

# MITCHELL ENERGY & DEVELOPMENT CORP

Filed by  
**DEVON ENERGY CORP/DE**

## **FORM SC 13D** (Statement of Beneficial Ownership)

Filed 08/23/01

Address	2001 TIMBERLOCH PL THE WOODLANDS, TX 77380
Telephone	7133775500
CIK	0000311995
SIC Code	1311 - Crude Petroleum and Natural Gas
Fiscal Year	01/31

# MITCHELL ENERGY & DEVELOPMENT CORP

## FORM SC 13D (Statement of Beneficial Ownership)

Filed 8/23/2001

Address	2001 TIMBERLOCH PL THE WOODLANDS, Texas 77380
Telephone	713-377-5500
CIK	0000311995
Industry	Oil & Gas Operations
Sector	Energy
Fiscal Year	01/31

**SECURITIES AND EXCHANGE COMMISSION**  
WASHINGTON, D.C. 20549

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**SCHEDULE 13D**

UNDER THE SECURITIES EXCHANGE ACT OF 1934 (AMENDMENT NO. \_\_\_)

**Mitchell Energy & Development Corp.**

---

(Name of Issuer)

**Class A Common Stock, par value \$0.10 per share**

---

(Title of Class of Securities)

606592 20 2

---

(CUSIP Number)

Duke R. Ligon  
Senior Vice President and General Counsel  
Devon Energy Corporation  
20 North Broadway, Suite 1500  
Oklahoma City, OK 73102  
(405) 235-3611

---

(Name, Address and Telephone Number of Person  
Authorized to Receive Notices and Communications)

August 13, 2001

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(Date of Event Which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition which is the subject of this Schedule 13D, and is filing this schedule because of Sections 240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box [ ]

(Continued on following pages)

(Page 1 of 8 Pages)

CUSIP NO.: 606592 20 2

SCHEDULE 13D

1 NAME OF REPORTING PERSONS  
 I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY)  
 Devon Energy Corporation (73-1567067)

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a) [ ]  
 (b) [X]

3 SEC USE ONLY

4 SOURCE OF FUNDS  
 WC

5 CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED  
 PURSUANT TO ITEM 2(d) or 2(e) [ ]

6 CITIZENSHIP OR PLACE OF ORGANIZATION  
 DELAWARE

	7	SOLE VOTING POWER 100 (1)
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON	8	SHARED VOTING POWER 22,976,045(2)
	9	SOLE DISPOSITIVE POWER 100 (1)
	10	WITH SHARED DISPOSITIVE POWER 22,976,045(2)

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON  
 22,976,145(1)(2)

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES  
 CERTAIN SHARES [X]

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)  
 46.0 %

14 TYPE OF REPORTING PERSON  
 CO

(1) Includes 100 shares of Class A Common Stock purchased by Devon Energy Corporation from George P. Mitchell on August 13, 2001 for aggregate consideration of \$6,212.00.

(2) Includes 22,976,045 shares of Class A Common Stock that may be deemed to be beneficially owned by Devon Energy Corporation pursuant to the Shareholders Agreement described in Item 6 below.

## ITEM 1. SECURITY AND ISSUER

This statement relates to the class A common stock, par value \$0.10 per share (the "Company Common Stock"), of Mitchell Energy & Development Corp., a Texas corporation (the "Company"). The Company's principal executive offices are located at 2001 Timberloch Place, The Woodlands, Texas 77380.

## ITEM 2. IDENTITY AND BACKGROUND

(a) - (c) This statement is being filed by Devon Energy Corporation, a corporation organized under the laws of Delaware ("Devon"). Devon's principal executive offices are located at 20 North Broadway, Suite 1500, Oklahoma City, Oklahoma 73102. Devon is an independent energy company engaged primarily in oil and gas exploration, development and production and property acquisitions. The names, business addresses and principal occupation or employment (and the name, principal business and address of any corporation or other organization in which such employment is conducted) of each of the persons specified by Instruction C of Schedule 13D are set forth on Schedule I.

(d) - (e) Neither Devon, nor to the knowledge of Devon, any of the persons specified in Schedule I has, during the last five years, been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) nor has been a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws.

(f) The citizenship of each of the persons specified by Instruction C of the Schedule 13D is set forth on the attached Schedule I.

## ITEM 3. SOURCE AND AMOUNT OF FUNDS OR OTHER CONSIDERATION

This Schedule 13D is filed as a result of the Shareholders Agreement described in Item 6 of this Schedule 13D. The \$6,212.00 purchase price for the 100 shares of Company Common Stock purchased by Devon on August 13, 2001 was obtained by Devon from its cash on hand on that date. No other funds were required in connection with entering into the Shareholders Agreement.

## ITEM 4. PURPOSE OF THE TRANSACTION

On August 13, 2001, Devon, Devon NewCo Corporation, a wholly owned subsidiary of Devon ("NewCo"), and the Company entered into an Agreement and Plan of Merger (the "Merger Agreement"). Pursuant to the Merger Agreement, the Company will be merged with and into NewCo in accordance with the Merger Agreement, and the separate corporate existence of the Company will thereupon cease (the "Merger"). NewCo will be the surviving corporation (the "Surviving Corporation") in the Merger and will remain a wholly owned subsidiary of Devon.

Upon consummation of the Merger, each share of Company Common Stock issued and outstanding immediately prior to the Effective Time (as defined in the Merger Agreement), other than shares of Company Common Stock owned by Devon, NewCo, the Company and each of their respective subsidiaries, including treasury stock, which shall be cancelled and shares of Company Common Stock held by shareholders who validly exercise their dissenters' rights under Texas law, will be converted into (i) the right to receive \$31.00 in cash and (ii) 0.585 of a share of Devon common stock, par value \$0.10 per share (the "Devon Common Stock"), subject to adjustment as provided in the Merger Agreement.

The certificate of incorporation and bylaws of NewCo immediately before the Effective Time of the Merger will be the certificate of incorporation and bylaws of the Surviving Corporation. The directors of NewCo at the Effective Time of the Merger will become the directors of the Surviving Corporation. In addition, at the Effective Time of the Merger, Devon will increase the size of its board of directors by one and J. Todd Mitchell, or a substitute designee, will be appointed to fill the vacancy on Devon's board of directors so created.

