 North Akard  
4200 Lincoln Center  
Dallas, Texas 75201  
Attention: Randall L. Osterberg  
Telecopy: (214) 922-4209  
Telephone: (214) 922-4200

With a copy to: Union Bank of California, N.A.  
601 Potrero Grande Drive  
Monterey Park, California 91754  
Attention: Commercial Loan and  
Agency Services  
Telecopy: (323) 720-2780  
Telephone: (323) 720-2581

provided that any notice, request or demand to or upon any Agent, the Issuing Lender or the Lenders shall not be effective until received.

10.3. No Waiver; Cumulative Remedies. No failure to exercise and no delay in exercising, on the part of any Agent or any Lender, any right, remedy, power or privilege hereunder or under the other Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The



rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

10.4. **Survival of Representations and Warranties.** All representations and warranties made hereunder, in the other Loan Documents and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and the making of the Revolving Loans and other extensions of credit hereunder.

10.5. **Payment of Expenses and Taxes.** The Company and the Borrower hereby jointly and severally agree (a) to pay or reimburse each Agent for all its out-of-pocket costs and expenses incurred in connection with the development, preparation and execution of, and any amendment, supplement or modification to, this Agreement and the other Loan Documents and any other documents prepared in connection herewith or therewith, and the consummation and administration of the transactions contemplated hereby and thereby, including the reasonable fees and disbursements of counsel to such Agent and filing and recording fees and expenses, with statements with respect to the foregoing to be submitted to the Borrower prior to the Closing Date (in the case of amounts to be paid on the Closing Date) and from time to time thereafter on a quarterly basis or such other periodic basis as such Agent shall deem appropriate, (b) to pay or reimburse each Lender and Agent for all its costs and expenses incurred in connection with the enforcement or preservation of any rights under this Agreement, the other Loan Documents and any such other documents, including the fees and disbursements of counsel (including the allocated fees and expenses of in-house counsel) to each Lender and of counsel to such Agent, (c) to pay, indemnify, and hold each Lender and Agent harmless from, any and all recording and filing fees and any and all liabilities with respect to, or resulting from any delay in paying, stamp, excise and other taxes, if any, that may be payable or determined to be payable in connection with the execution and delivery of, or consummation or administration of any of the transactions contemplated by, or any amendment, supplement or modification of, or any waiver or consent under or in respect of, this Agreement, the other Loan Documents and any such other documents, and (d) to pay, indemnify, and hold each Lender and Agent and their respective officers, directors, employees, affiliates, agents and controlling persons (each, an "Indemnitee") harmless from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration of this Agreement, the other Loan Documents and any such other documents, including any of the foregoing relating to the use of proceeds of the Revolving Loans or the violation of, noncompliance with or liability under, any Environmental Law applicable to the operations of any Group Member or any of the Properties and the reasonable fees and expenses of legal counsel in connection with claims, actions or proceedings by any Indemnitee against any Loan Party under any Loan Document (all the foregoing in this clause (d), collectively, the "**Indemnified Liabilities**"), **WHICH INDEMNITY SHALL APPLY WHETHER OR NOT ANY SUCH LIABILITY OR CLAIM IS IN ANY WAY OR TO ANY EXTENT CAUSED, IN WHOLE OR IN PART, BY ANY NEGLIGENT ACT OR OMISSION OF ANY KIND BY ANY LENDER OR AGENT**, provided, that the Borrower shall have no obligation hereunder to any Indemnitee with respect to Indemnified Liabilities to the extent such Indemnified Liabilities are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from the gross negligence or willful

misconduct of such Indemnitee. Without limiting the foregoing, and to the extent permitted by applicable law, each of the Company and the Borrower agrees not to assert and to cause its Subsidiaries not to assert, and hereby waives and agrees to cause its Subsidiaries to waive, all rights for contribution or any other rights of recovery with respect to all claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature, under or related to Environmental Laws, that any of them might have by statute or otherwise against any Indemnitee. All amounts due under this Section 10.5 shall be payable not later than 10 days after written demand therefor. Statements payable by the Borrower pursuant to this Section 10.5 shall be submitted to the Treasurer (Telephone No. (405) 848-8000) (Telecopy No. (405) 879-9587), at the address of the Borrower set forth in Section 10.2, or to such other Person or address as may be hereafter designated by the Borrower in a written notice to the Administrative Agent. The agreements in this Section 10.5 shall survive repayment of the Revolving Loans and all other amounts payable hereunder.

10.6. Successors and Assigns; Participations and Assignments

(a) This Agreement shall be binding upon and inure to the benefit of the Company, the Borrower, the Lenders, the Administrative Agent, all future holders of the Revolving Loans and their respective successors and assigns, except that the Borrower may not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of each Lender.