The closing of the Merger will occur on the first business day after the day on which the last condition to completing the Merger is satisfied or waived, or at such other time as Devon and the Company may agree. The consummation of the Merger is subject to a number of conditions, including (i) compliance with the pre-merger notification requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, (ii) approval of the Merger Agreement and the transactions contemplated thereby by the holders of two-thirds of the outstanding shares of Company Common Stock and approval of the issuance of shares of Devon Common Stock in the Merger by the holders of a majority of the shares of Devon Common Stock voting at a special meeting at which a quorum is present and (iii) the receipt of tax opinions from legal counsel to the Company and Devon to the effect that the Merger qualifies as a reorganization under section 368(a) of the Internal Revenue Code of 1986, as amended.

Pursuant to the Merger Agreement, the Company and Devon must pay, in certain circumstances upon termination of the Merger Agreement, a fee of \$100 million in cash (the "Termination Fee") and up to \$10 million as reimbursement for expenses incurred in connection with the Merger (the "Reimbursement Amount," together with the Termination Fee, the "Termination Amount") to the other party. The Company has agreed to pay the Termination Amount if (i) Devon terminates the Merger Agreement after the Company's board of directors has withdrawn, modified or changed, in a manner adverse to Devon, the Board's approval or recommendation of the Merger or recommends an alternative acquisition proposal, or (ii) the Company or Devon terminates the Merger Agreement after a person shall have made, or announced an intention to make, an acquisition proposal for the Company that has become public prior to the meeting of the Company's shareholders and Devon's stockholders have voted to approve the issuance of shares of Devon Common Stock in the Merger and the Company's shareholders have not approved the Merger Agreement and the transactions contemplated thereby. Devon has agreed to pay the Termination Amount if (i) the Company terminates the Merger Agreement after Devon's board of directors has withdrawn, modified or changed, in a manner adverse to the Company, the Board's approval or recommendation of the Merger or (ii) the Company or Devon terminates the Merger Agreement after a person shall have made, or announced an intention to make, an acquisition proposal for Devon that has become public prior to the meeting of Devon's stockholders, the Company's shareholders have voted to approve the Merger and Devon's stockholders have not approved the issuance of shares of Devon Common Stock in the Merger.

The preceding summary of the Merger Agreement does not purport to be complete. Reference is made to the full text of the Merger Agreement that is filed as an exhibit to this statement and is incorporated in this Schedule 13D by this reference.

Except as set forth in this Item 4 or as provided in the Merger Agreement, the Shareholders Agreement described in Item 6 of this Schedule 13D or as otherwise referred to or described in this Schedule 13D, Devon has no present plan or proposal which relates to or would result in any of the matters referred to in Items (a) through (j) of Item 4 of Schedule 13D.

#### **ITEM 5. INTEREST IN SECURITIES OF THE ISSUER**

(a) - (b) By reason of its execution of the Shareholders Agreement described in Item 6 of this Schedule 13D and the voting agreement and irrevocable proxy contained therein, Devon may be deemed to beneficially own 22,976,145 shares of Company Common Stock, or approximately 46.0% of the Company Common Stock outstanding, exclusive of 404,666 shares of Company Common Stock which Mr. Mitchell has the right to acquire within 60 days on the exercise of stock options and as to which Devon disclaims beneficial ownership. Devon expressly disclaims that it and Mr. and Mrs. Mitchell have become members of a "group" as a result of the execution of the Shareholders Agreement described in Item 6 of this Schedule 13D.

(c) Other than the execution of the Shareholders Agreement described in Item 6 of this Schedule 13D and the purchase of 100 shares of Company Common Stock from George P. Mitchell on August 13, 2001, none of Devon or, to Devon's knowledge, any of the persons named on the attached Schedule I has effected any transactions in Company Common Stock in the past 60 days.

(d) - (e) Not applicable.

**ITEM 6. CONTRACTS, ARRANGEMENTS, UNDERSTANDINGS OR RELATIONSHIPS WITH RESPECT TO SECURITIES OF THE ISSUER**

Reference is made to Item 4 above.

On August 13, 2001, Devon and Mr. and Mrs. Mitchell entered into a Principal Shareholders Agreement Containing a Voting Agreement and an Irrevocable Proxy (the "Shareholders Agreement") and an Investor Rights Agreement (the "Investor Agreement") as an inducement and a condition to Devon's and NewCo's execution of the Merger Agreement. Pursuant to the Shareholders Agreement, Mr. and Mrs. Mitchell have agreed, among other things, to vote (or cause to be voted) the shares of Company Common Stock beneficially owned by them and as to which they have the right to vote (the "Subject Shares") in favor of the approval of the Merger Agreement and the transactions contemplated thereby and to vote against any proposal that is inconsistent with the consummation of the transactions contemplated by the Merger Agreement. In connection with the execution of the Shareholders Agreement, Mr. and Mrs. Mitchell granted Devon an irrevocable proxy to vote the Subject Shares in a manner consistent with the Shareholders Agreement. Except for pledges in existence at the date of the Shareholders Agreement and transfers to any trust, estate, family partnership, foundation or charitable organization that agrees in writing to be bound by the terms of the Shareholders Agreement, Mr. and Mrs. Mitchell have agreed not to sell, transfer, tender, pledge, encumber or otherwise dispose of the Subject Shares. The Shareholders Agreement becomes null and void upon the earliest to occur of (i) the second anniversary date of the execution of the Shareholders Agreement, (ii) the termination of the Shareholders Agreement with the mutual consent of Devon and Mr. and Mrs. Mitchell, (iii) the consummation of the Merger or (iv) the termination of the Merger Agreement by Devon for any reason or by the Company because the conditions to its obligation to consummate the Merger (other than the Company's failure to secure approval of the Merger Agreement and the transaction contemplated thereby by the requisite vote of its shareholders) are not satisfied.

The Investor Agreement contains, among other things, restrictions upon the disposition of the shares of Devon Common Stock received by Mr. and Mrs. Mitchell upon consummation of the Merger and sets forth the obligations of Devon to register those shares for sale in underwritten public offerings under the Securities Act of 1933, as amended, and applicable state securities laws.

Except as provided in the Merger Agreement, the Shareholders Agreement, the Investors Agreement and as otherwise referred to or described in this Schedule 13D, to Devon's knowledge, there are no contracts, arrangements, understandings or relationships (legal or otherwise) between Devon and the Company or any other person with respect to securities of the Company.

The preceding summary of the Shareholders Agreement and the Investors Agreement does not purport to be complete. Reference is made to the full text of the Shareholders Agreement and the Investors Agreement that are filed as exhibits to this statement and are incorporated in this Schedule 13D by this reference

**ITEM 7. MATERIAL TO BE FILED AS EXHIBITS.**

Exhibit No.	Description
99(a)(1)	Agreement and Plan of Merger dated as of August 13, 2001, by and among Devon Energy Corporation, Devon NewCo Corporation and Mitchell Energy & Development Corp.
99(a)(2)	Principal Shareholders Agreement Containing a Voting Agreement and an Irrevocable Proxy, dated as of August 13, 2001, by and among Devon Energy Corporation, George P. Mitchell and Cynthia Woods Mitchell.
99(a)(3)	Investor Rights Agreement, dated as of August 13, 2001, by and among Devon Energy Corporation, George P. Mitchell and Cynthia Woods Mitchell.

**SCHEDULE I****Information Concerning Executive Officers and Directors of Devon Energy Corporation**

The current executive officers and directors of Devon are listed below. Devon's principal executive offices are located at 20 North Broadway, Suite 1500, Oklahoma City, Oklahoma 73102. Unless otherwise indicated, the business address listed for each individual not principally employed by Devon is also the address of the corporation or other organization which principally employs that individual.

**CORPORATE OFFICERS**

NAME	PRESENT POSITION WITH DEVON	CITIZENSHIP
J. Larry Nichols	Director, Chairman, President and Chief Executive Officer	United States
Brian J. Jennings	Senior Vice President - Corporate Development	United States
J. Michael Lacey	Senior Vice President - Exploration and Production	United States
Duke R. Ligon	Senior Vice President - General Counsel	United States
Marian J. Moon	Senior Vice President - Administration	United States
John Richels	Senior Vice President - Canadian Division	Canada
Darryl G. Smette	Senior Vice President - Marketing	United States
William T. Vaughn	Senior Vice President - Finance	United States

**DIRECTORS**

NAME	POSITION/PRESENT PRINCIPAL OCCUPATION OR EMPLOYMENT AND BUSINESS ADDRESS	CITIZENSHIP
Thomas F. Ferguson	Managing Director of United Gulf Management, Ltd., a wholly owned subsidiary of Kuwait Investment Projects Company KSC. The address of United Gulf Management, Ltd. is 7 Old Park Lane, London, United Kingdom W1Y3LJ.	United Kingdom
David M. Gavrin	Director of United American Energy Corp. and MetBank Holding Corporation. His address is 1865 Palmer Avenue, Suite 108, Larchmont, NY 10538.	United States
Michael E. Gellert	General Partner of Windcrest Partners. The address of Windcrest Partners is 122 East 42nd Street, 47th Floor, New York, NY 10168.	United States

J. Larry Nichols	Chairman, President and Chief Executive Officer of Devon Energy Corporation.	United States
Robert B. Weaver	Retired. His address is 15 Shields Road, Darien, CT 06820.	United States
John A. Hill	Vice Chairman and Managing Director of First Reserve Corporation. The address of First Reserve Corporation is 411 W. Putnam Avenue, Greenwich, CT 06830.	United States
William J. Johnson	President and Director of JonLoc, Inc. The address of JonLoc, Inc. is 9545 Katy Freeway, Suite 470, Houston, TX 77024.	United States
Michael M. Kanovsky	President of Sky Energy Corporation. The address of Sky Energy Corporation is 3000, 400 3rd Avenue S.W., Calgary, Alberta T2P 4H2.	Canada
Robert A. Mosbacher, Jr.	President and Vice Chairman of Mosbacher Energy Company and Vice Chairman of Mosbacher Power Group. His address is 717 Main, Suite 2200, Houston, TX 77002-3290.	United States
John W. Nichols	Chairman Emeritus of Devon.	United States

**SIGNATURE**

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

**DEVON ENERGY CORPORATION**

By: /s/ MARIAN J. MOON

-----  
Name: Marian J. Moon

Title: Senior Vice President

Dated: August 23, 2001

## INDEX TO EXHIBITS

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99(a)(3)	Investor Rights Agreement, dated as of August 13, 2001, by and among Devon Energy Corporation, George P. Mitchell and Cynthia Woods Mitchell.

**AGREEMENT AND PLAN OF MERGER**

**BY AND AMONG**

**DEVON ENERGY CORPORATION,**

**DEVON NEWCO CORPORATION**

**AND**

**MITCHELL ENERGY & DEVELOPMENT CORP.**

**DATED AS OF AUGUST 13, 2001**

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## **AGREEMENT AND PLAN OF MERGER**

THIS AGREEMENT AND PLAN OF MERGER (this "Agreement") dated as of August 13, 2001, is among Devon Energy Corporation, a Delaware corporation ("Parent"), Devon NewCo Corporation, a Delaware corporation and a direct and wholly owned subsidiary of Parent ("Merger Sub"), and Mitchell Energy & Development Corp., a Texas corporation (the "Company").

### **RECITALS**

WHEREAS, the respective Boards of Directors of each of Parent, Merger Sub and the Company have determined that the merger of the Company with and into Merger Sub (the "Merger"), in the manner contemplated herein, is advisable and in the best interests of their respective corporations and stockholders, and, by resolutions duly adopted, have approved and adopted this Agreement;

WHEREAS, for federal income tax purposes, it is intended that the Merger qualify as a reorganization within the meaning of section 368(a) of the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder (the "Code"); and

WHEREAS, as a condition and inducement to the willingness of Parent to enter into this Agreement, certain principal stockholders of the Company have entered into a shareholders agreement with Parent and Merger Sub pursuant to which such stockholders have (i) agreed, among other things, to vote their shares of Company common stock in favor of the Merger and (ii) granted to Parent and Merger Sub an irrevocable proxy to vote their shares of Company common stock upon the terms and conditions set forth therein (the "Principal Shareholders Agreement").

NOW, THEREFORE, in consideration of the foregoing, and of the representations, warranties, covenants and agreements contained herein, the parties hereto hereby agree as follows:

### **ARTICLE 1**

#### **THE MERGER**

**SECTION 1.1 The Merger.** Subject to the terms and conditions of this Agreement, at the Effective Time (as defined in Section 1.3), the Company shall be merged with and into Merger Sub in accordance with this Agreement, and the separate corporate existence of the Company shall thereupon cease. Merger Sub shall be the surviving corporation in the Merger and shall be a wholly owned subsidiary of Parent (sometimes hereinafter referred to as the "Surviving Corporation"). The Merger shall have the effects specified in the Delaware General Corporation Law ("DGCL") and the Texas Business Corporation Act (the "TBCA"). At the election of Parent, any direct wholly owned subsidiary of Parent may be substituted for Merger Sub as a constituent corporation in the Merger. In such event, the parties hereto agree to execute an appropriate amendment to this Agreement in order to reflect such substitution.