(b) Any Lender other than any Conduit Lender may, without the consent of the Borrower, in accordance with applicable law, at any time sell to one or more banks, financial institutions or other entities (each, a “Participant”) participating interests in any Revolving Loan owing to such Lender, any Revolving Commitment of such Lender or any other interest of such Lender hereunder and under the other Loan Documents. In the event of any such sale by a Lender of a participating interest to a Participant, such Lender’s obligations under this Agreement to the other parties to this Agreement shall remain unchanged, such Lender shall remain solely responsible for the performance thereof, such Lender shall remain the holder of any such Revolving Loan for all purposes under this Agreement and the other Loan Documents, and the Borrower and the Administrative Agent shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement and the other Loan Documents. In no event shall any Participant under any such participation have any right to approve any amendment or waiver of any provision of any Loan Document, or any consent to any departure by any Loan Party therefrom, except to the extent that such amendment, waiver or consent would reduce the principal of, or interest on, the Revolving Loans or any fees payable hereunder, or postpone the date of the final maturity of the Revolving Loans, in each case to the extent subject to such participation. The Borrower agrees that if amounts outstanding under this Agreement and the Revolving Loans are due or unpaid, or shall have been declared or shall have become due and payable upon the occurrence of an Event of Default, each Participant shall, to the maximum extent permitted by applicable law, be deemed to have the right of setoff in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement, provided that, in purchasing such participating interest, such Participant shall be deemed to have agreed to share with the Lenders the proceeds thereof as provided in Section

10.7(a) as fully as if it were a Lender hereunder. The Borrower also agrees that each Participant shall be entitled to the benefits of Sections 3.9, 3.10 and 3.11 with respect to its participation in the Revolving Commitments and the Revolving Loans outstanding from time to time as if it was a Lender; provided that, in the case of Section 3.10, such Participant shall have complied with the requirements of said Section and provided, further, that no Participant shall be entitled to receive any greater amount pursuant to any such Section than the transferor Lender would have been entitled to receive in respect of the amount of the participation transferred by such transferor Lender to such Participant had no such transfer occurred.

(c) Any Lender other than any Conduit Lender (an "Assignor") may, in accordance with applicable law, at any time and from time to time assign to any Lender, or any Lender Affiliate or any Approved Fund or, with the consent of the Borrower, the Issuing Lender and the Administrative Agent (which, in each case, shall not be unreasonably withheld or delayed), to an additional bank, financial institution or other entity (an "Assignee") all or any part of its rights and obligations under this Agreement and the other Loan Documents pursuant to an Assignment and Acceptance, executed by such Assignee, such Assignor and any other Person whose consent is required pursuant to this paragraph, and delivered to the Administrative Agent (in the case of an assignment hereunder that does not require the consent of the Borrower, with a copy to the Borrower) with the payment to the Administrative Agent a processing fee of \$3,500, for its acceptance and recording in the Register; provided that unless otherwise agreed by the Borrower, the Issuing Lender and the Administrative Agent (x) no such assignment to an Assignee (other than any Lender or any Lender Affiliate) shall be in an aggregate principal amount of less than \$10,000,000 (except in the case of an assignment of all of a Lender's interests under this Agreement) and (y) after giving effect to such assignment the Assignor's Revolving Commitments shall be not less than \$10,000,000 (except in the case of an assignment of all of a Lender's interests under this Agreement). For purposes of the proviso contained in the preceding sentence, the amount described therein shall be aggregated in respect of each Lender and its Lender Affiliates, if any. Upon such execution, delivery, acceptance and recording, from and after the effective date determined pursuant to such Assignment and Acceptance, (x) the Assignee thereunder shall be a party hereto and, to the extent provided in such Assignment and Acceptance, have the rights and obligations of a Lender hereunder with a Revolving Commitment and/or Revolving Loans as set forth therein, and (y) the Assignor thereunder shall, to the extent provided in such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of an Assignor's rights and obligations under this Agreement, such Assignor shall cease to be a party hereto). Notwithstanding any provision of this Section 10.6, the consent of the Borrower shall not be required for any assignment that occurs when an Event of Default pursuant to Section 8(f) (with respect to the Borrower) shall have occurred and be continuing. Notwithstanding the foregoing, any Conduit Lender may assign at any time to its designating Lender hereunder without the consent of the Borrower or the Administrative Agent any or all of the Revolving Loans it may have funded hereunder and pursuant to its designation agreement and without regard to the limitations set forth in the first sentence of this Section 10.6(c).

(d) The Administrative Agent shall, on behalf of the Borrower, maintain at its address referred to in Section 10.2 a copy of each Assignment and Acceptance delivered to it and

a register (the “Register”) for the recordation of the names and addresses of the Lenders and the Revolving Commitment of, and the principal amount of the Revolving Loans owing to, each Lender from time to time. The entries in the Register shall be conclusive, in the absence of manifest error, and the Borrower, each other Loan Party, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register as the owner of the Revolving Loans and any Notes evidencing the Revolving Loans recorded therein for all purposes of this Agreement. Any assignment of any Revolving Loan, whether or not evidenced by a Note, shall be effective only upon appropriate entries with respect thereto being made in the Register (and each Note shall expressly so provide). Any assignment or transfer of all or part of a Revolving Loan evidenced by a Note shall be registered on the Register only upon surrender for registration of assignment or transfer of the Note evidencing such Revolving Loan, accompanied by a duly executed Assignment and Acceptance, and thereupon one or more new Notes shall be issued to the designated Assignee.

(e) Upon its receipt of an Assignment and Acceptance executed by an Assignor, an Assignee and any other Person whose consent is required by Section 10.6(c), the Administrative Agent shall (i) promptly accept such Assignment and Acceptance and (ii) record the information contained therein in the Register on the effective date determined pursuant thereto.

(f) For avoidance of doubt, the parties to this Agreement acknowledge that the provisions of this Section 10.6 concerning assignments relate only to absolute assignments and that such provisions do not prohibit assignments creating security interests, including any pledge or assignment by a Lender to any Federal Reserve Bank in accordance with applicable law.

(g) The Borrower, upon written notice from a Lender, agrees to issue Notes to any Lender requiring Notes to facilitate transactions of the type described in paragraph (f) above.

(h) Each of the Company, the Borrower, each Lender and the Administrative Agent hereby confirms that it will not institute against a Conduit Lender or join any other Person in instituting against a Conduit Lender any bankruptcy, reorganization, arrangement, insolvency or liquidation proceeding under any state bankruptcy or similar law, for one year and one day after the payment in full of the latest maturing commercial paper note issued by such Conduit Lender; provided, however, that each Lender designating any Conduit Lender hereby agrees to indemnify, save and hold harmless each other party hereto for any loss, cost, damage or expense arising out of its inability to institute such a proceeding against such Conduit Lender during such period of forbearance.

10.6A. Procedure for Increases and Addition of New Lenders. So long as no Default or Event of Default has occurred and is continuing Borrower shall have the right to increase the Total Revolving Commitments by obtaining additional Revolving Commitments without the consent of Lenders (the amount of such increase is herein called the “Increase”), either from one or more of the existing Lenders or another lending institution provided that (a) Borrower shall have notified Administrative Agent of the amount of the Increase at least three Business Days prior to the proposed effective date thereof, (b) if the Increase is provided by a lending institution that is not then an existing Lender, Administrative Agent shall have approved

such new Lender, such approval not to be unreasonably withheld, (c) the resulting Total Revolving Commitments shall not exceed the amount of \$600,000,000, (d) the procedure described below in this Section shall have been complied with, (e) Borrower shall be in compliance with the Collateral Coverage Ratio after giving effect to such Increase, and (f) Borrower shall pay any amounts owing under Section 3.11 in connection with the prepayment of Eurodollar Loans, if any, necessary to give effect to the Lenders' revised Revolving Percentages. Any amendment hereto for such an Increase shall be in the form attached hereto as Exhibit J and shall only require the written signatures of Administrative Agent, Borrower and the Lender(s) being added or increasing their Revolving Commitment. In addition, within a reasonable time after the effective date of any Increase, the Administrative Agent shall, and is hereby authorized and directed to, revise Schedule 1.1A reflecting such Increase and shall distribute such revised Schedule 1.1A to each of the Lenders and Borrower, whereupon such revised Schedule 1.1A shall replace the old Schedule 1.1A and become part of this Agreement. On the Business Day following any such Increase, all outstanding Revolving Loans shall be reallocated among the Lenders (including any newly added Lenders) in accordance with the Lenders' respective revised Revolving Percentages.

#### 10.7. Adjustments; Set-off

(a) Except to the extent that this Agreement expressly provides for payments to be allocated to a particular Lender or to the Lenders, if any Lender (a "Benefited Lender") shall receive any payment of all or part of the Obligations owing to it, or receive any collateral in respect thereof (whether voluntarily or involuntarily, by set-off, pursuant to events or proceedings of the nature referred to in Section 8(f), or otherwise), in a greater proportion than any such payment to or collateral received by any other Lender, if any, in respect of the Obligations owing to such other Lender, such Benefited Lender shall purchase for cash from the other Lenders a participating interest in such portion of the Obligations owing to each such other Lender, or shall provide such other Lenders with the benefits of any such collateral, as shall be necessary to cause such Benefited Lender to share the excess payment or benefits of such collateral ratably with each of the Lenders; provided, however, that if all or any portion of such excess payment or benefits is thereafter recovered from such Benefited Lender, such purchase shall be rescinded, and the purchase price and benefits returned, to the extent of such recovery, but without interest.