**SECTION 1.2 The Closing.** Subject to the terms and conditions of this Agreement, the closing of the Merger (the "Closing") shall take place (a) at the offices of Mayer, Brown & Platt, 700 Louisiana Street, Houston, Texas 77002, at 9:00 a.m., local time, on the first business day immediately following the day on which the last to be fulfilled or waived of the conditions set forth in Article 7 (other than those conditions that by their nature are to be satisfied at the Closing, but subject to fulfillment or waiver of those conditions) shall be fulfilled or waived in accordance herewith or (b) at such other time, date or place as Parent and the Company may agree in writing. The date on which the Closing occurs is hereinafter referred to as the "Closing Date."

**SECTION 1.3 Effective Time.** If all the conditions to the Merger set forth in Article 7 shall have been fulfilled or waived in accordance herewith and this Agreement shall not have been terminated as provided in Article 8, on the Closing Date, a certificate of merger (the "Certificate of Merger") meeting the requirements of Section 251 of the DGCL shall be properly executed and filed with the Secretary of State of the State of Delaware and articles of merger (the "Articles of Merger") meeting the requirements

of Article 5.04 of the TBCA will be filed with the Secretary of State of the State of Texas. The Merger shall become effective upon the filing of the Certificate of Merger with the Secretary of State of the State of Delaware in accordance with the DGCL and the issuance of a certificate of merger by the Secretary of State of the State of Texas in accordance with the TBCA, or at such later time that the parties hereto shall have agreed upon and designated in such filing as the effective time of the Merger (the "Effective Time").

**SECTION 1.4 Certificate of Incorporation.** The certificate of incorporation of Merger Sub in effect immediately prior to the Effective Time shall be the certificate of incorporation of the Surviving Corporation, until duly amended in accordance with applicable law.

**SECTION 1.5 Bylaws.** The bylaws of Merger Sub in effect immediately prior to the Effective Time shall be the bylaws of the Surviving Corporation, until duly amended in accordance with applicable law.

**SECTION 1.6 Board of Directors.** The Board of Directors of the Surviving Corporation shall consist of the Board of Directors of Merger Sub, as it existed immediately prior to the Effective Time.

## **ARTICLE 2**

### **DIRECTORS OF PARENT**

**SECTION 2.1 Directors of Parent.** At the Effective Time, the Board of Directors of Parent shall consist of a number of persons as determined by Parent. One member of the Board of Directors of Parent shall be J. Todd Mitchell (the "Company Designee"). The Company Designee shall be appointed to fill a vacancy on the Board of Directors existing immediately prior to the Effective Time. If, prior to the Effective Time, the Company Designee becomes unavailable or unwilling to serve, the Company shall designate a substitute designee acceptable to Parent. If necessary to comply with this Section 2.1, Parent shall cause to be presented to the meeting of its stockholders contemplated by Section 6.3 of this Agreement a proposal to amend Parent's certificate of incorporation to increase the number of directors that constitutes the entire Board of Directors.

## **ARTICLE 3**

### **CONVERSION OF COMPANY SHARES**

**SECTION 3.1 Effect on Capital Stock.** At the Effective Time, the Merger shall have the following effects on the capital stock of the Company and Merger Sub, without any action on the part of the holder of any capital stock of the Company or Merger Sub:

(a) **Conversion of the Company Common Stock.** Subject to the provisions of this Section 3.1 and Section 3.3, each share of Class A common stock, \$0.10 par value per share, of the Company (each a "Company Share" and collectively the "Company Shares") issued and outstanding immediately prior to the Effective Time (but not including any Dissenting Shares (as defined below) and any Company Shares that are (i) owned (A) by Parent, Merger Sub or any other direct or indirect Subsidiary of Parent or (B) by the Company or any direct or indirect Subsidiary of the Company and (ii) are not held on behalf of third parties (the "Excluded Company Shares")) shall, by virtue of the Merger and without any action on the part of the holder thereof, be converted into (i) the right to receive \$31.00 in cash (the "Cash Consideration") and (ii) 0.585 of a share (the "Exchange Ratio") of Parent Common Stock (the "Stock Consideration" and, together with the Cash Consideration, the "Merger Consideration"). "Parent Common Stock" shall mean the common stock, par value \$0.10 per share, of Parent.

(b) **Cancellation of Excluded Company Shares.** Each Excluded Company Share issued and outstanding immediately prior to the Effective Time shall, by virtue of the Merger and without any action on the part of the holder thereof, no longer be outstanding, shall be canceled and retired without payment of any consideration therefor and shall cease to exist.

(c) Merger Sub. At the Effective Time, each share of common stock, par value \$0.01 per share, of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into one share of common stock of the Surviving Corporation, and the Surviving Corporation shall thereby become a wholly owned subsidiary of Parent.