(b) In addition to any rights and remedies of the Lenders provided by law, each Lender shall have the right, without prior notice to the Company or the Borrower, any such notice being expressly waived by the Company and the Borrower to the extent permitted by applicable law, upon any amount becoming due and payable by the Company or the Borrower hereunder (whether at the stated maturity, by acceleration or otherwise), to set off and appropriate and apply against such amount any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Lender or any branch or agency thereof to or for the credit or the account of the Company or the Borrower, as the case may be. Each Lender agrees promptly to notify the Borrower and the Administrative Agent after any such setoff and

application made by such Lender, provided that the failure to give such notice shall not affect the validity of such setoff and application.

10.8. Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Agreement by facsimile transmission shall be effective as delivery of a manually executed counterpart hereof. A set of the copies of this Agreement signed by all the parties shall be lodged with the Borrower and the Administrative Agent.

10.9. Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

10.10. Integration. This Agreement and the other Loan Documents represent the entire agreement of the Company, the Borrower, the Agents and the Lenders with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by any Agent or any Lender relative to subject matter hereof not expressly set forth or referred to herein or in the other Loan Documents. **THIS WRITTEN AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.**

**There are no unwritten oral agreements between the Parties.**

10.11. GOVERNING LAW. **THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF TEXAS.**

10.12. Submission To Jurisdiction; Waivers. Each of the Company and the Borrower hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Agreement and the other Loan Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the courts of the State of Texas, the courts of the United States for the Northern District of Texas, and appellate courts from any thereof;

(b) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to the Company or the Borrower, as the case may be at its address set forth in Section 10.2 or at such other address of which the Administrative Agent shall have been notified pursuant thereto;

(d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction; and

(e) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section any special, exemplary, punitive or consequential damages.

10.13. Acknowledgments. Each of the Company and the Borrower hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents;

(b) no Agent or Lender has any fiduciary relationship with or duty to the Company or the Borrower arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between the Agents and Lenders, on one hand, and the Company and the Borrower, on the other hand, in connection herewith or therewith is solely that of creditor and debtor; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Lenders or among the Company, the Borrower and the Lenders.

10.14. Releases of Guarantees and Liens; Designation of Subsidiaries

(a) Notwithstanding anything to the contrary contained herein or in any other Loan Document, the Administrative Agent is hereby irrevocably authorized by each Lender (without requirement of notice to or consent of any Lender except as expressly required by Section 10.1) to take any action requested by the Borrower having the effect of releasing any Collateral or guarantee obligations (i) to the extent necessary to permit consummation of any transaction not prohibited by any Loan Document or that has been consented to in accordance with Section 10.1 or (ii) to release Collateral to the extent provided in paragraph (c) of this Section 10.14 or (iii) at such time as the Revolving Loans, the Reimbursement Obligations and the other obligations under the Loan Documents (other than obligations under or in respect of Hedge Agreements) shall have been paid in full, the Revolving Commitments have been terminated and no Letters of Credit shall be outstanding. In connection with the releases of Collateral and guarantee obligations under subpart (iii) of this Section, the Collateral shall be released from the Liens created by the Security Documents, and the Security Documents and all obligations (other than those expressly stated to survive such termination) of the Administrative

Agent and each Loan Party under the Security Documents shall terminate, all without delivery of any instrument or performance of any act by any Person.

(b) Notwithstanding anything to the contrary contained herein or in any other Loan Document, in the event that, after the Closing Date, the Borrower shall designate a Subsidiary Guarantor or any newly created or acquired Subsidiary as an "Unrestricted Subsidiary" under the Indentures, and so long as the Unrestricted Subsidiary Investment resulting from such designation is permitted under Section 7.7(g) (and a Responsible Officer has certified in writing thereto to the Administrative Agent), the Administrative Agent is hereby irrevocably authorized by each Lender (without requirement of notice to or consent of any Lender except as expressly required by Section 10.1) to take any action requested by the Borrower having the effect of releasing any guarantee obligations of any such Subsidiary Guarantor or newly created or acquired Subsidiary that has been so designated, and