### SECTION 3.2 Exchange of Certificates for Shares.

(a) Exchange Procedures. At or prior to the Effective Time, Parent shall deposit with the Exchange Agent, in trust for the benefit of the holders of Company Shares, an amount in cash and certificates representing shares of Parent Common Stock required to effect the conversion of the Company Shares into the Merger Consideration pursuant to Section 3.1(a). Parent shall make sufficient funds available to an exchange agent (the "Exchange Agent"), selected by Parent with the Company's prior approval, which shall not be unreasonably withheld, from time to time as needed to pay cash in respect of dividends or other distributions in accordance with Section 3.2(b). Promptly after the Effective Time, but in no event later than three business days following the Closing Date, the Surviving Corporation shall cause the Exchange Agent to mail to each holder of record as of the Effective Time of a certificate representing Company Shares (each a "Certificate") (other than holders of a Certificate in respect of Excluded Company Shares) (i) a letter of transmittal specifying that delivery of the Certificates shall be effected, and that risk of loss and title to the Certificates shall pass, only upon delivery of the Certificates (or, in lieu of such Certificates, affidavits of loss together with either a reasonable undertaking to indemnify Parent or the Company, if Parent believes that the person providing the indemnity is sufficiently creditworthy, or, if Parent does not so believe, indemnity bonds) to the Exchange Agent, such letter of transmittal to be in such form and have such other provisions as Parent and the Company may reasonably agree, and (ii) instructions for exchanging the Certificates and receiving the Merger Consideration to which such holder shall be entitled therefore pursuant to Section 3.1(a). Subject to Section 3.2(g), upon surrender of a Certificate for cancellation to the Exchange Agent together with such letter of transmittal, duly executed, the holder of such Certificate shall be entitled to receive in exchange therefor (i) a certificate representing that number of whole shares of Parent Common Stock that such holder is entitled to receive pursuant to Section 3.1(a) and (ii) a check in the aggregate amount (after giving effect to any required tax withholdings) of (A) the cash that such holder is entitled to receive pursuant to Section 3.1(a) plus (B) any cash in lieu of fractional shares determined in accordance with Section 3.2(d) plus (C) any cash dividends and any other dividends or other distributions that such holder has the right to receive pursuant to the provisions of this Section 3.2. The Certificate so surrendered shall forthwith be canceled. No interest will be paid or accrued on any amount payable upon due surrender of any Certificate. In the event of a transfer of ownership of Company Shares that occurred prior to the Effective Time, but is not registered in the transfer records of the Company, the Merger Consideration may be issued and/or paid to such a transferee if the Certificate formerly representing such Company Shares is presented to the Exchange Agent, accompanied by all documents required to evidence and effect such transfer and to evidence that any applicable stock transfer taxes have been paid. If any certificate for shares of Parent Common Stock is to be issued in a name other than that in which the Certificate surrendered in exchange therefor is registered, it shall be a condition of such exchange that the Person requesting such exchange shall pay any transfer or other taxes required by reason of the issuance of certificates for shares of Parent Common Stock in a name other than that of the registered holder of the Certificate surrendered, or shall establish to the satisfaction of Parent or the Exchange Agent that such tax has been paid or is not applicable.

(b) Distributions with Respect to Unexchanged Shares. Whenever a dividend or other distribution is declared by Parent in respect of Parent Common Stock, the record date for which is at or after the Effective Time, that declaration shall include dividends or other distributions in respect of all shares of Parent Common Stock issuable pursuant to this Agreement. No dividends or other distributions so declared in respect of such Parent Common Stock shall be paid to any holder of any unsurrendered Certificate until such Certificate is surrendered for exchange in accordance with this Section 3.2. Subject to the effect of applicable laws, following surrender of any such Certificate, there shall be issued or paid, less the amount of any withholding taxes that may be required thereon, to the holder of the certificates

representing whole shares of Parent Common Stock issued in exchange for such Certificate, without interest, (i) at the time of such surrender, the dividends or other distributions with a record date that is at or after the Effective Time and a payment date on or prior to the date of surrender of such whole shares of Parent Common Stock and not previously paid and (ii) at the appropriate payment date, the dividends or other distributions payable with respect to such whole shares of Parent Common Stock with a record date at or after the Effective Time but with a payment date subsequent to surrender. For purposes of dividends or other distributions in respect of shares of Parent Common Stock, all shares of Parent Common Stock to be issued pursuant to the Merger shall be deemed issued and outstanding as of the Effective Time.

(c) Transfers. After the Effective Time, there shall be no transfers on the stock transfer books of the Company of the Company Shares that were outstanding immediately prior to the Effective Time.

(d) Fractional Shares. Notwithstanding any other provision of this Agreement, no fractional shares of Parent Common Stock will be issued and any holder of Company Shares entitled to receive a fractional share of Parent Common Stock (after taking into account the aggregate number of shares of Parent Common Stock to be received in exchange for all shares held by such holder) but for this Section 3.2(d) shall be entitled to receive in lieu thereof an amount in cash (without interest) determined by multiplying such fraction (rounded to the nearest one-hundredth of a share) by the average closing price of a share of Parent Common Stock, as reported in The Wall Street Journal, Southwestern edition, on the five trading days immediately prior to the last business day before the Effective Time.

(e) Termination of Exchange Period; Unclaimed Merger Consideration. Any shares of Parent Common Stock and any portion of the cash, dividends or other distributions with respect to the Parent Common Stock deposited by Parent with the Exchange Agent (including the proceeds of any investments thereof) that remain unclaimed by the stockholders of the Company 180 days after the Effective Time shall be paid to Parent. Any stockholders of the Company who have not theretofore complied with this Article 3 shall thereafter be entitled to look only to Parent for payment of their Merger Consideration and any cash, dividends and other distributions in respect thereof issuable and/or payable pursuant to Section 3.1, Section 3.2(b) and Section 3.2(d) upon due surrender of their Certificates (or, in lieu of such Certificates, affidavits of loss together with either a reasonable undertaking to indemnify Parent or the Company, if Parent believes that the Person providing the indemnity is sufficiently creditworthy, or, if Parent does not so believe, indemnity bonds), in each case, without any interest thereon. Notwithstanding the foregoing, none of Parent, the Surviving Corporation, the Exchange Agent or any other Person shall be liable to any former holder of Company Shares for any amount properly delivered to a public official pursuant to applicable abandoned property, escheat or similar laws.

(f) Lost, Stolen or Destroyed Certificates. In the event any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed, and if Parent believes that the Person providing the indemnity is sufficiently creditworthy, the making of a reasonable undertaking to indemnify Parent or the Company, or, if Parent does not so believe, the posting by such Person of a bond in the form customarily required by Parent to indemnify against any claim that may be made against it with respect to such Certificate, Parent will issue the shares of Parent Common Stock and the Exchange Agent will distribute such Merger Consideration, dividends and other distributions in respect thereof issuable or payable in exchange for such lost, stolen or destroyed Certificate pursuant to Section 3.1, Section 3.2(b) and Section 3.2(d), in each case, without interest.

(g) Affiliates. Notwithstanding anything in this Agreement to the contrary, Certificates surrendered for exchange by any Rule 145 Affiliate (as determined pursuant to Section 6.10) of the Company shall not be exchanged until Parent has received a written agreement from such Person as provided in Section 6.10.

**SECTION 3.3 Dissenters' Rights.** Company Shares that are outstanding immediately prior to the Effective Time and that are held by stockholders who shall have not voted in favor of the Merger and who shall have made written demand for payment of the fair value for such shares in accordance with Section 5.12 of the TBCA (collectively, the "Dissenting Shares") shall not be converted into or represent

the right to receive the Merger Consideration. Such stockholders shall be entitled to receive payment of the fair value of the Company Shares held by them in accordance with the TBCA, except that all Dissenting Shares held by stockholders who shall have failed to perfect or who effectively shall have withdrawn or lost their rights to appraisal of such Company Shares under the TBCA shall thereupon be deemed to have been converted into and to be exchangeable, as of the Effective Time, for Merger Consideration in the manner provided in Section 3.1(a).

SECTION 3.4 Adjustments to Prevent Dilution. In the event that prior to the Effective Time, there shall have been declared or effected a reclassification, stock split (including a reverse split), stock dividend, stock distribution or similar event made with respect to the Company Shares or the Parent Common Stock, the Merger Consideration shall be equitably adjusted to reflect such event.

## ARTICLE 4

### REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as set forth in the disclosure letter delivered to Parent concurrently with the execution hereof (the "Company Disclosure Letter") or as disclosed with reasonable specificity in the Company Reports (as defined in Section 4.7), the Company represents and warrants to Parent that:

SECTION 4.1 Existence; Good Standing; Corporate Authority. The Company is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Texas. The Company is duly qualified to do business as a foreign corporation and is in good standing under the laws of any jurisdiction in which the character of the properties owned or leased by it therein or in which the transaction of its business makes such qualification necessary, except where the failure to be so qualified would not have or reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect (as defined in Section 9.9). The Company has all requisite corporate power and authority to own, operate and lease its properties and to carry on its business as now conducted. The copies of the Company's articles of incorporation and bylaws previously made available to Parent are true and correct and contain all amendments as of the date hereof.

SECTION 4.2 Authorization, Validity and Effect of Agreements. The Company has the requisite corporate power and authority to execute and deliver this Agreement and all other agreements and documents contemplated hereby, to which it is a party. The consummation by the Company of the transactions contemplated hereby has been duly authorized by all requisite corporate action, other than, with respect to the Merger, the approval and adoption of this Agreement by the Company's stockholders. This Agreement constitutes the valid and legally binding obligation of the Company to the extent it is a party, enforceable in accordance with their respective terms, subject to applicable bankruptcy, insolvency, moratorium or other similar laws relating to creditors' rights and general principles of equity.

SECTION 4.3 Capitalization. The authorized capital stock of the Company consists of 200,000,000 Company Shares, and 10,000,000 shares of the Company preferred stock, par value \$0.10 per share ("Company Preferred Stock"). As of August 10, 2001, there were (a) 49,911,612 Company Shares issued and outstanding, (b) no shares of Company Preferred Stock issued and outstanding, (c) 2,136,588 Company Shares subject to outstanding employee stock options, of which the weighted average exercise price was approximately \$27.67 per share and (d) 1,056,257 Company bonus units outstanding, of which the weighted average Designation Date Price (as defined in the Bonus Unit Plan) was approximately \$31.85 per unit. All issued and outstanding Company Shares (i) are duly authorized, validly issued, fully paid, nonassessable and free of preemptive rights, (ii) were not issued in violation of the terms of any agreement or other understanding binding upon the Company and (iii) were issued in compliance with all applicable charter documents of the Company and all applicable federal and state securities laws, rules and regulations. Except as set forth in this Section 4.3 and except for any Company Shares issued pursuant to the plans described in the Company Disclosure Letter, there are no outstanding shares of capital stock and there are no options, warrants, calls, subscriptions, shareholder rights plan or similar instruments, convertible securities, or other rights, agreements or commitments which obligate the Company or any of

its Subsidiaries to issue, transfer or sell any shares of capital stock or other voting securities of the Company or any of its Subsidiaries. The Company has no outstanding bonds, debentures, notes or other obligations the holders of which have the right to vote (or which are convertible into or exercisable for securities having the right to vote) with the stockholders of the Company on any matter.

**SECTION 4.4 Significant Subsidiaries.** For purposes of this Agreement, "Significant Subsidiary" shall mean significant subsidiary as defined in Rule 1-02 of Regulation S-X of the Securities Exchange Act (the "Exchange Act"). Each of the Company's Significant Subsidiaries is a corporation, limited liability company or partnership duly organized, validly existing and in good standing (where applicable) under the laws of its jurisdiction of incorporation or organization, has the corporate or partnership power and authority to own, operate and lease its properties and to carry on its business as it is now being conducted, and is duly qualified to do business and is in good standing (where applicable) in each jurisdiction in which the ownership, operation or lease of its property or the conduct of its business requires such qualification, except for jurisdictions in which such failure to be so qualified or to be in good standing would not have or reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. All of the outstanding shares of capital stock of, or other ownership interests in, each of the Company's Significant Subsidiaries is duly authorized, validly issued, fully paid and nonassessable, and is owned, directly or indirectly, by the Company free and clear of all liens, pledges, security interests, claims, preferential purchase rights or other rights, interests or encumbrances ("Liens"). Schedule 4.4 to the Company Disclosure Letter sets forth for each Significant Subsidiary of the Company, its name and jurisdiction of incorporation or organization.

**SECTION 4.5 No Violation.** Neither the Company nor any of its Subsidiaries is, or has received notice that it would be with the passage of time, in violation of any term, condition or provision of (a) its charter documents or bylaws, (b) any loan or credit agreement, note, bond, mortgage, indenture, contract, agreement, lease, license or other instrument or (c) any order of any court, governmental authority or arbitration board or tribunal, or any law, ordinance, governmental rule or regulation to which the Company or any of its Subsidiaries or any of their respective properties or assets is subject, or is delinquent with respect to any report required to be filed with any governmental entity, except, in the case of matters described in clause (b) or (c), as would not have or reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Except where it would not have a Company Material Adverse Effect, the Company and its Subsidiaries hold all permits, licenses, variances, exemptions, orders, franchises and approvals of all governmental authorities necessary for the lawful conduct of their respective businesses (the "Company Permits") and the Company and its Subsidiaries are in compliance with the terms of the Company Permits. No investigation by any governmental authority with respect to the Company or any of its Subsidiaries is pending or, to the knowledge of the Company, threatened, other than those that would not have or reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