(c) The Administrative Agent may release a portion of the Collateral from time to time without notice to or consent of any Lender so long as (i) no Default or Event of Default has occurred and is continuing, (ii) no Borrowing Base Deficiency shall exist and (iii) the aggregate value of the Collateral released in the period between any two regular semi-annual Determination Dates on which the Collateral Value is designated (or the period between the last regular semi-annual Determination Date on which the Collateral Value is designated in the Revolving Commitment Period and the Revolving Termination Date) including any Collateral released pursuant to a Disposition permitted under Section 7.5 shall not exceed the sum of (A) the amount, if any, by which the Collateral Value most recently designated exceeded 150% of the then effective Borrowing Base plus (B) \$20,000,000. The Administrative Agent shall release Collateral pursuant to this paragraph (c) only upon, and shall be protected in relying upon, a certificate of Borrower to the effect that the conditions of the preceding sentence exist with respect to the requested release of Collateral.

10.15. Confidentiality. Each Agent and each Lender agrees to keep confidential all non-public information provided to it by any Group Member pursuant to this Agreement that is designated by such Group Member as confidential; provided that nothing herein shall prevent any Agent or any Lender from disclosing any such information (a) to any Agent, any other Lender or any Lender Affiliate, (b) subject to an agreement to comply with the provisions of this Section, to any actual or prospective Transferee or any direct or indirect counterparty to any Hedge Agreement (or any professional advisor to such counterparty), (c) to its employees, directors, agents, attorneys, accountants and other professional advisors or those of any of its affiliates, (d) upon the request or demand of any Governmental Authority, (e) in response to any order of any court or other Governmental Authority or as may otherwise be required pursuant to any Requirement of Law, (f) if requested or required to do so in connection with any litigation or similar proceeding, (g) that has been publicly disclosed, (h) to the National Association of Insurance Commissioners or any similar organization or any nationally recognized rating agency that requires access to information about a Lender's investment portfolio in connection with ratings issued with respect to such Lender, or (i) in connection with the exercise of any remedy hereunder or under any other Loan Document. Notwithstanding anything to the contrary, the Administrative Agent and each Lender may disclose, without limitation of any kind, any information with respect to the "tax treatment" and "tax structure" (in each case, within the



meaning of Treasury Regulation Section 1.6011-4) of the transactions contemplated hereby and all materials of any kind (including opinions or other tax analyses) that are provided to the Administrative Agent or such Lender relating to such tax treatment and tax structure; provided that with respect to any document or similar item that in either case contains information concerning the tax treatment or tax structure of the transaction as well as other information, this sentence shall only apply to such portions of the document or similar item that relate to the tax treatment or tax structure of the transactions contemplated hereby. Borrower shall deliver to Administrative Agent a correct and complete copy of each IRS Form 8886 or any successor form promptly after the Borrower has notified the Administrative Agent of any intention by the Borrower to treat the Revolving Loans and/or Letters of Credit and related transactions as being a "reportable transaction" (within the meaning of Treasury Regulation Section 1.6011-4).

**10.16. WAIVERS OF JURY TRIAL. THE COMPANY, THE BORROWER, THE AGENTS AND THE LENDERS HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.**

10.17. Delivery of Addenda. Each initial Lender shall become a party to this Agreement by delivering to the Administrative Agent an Addendum duly executed by such Lender.

10.18. Special Provisions

(a) From and after the Closing Date, (i) each Exiting Lender shall cease to be a party to this Agreement, (ii) no Exiting Lender shall have any obligations or liabilities under this Agreement with respect to the period from and after the Closing Date and, without limiting the foregoing, no Exiting Lender shall have any Revolving Commitment under this Agreement or any participation in any Letter of Credit outstanding hereunder and (iii) no Exiting Lender shall have any rights under the Existing Credit Agreement, this Agreement or any other Loan Document (other than rights under the Existing Credit Agreement expressly stated to survive the termination of the Existing Credit Agreement and the repayment of amounts outstanding thereunder).

(b) The Lenders (which are Lenders under the Existing Credit Agreement) hereby waive any requirements for notice of prepayment, minimum amounts of prepayments of Revolving Credit Loans (as defined in the Existing Credit Agreement), ratable reductions of the commitments of the Lenders under the Existing Credit Agreement and ratable payments on account of the principal or interest of any Loan (as defined in the Existing Credit Agreement) under the Existing Credit Agreement to the extent such prepayment, reductions or payments are required pursuant to subsection 5.1(l).