**SECTION 4.6 No Conflict.**

(a) Neither the execution and delivery by the Company of this Agreement nor the consummation by the Company of the transactions contemplated hereby in accordance with the terms hereof will: (i) conflict with or result in a breach of any provisions of the charter documents or bylaws of the Company; (ii) violate, or conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination or in a right of termination or cancellation of, or give rise to a right of purchase under, or accelerate the performance required by, or result in the creation of any Lien upon any of the properties of the Company or its Subsidiaries under, or result in being declared void, voidable, or without further binding effect, or otherwise result in a detriment to the Company or any of its Subsidiaries under any of the terms, conditions or provisions of, any note, bond, mortgage, indenture, deed of trust, Company Permit, lease, contract, agreement, joint venture or other instrument or obligation to which the Company or any of its Subsidiaries is a party, or by which the Company or any of its Subsidiaries or any of their properties is bound or affected; or (iii) contravene or conflict with or constitute a violation of any provision of any law, rule, regulation, judgment, order or decree binding upon or applicable to the Company or any of its

Subsidiaries, except, in the case of matters described in clause (ii) or (iii), as would not have or reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(b) Neither the execution and delivery by the Company of this Agreement nor the consummation by the Company of the transactions contemplated hereby in accordance with the terms hereof or thereof will require any consent, approval or authorization of, or filing or registration with, any governmental or regulatory authority, other than (i) the filings provided for in Article I and (ii) filings required under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), the Exchange Act, the Securities Act or applicable state securities and "Blue Sky" laws and applicable foreign competition or antitrust laws ((i) and (ii) collectively, the "Regulatory Filings"), except for any consent, approval or authorization the failure of which to obtain and for any filing or registration the failure of which to make would not prevent the consummation of the Merger or otherwise prevent the Company from performing its obligations under this Agreement and would not have or reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(c) Other than as contemplated by Section 4.6(b), no consents, assignments, waivers, authorizations or other certificates are necessary in connection with the transactions contemplated hereby to provide for the continuation in full force and effect of all of the Company's material contracts or leases or for the Company to consummate the transactions contemplated hereby, except when the failure to receive such consents or other certificates would not have or reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(d) Except as set forth on Schedule 4.6(d) to the Company Disclosure Letter, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will: (i) result in any payment from the Company or its Subsidiaries (including severance, unemployment compensation, parachute payment, bonus or otherwise) becoming due to any director, employee or independent contractor of the Company or any of its Subsidiaries under any Company Plan (as defined in Section 4.11) or otherwise; (ii) increase any benefits otherwise payable under any Company Plan or otherwise; or (iii) result in the acceleration of the time of payment or vesting of any such benefits.

SECTION 4.7 Sec Documents. The Company has made available to Parent each registration statement, report, proxy statement or information statement (other than preliminary materials) filed by the Company with the Securities and Exchange Commission ("SEC") since January 1, 2000, each in the form (including exhibits and any amendments thereto) filed with the SEC prior to the date hereof (collectively, the "Company Reports"), and the Company has filed all forms, reports and documents required to be filed by it with the SEC pursuant to relevant securities statutes, regulations, policies and rules since such time. As of their respective dates, the Company Reports (i) were prepared in accordance with the applicable requirements of the Securities Act of 1933 ("Securities Act"), the Exchange Act, and the rules and regulations thereunder and complied with the then applicable accounting requirements and (ii) did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading except for such statements, if any, as have been modified by subsequent filings with the SEC prior to the date hereof. Each of the consolidated balance sheets included in or incorporated by reference into the Company Reports (including the related notes and schedules) fairly presents the consolidated financial position of the Company and its Subsidiaries as of its date and each of the consolidated statements of earnings, cash flows and stockholders' equity included in or incorporated by reference into the Company Reports (including any related notes and schedules) fairly presents the results of operations, cash flows or changes in stockholders' equity, as the case may be, of the Company and its Subsidiaries for the periods set forth therein (subject, in the case of unaudited statements, to such exceptions as may be permitted by Form 10-Q of the SEC), in each case in accordance with generally accepted accounting principles consistently applied during the periods involved, except as may be noted therein.

SECTION 4.8 Litigation and Liabilities. There are no actions, suits or proceedings pending against the Company or any of its Subsidiaries or, to the Company's knowledge, threatened against the Company

or any of its Subsidiaries, at law or in equity, or before or by any federal, state or foreign commission, board, bureau, agency or instrumentality, other than those that would not have or reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. There are no outstanding judgments, decrees, injunctions, awards or orders against the Company or any of its Subsidiaries, other than those that would not have or reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. There are no obligations or liabilities of any nature, whether or not accrued, contingent or otherwise and whether or not required to be disclosed, including those relating to environmental and occupational safety and health matters, or any other facts or circumstances that could result in any claims against, or obligations or liabilities of, the Company or any of its affiliates, except for those that would not have or reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

SECTION 4.9 Absence of Certain Changes. Since December 31, 2000, the Company has conducted its business only in the ordinary and usual course of business, and during such period there have not been (i) events, conditions, actions, occurrences or omissions that would have or would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect; (ii) any change by the Company or any of its Subsidiaries in any of its accounting methods, principles or practices or any of its tax methods, practices or elections, except for changes required by generally accepted accounting principles; (iii) any material damage, destruction, or loss to the business or properties of the Company and its Subsidiaries (whether or not covered by insurance) taken as a whole; (iv) any declaration, setting aside or payment of any dividend (other than ordinary quarterly dividends of \$0.1325 per share) or other distribution in respect of the capital stock of the Company, or any direct or indirect redemption, purchase or any other acquisition by the Company of any such stock; (v) any change in the capital stock or in the number of shares or classes of the Company's authorized or outstanding capital stock (other than as a result of issuances under the Company Plans or exercises of options to purchase the Company Shares outstanding or issued as permitted hereunder); (vi) any increase in or establishment of any bonus, insurance, severance, deferred compensation, pension, retirement, profit sharing, stock option, stock purchase or other employee benefit plan, except in the ordinary course of business; or (vii) any event, condition, action, occurrence or omission that is prohibited on or after the date of this Agreement under Section 6.1 of this Agreement.