(c) The Lenders hereby authorize the Administrative Agent and the Borrower to request borrowings from the Lenders, to make prepayments of Loans (as defined in the Existing Credit Agreement) and to reduce commitments under the Existing Credit Agreement among the Lenders (as defined in the Existing Credit Agreement) in order to ensure that, upon the

effectiveness of this Agreement, the Revolving Loans of the Lenders shall be outstanding on a ratable basis in accordance with their respective Revolving Percentages and that the Revolving Commitments shall be as set forth on Schedule 1.1A hereto and no such borrowing, prepayment or reduction shall violate any provisions of the Existing Credit Agreement or this Agreement. The Lenders hereby confirm that, from and after the Closing Date, all participations of the Lenders in respect of Letters of Credit outstanding hereunder pursuant to subsection 2.8(a) shall be based upon the Revolving Percentages of the Lenders (after giving effect to this Agreement).

(d) The Borrower hereby terminates, effective as of the Closing Date, in full the commitments under the Existing Credit Agreement of the Existing Lenders.

10.19. Limitation on Interest. The Lenders, the Loan Parties and any other parties to the Loan Documents intend to contract in strict compliance with applicable usury law from time to time in effect. In furtherance thereof such Persons stipulate and agree that none of the terms and provisions contained in the Loan Documents shall ever be construed to create a contract to pay, for the use, forbearance or detention of money, interest in excess of the maximum amount of interest permitted to be charged by applicable law from time to time in effect. No Loan Party nor any present or future guarantors, endorsers, or other Persons hereafter becoming liable for payment of any Obligation shall ever be liable for unearned interest thereon or shall ever be required to pay interest thereon in excess of the maximum amount that may be lawfully charged under applicable law from time to time in effect, and the provisions of this section shall control over all other provisions of the Loan Documents which may be in conflict or apparent conflict herewith. The Lenders expressly disavow any intention to charge or collect excessive unearned interest or finance charges in the event the maturity of any Obligation is accelerated. If (a) the maturity of any Obligation is accelerated for any reason, (b) any Obligation is prepaid and as a result any amounts held to constitute interest are determined to be in excess of the legal maximum, or (c) any Lender or any other holder of any or all of the Obligations shall otherwise collect moneys which are determined to constitute interest which would otherwise increase the interest on any or all of the Obligations to an amount in excess of that permitted to be charged by applicable law then in effect, then all sums determined to constitute interest in excess of such legal limit shall, without penalty, be promptly applied to reduce the then outstanding principal of the related Obligations or, at such Lender's or holder's option, promptly returned to the Borrower or the other payor thereof upon such determination. In determining whether or not the interest paid or payable, under any specific circumstances, exceeds the maximum amount permitted under applicable law, the Lenders and the Loan Parties (and any other payors thereof) shall to the greatest extent permitted under applicable law, (i) characterize any non-principal payment as an expense, fee or premium rather than as interest, (ii) exclude voluntary prepayments and the effects thereof, and (iii) amortize, prorate, allocate, and spread the total amount of interest throughout the entire contemplated term of the instruments evidencing the Obligations in accordance with the amounts outstanding from time to time thereunder and the maximum legal rate of interest from time to time in effect under applicable law in order to lawfully charge the maximum amount of interest permitted under applicable law. In the event applicable law provides for an interest ceiling under Chapter 303 of the Texas Finance Code, that ceiling shall be the weekly ceiling and shall be used when appropriate in determining the Highest Lawful Rate.

10.20. **USA Patriot Act Notice.** Each Lender that is subject to the Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001))(the “Act”), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrower in accordance with the Act.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

CHESAPEAKE ENERGY CORPORATION

By: /s/ Martha A. Burger

---

Name: Martha A. Burger  
Title: Treasurer and Senior Vice President Human  
Resources

CHESAPEAKE EXPLORATION LIMITED PARTNERSHIP

By: Chesapeake Operating, Inc., its general partner

By: /s/ Martha A. Burger

---

Name: Martha A. Burger  
Title: Treasurer and Senior Vice President Human  
Resources

UNION BANK OF CALIFORNIA, N.A., as Administrative  
Agent, Collateral Agent  
and as a Lender

By: /s/ Randall Osterberg

---

Name: Randall Osterberg  
Title: Senior Vice President

The following schedules and exhibits were omitted:

SCHEDULES:

|         |   |
|---------|---|
| 1.1A    | Commitments   |
| 1.1B    | Mortgaged Property  |
| 4.1(b)  | Certain Hedging Transactions  |
| 4.4     | Consents, Authorizations, Filings and Notices   |
| 4.6     | Litigation  |
| 4.15(a) | Subsidiaries  |
| 4.15(b) | Outstanding Subscriptions, Options, Warrants, Calls, Rights etc. Relating to Capital Stock of the Company or any Subsidiary |
| 4.17(d) | Environmental Matters   |
| 4.17(f) | NonCompliance with Environmental Laws   |
| 4.19    | Mortgage Filing Jurisdictions   |
| 5.1(i)  | Existing Mortgages  |
| 7.2(d)  | Existing Indebtedness   |
| 7.3(f)  | Existing Liens  |
| 7.7(m)  | Investments   |

EXHIBITS:

|   |   |
|---|---|
| A | Form of Guarantee Agreement                         |
| B | Form of Compliance Certificate                      |
| C | Form of Closing Certificate                         |
| D | Form of Mortgage                                    |
| E | Form of Assignment and Acceptance                   |
| F | Form of Legal Opinion of Commercial Law Group, P.C. |
| G | Form of Exemption Certificate                       |
| H | Form of Revolving Note                              |
| I | Form of Addendum                                    |
| J | Form of Pari Passu Hedging Obligation Notice        |
| K | Requirements for Hedging Support Credit Facility    |

**CHEAPEAKE ENERGY CORPORATION**  
**RATIOS OF EARNINGS TO COMBINED FIXED CHARGES AND PREFERRED DIVIDENDS**  
(dollars in 000's)

|   | Year<br>Ended<br>December 31,<br>1999 | Year<br>Ended<br>December 31,<br>2000 | Year<br>Ended<br>December 31,<br>2001 | Year<br>Ended<br>December 31,<br>2002 | Year<br>Ended<br>December 31,<br>2003 | Three Months<br>Ended<br>March 31,<br>2004 |
|---|---------------------------------------|---------------------------------------|---------------------------------------|---------------------------------------|---------------------------------------|--|
| <b>EARNINGS:</b>  |                                       |                                       |                                       |                                       |                                       |  |
| Income before income taxes and cumulative effect of accounting change | \$ 35,030                             | \$ 196,162                            | \$ 361,698                            | \$ 67,140                             | \$ 500,952                            | \$ 175,917                                 |
| Interest expense (a)  | 81,052                                | 86,256                                | 98,321                                | 111,280                               | 147,817                               | 37,806                                     |
| (Gain)Loss on investment in equity investees                          | —                                     | —                                     | —                                     | —                                     | 409                                   | (422)                                      |
| Amortization of capitalized interest                                  | 1,047                                 | 1,226                                 | 1,784                                 | 1,804                                 | 2,519                                 | 884  |
| Bond discount amortization (c)  | —                                     | —                                     | —                                     | —                                     | —                                     | —  |
| Loan cost amortization  | 3,338                                 | 3,669                                 | 4,022                                 | 4,962                                 | 4,254                                 | 1,049                                      |
| <b>Earnings</b>   | <b>\$ 120,467</b>                     | <b>\$ 287,313</b>                     | <b>\$ 465,825</b>                     | <b>\$ 185,186</b>                     | <b>\$ 655,951</b>                     | <b>\$ 215,234</b>                          |
| <b>FIXED CHARGES:</b>   |                                       |                                       |                                       |                                       |                                       |  |
| Interest expense  | \$ 81,052                             | \$ 86,256                             | \$ 98,321                             | \$ 111,280                            | \$ 147,817                            | \$ 37,806                                  |
| Capitalized interest  | 3,356                                 | 2,452                                 | 4,719                                 | 4,976                                 | 13,041                                | 5,257                                      |
| Bond discount amortization (c)  | —                                     | —                                     | —                                     | —                                     | —                                     | —  |
| Loan cost amortization  | 3,338                                 | 3,669                                 | 4,022                                 | 4,962                                 | 4,254                                 | 1,049                                      |
| <b>Fixed Charges</b>  | <b>\$ 87,746</b>                      | <b>\$ 92,377</b>                      | <b>\$ 107,062</b>                     | <b>\$ 121,218</b>                     | <b>\$ 165,112</b>                     | <b>\$ 44,112</b>                           |
| <b>Preferred Stock Dividends</b>                                      |                                       |                                       |                                       |                                       |                                       |  |
| Preferred Dividend Requirements                                       | \$ 16,711                             | \$ 8,484                              | \$ 2,050                              | \$ 10,117                             | \$ 22,469                             | \$ 8,168                                   |
| Ratio of income before provision for taxes to net income (b)          | 1.05                                  | N/A                                   | 1.66                                  | 1.67                                  | 1.61                                  | 1.56                                       |
| Subtotal – Preferred Dividends  | \$ 17,597                             | \$ 8,484                              | \$ 3,411                              | \$ 16,861                             | \$ 36,240                             | \$ 12,762                                  |
| Combined Fixed Charges and Preferred Dividends                        | \$ 105,343                            | \$ 100,861                            | \$ 110,473                            | \$ 138,079                            | \$ 201,352                            | \$ 56,874                                  |
| Ratio of Earnings to Fixed Charges                                    | 1.4                                   | 3.1                                   | 4.4                                   | 1.5                                   | 4.0                                   | 4.9  |
| Insufficient coverage   | \$ —                                  | \$ —                                  | \$ —                                  | \$ —                                  | \$ —                                  | \$ —                                       |
| Ratio of Earnings to Combined Fixed Charges and Preferred Dividends   | 1.1                                   | 2.8                                   | 4.2                                   | 1.3                                   | 3.3                                   | 3.8  |
| Insufficient coverage   | \$ —                                  | \$ —                                  | \$ —                                  | \$ —                                  | \$ —                                  | \$ —                                       |

(a) Excludes the effect on unrealized gains or losses on interest rate derivatives.

(b) Amounts of income before provision for taxes and of net income exclude the cumulative effect of accounting change.

(c) Bond discount excluded since it is included in interest expense.

**SUBSIDIARIES  
OF  
CHESAPEAKE ENERGY CORPORATION  
(an Oklahoma corporation)**

| <u>Corporations</u>                        | <u>State of Organization</u> |
|--|------------------------------|
| Chesapeake Energy Louisiana Corporation    | Oklahoma                     |
| Chesapeake Energy Marketing, Inc.          | Oklahoma                     |
| Chesapeake Operating, Inc.                 | Oklahoma                     |
| Chesapeake PRH Corp.                       | Oklahoma                     |
| Chesapeake South Texas Corp.               | Oklahoma                     |
| Nomac Drilling Corporation                 | Oklahoma                     |
| Oxley Petroleum Co.                        | Oklahoma                     |
| <br>                                       |                              |
| <u>Limited Liability Companies</u>         | <u>State of Formation</u>    |
| Carmen Acquisition, L.L.C.                 | Oklahoma                     |
| Chesapeake Acquisition, L.L.C.             | Oklahoma                     |
| Chesapeake ENO Acquisition, L.L.C.         | Oklahoma                     |
| Chesapeake EP, L.L.C.                      | Oklahoma                     |
| Chesapeake Focus, L.L.C.                   | Oklahoma                     |
| Chesapeake KNAN Acquisition, L.L.C.        | Oklahoma                     |
| Chesapeake Mountain Front, L.L.C.          | Oklahoma                     |
| Chesapeake ORC, L.L.C.                     | Oklahoma                     |
| Chesapeake Permian Acquisition, L.L.C.     | Oklahoma                     |
| Chesapeake Royalty, L.L.C.                 | Oklahoma                     |
| Gothic Production, L.L.C.                  | Oklahoma                     |
| John C. Oxley, L.L.C.                      | Oklahoma                     |
| MC Mineral Company, L.L.C.                 | Oklahoma                     |
| Mayfield Processing, LLC                   | Oklahoma                     |
| Sap Acquisition, L.L.C.                    | Oklahoma                     |
| <br>                                       |                              |
| <u>Partnerships</u>                        |                              |
| Chesapeake Exploration Limited Partnership | Oklahoma                     |
| Chesapeake Louisiana, L.P.                 | Oklahoma                     |
| Chesapeake Panhandle Limited Partnership   | Oklahoma                     |
| Chesapeake Permian, L.P.                   | Oklahoma                     |
| Chesapeake Sigma, L.P.                     | Oklahoma                     |
| Chesapeake-Staghorn Acquisition L.P.       | Oklahoma                     |
| Chesapeake Zapata, L.P.                    | Oklahoma                     |
| MidCon Compression, L.P.                   | Oklahoma                     |

## CERTIFICATION

I, Aubrey K. McClendon, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Chesapeake Energy Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - (a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (c) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 10, 2004

/s/ AUBREY K. MCCLENDON

---

Aubrey K. McClendon  
Chairman and Chief Executive Officer



## CERTIFICATION

I, Marcus C. Rowland certify that:

1. I have reviewed this quarterly report on Form 10-Q of Chesapeake Energy Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - (a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (c) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 10, 2004

/s/ MARCUS C. ROWLAND

---

Marcus C. Rowland  
Executive Vice President and Chief Financial Officer

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO SECTION 906  
OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Chesapeake Energy Corporation (the "Company") on Form 10-Q for the period ended March 31, 2004 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Aubrey K. McClendon, Chairman and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C § 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ AUBREY K. MCCLENDON

\_\_\_\_\_  
Aubrey K. McClendon  
Chairman and Chief Executive Officer

Date: May 10, 2004

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO SECTION 906  
OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Chesapeake Energy Corporation (the "Company") on Form 10-Q for the period ended March 31, 2004 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Marcus C. Rowland, Executive Vice President and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C § 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ MARCUS C. ROWLAND

---

Marcus C. Rowland  
Executive Vice President and Chief Financial Officer

Date: May 10, 2004