#### SECTION 4.10 Taxes.

(a) Each of the Company, its Subsidiaries and each affiliated, consolidated, combined, unitary or similar group of which any such corporation is or, since January 1, 1991, was a member has (i) duly filed (or there has been filed on its behalf) on a timely basis (taking into account any extensions of time to file before the date hereof) with appropriate governmental authorities all tax returns, statements, reports, declarations, estimates and forms ("Returns") required to be filed by or with respect to it, except to the extent that any failure to file would not have or reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, and (ii) duly paid or deposited in full on a timely basis or made adequate provisions in accordance with generally accepted accounting principles (or there has been paid or deposited or adequate provision has been made on its behalf) for the payment of all taxes required to be paid by it other than those being contested in good faith by the Company or a Subsidiary of the Company and except to the extent that any failure to pay or deposit or make adequate provision for the payment of such taxes would not have or reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(b) (i) The federal income tax returns of the Company and each of its Subsidiaries have been examined by the Internal Revenue Service (the "IRS") (or the applicable statutes of limitation for the assessment of federal income taxes for such periods have expired) for all periods; (ii) except to the extent being contested in good faith, all material deficiencies asserted as a result of such examinations and any other examinations of the Company and its Subsidiaries by any taxing authority have been paid fully, settled or adequately provided for in the financial statements contained in the Company Reports; (iii) as of the date hereof, neither the Company nor any of its Subsidiaries has granted any requests, agreements, consents or waivers to extend the statutory period of limitations applicable to the assessment of any taxes

with respect to any Returns of the Company or any of its Significant Subsidiaries that will be outstanding as of the Effective Time; (iv) neither the Company nor any of its Subsidiaries is a party to, is bound by or has any obligation under any tax sharing, allocation or indemnity agreement or any similar agreement or arrangement that would have or would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect;

(v) there are no tax liens on any assets of the Company or its Subsidiaries except for taxes not yet currently due, with respect to matters being contested by the Company in good faith for which adequate reserves are reflected in the financial statements and those which could not reasonably be expected, individually or in the aggregate, to result in a Company Material Adverse Effect; and (vi) neither the Company nor any of its Subsidiaries is a party to an agreement that provides for the payment of any amount that would constitute a "parachute payment" within the meaning of section 280G of the Code.

For purposes of this Agreement, "tax" or "taxes" means all federal, state, county, local, foreign or other net income, gross income, gross receipts, sales, use, ad valorem, transfer, accumulated earnings, personal holding, excess profits, franchise, profits, license, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property, disability, capital stock, or windfall profits taxes, customs duties or other taxes, fees, assessments or governmental charges of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amounts imposed by any taxing authority (domestic or foreign).

**SECTION 4.11 Employee Benefit Plans.** For purposes of this Section 4.11, the Company Subsidiaries shall include any enterprise which, with the Company, forms or formed a controlled group of corporations, a group of trades or business under common control or an affiliated service group, within the meaning of section 414(b), (c) or (m) of the Code. All employee benefit plans, programs, arrangements and agreements covering active, former or retired employees of the Company and the Company Subsidiaries which provide material benefits to such employees are listed in the Company Disclosure Letter (the "Company Plans"). The Company has made available to Parent true, complete and correct copies of each Company Plan, any related trust agreement, annuity or insurance contract or other funding vehicle, and, except as would not have or reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect:

(a) each Company Plan has been maintained and administered in compliance with its terms and is, to the extent required by applicable law or contract, fully funded without having any deficit or unfunded actuarial liability or adequate provision has been made therefor; (b) all required employer contributions under any such plans have been made and the applicable funds have been funded in accordance with the terms thereof, (c) each Company Plan that is required or intended to be qualified under applicable law or registered or approved by a governmental agency or authority has been so qualified, registered or approved by the appropriate governmental agency or authority, and nothing has occurred since the date of the last qualification, registration or approval to adversely affect, or cause, the appropriate governmental agency or authority to revoke such qualification, registration or approval; (d) to the extent applicable, the Company Plans comply, in all respects, with the requirements of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Code and any other applicable tax act and other laws, and any Company Plan intended to be qualified under section 401(a) of the Code has been determined by the Internal Revenue Service to be so qualified and nothing has occurred to cause the loss of such qualified status; (e) no Company Plan is covered by Title IV of ERISA or section 412 of the Code; (f) there are no pending or anticipated claims against or otherwise involving any of the Company Plans and no suit, action or other litigation (excluding claims for benefits incurred in the ordinary course of the Company Plan activities) has been brought against or with respect to any Company Plan; (g) all contributions, reserves or premium payments required to be made as of the date hereof to the Company Plans have been made or provided for; (h) neither the Company nor any Company Subsidiary has incurred or reasonably expects to incur any liability under subtitle C or D of Title IV of ERISA with respect to any "single-employer plan," within the meaning of section 4001(a)(15) of ERISA, currently or formerly maintained by the Company, any Company Subsidiary or any entity which is considered one employer with the Company under section 4001 of ERISA; (i) neither the Company nor any Company Subsidiary has incurred or reasonably expects to incur any withdrawal liability under subtitle E of Title IV of ERISA with respect to any "multi-employer plan," within the meaning of section 4001(a)(3) of

ERISA; and (j) neither the Company nor any Company Subsidiary has any obligations for retiree health and life benefits under any Company Plan.

#### SECTION 4.12 Labor Matters.

(a) Neither the Company nor any of its Subsidiaries is a party to, or bound by, any collective bargaining agreement, contract or other agreement or understanding with a labor union or labor organization.

(b) Neither the Company nor any of its Subsidiaries is subject to a dispute, strike or work stoppage with respect to any collective bargaining agreement, contract or other agreement or understanding with a labor union or labor organization to which it is a party or by which it is bound that would have or would be reasonably expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(c) To the Company's knowledge, there are no organizational efforts with respect to the formation of a collective bargaining unit presently being made or threatened involving employees of the Company or any of its Subsidiaries.

#### SECTION 4.13 Environmental Matters.

(a) Except as would not have or reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, there are not any present or, to the knowledge of the Company, past conditions or circumstances that interfere with the conduct of the business of the Company and each of its Subsidiaries in the manner now conducted or which interfere with compliance with any order of any court, governmental authority or arbitration board or tribunal, or any law, ordinance, governmental rule or regulation related to human health or the environment ("Environmental Law");

(b) Except as would not have or reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, there are not any present or, to the knowledge of the Company, past conditions or circumstances at, or arising out of, any current or, to the knowledge of the Company, former businesses, assets or properties of the Company or any Subsidiary of the Company, including but not limited to, on-site or off-site disposal or release of any chemical substance, product or waste, which constitute a violation under any Environmental Law or could reasonably be expected to give rise to: (i) liabilities or obligations for any cleanup, remediation, disposal or corrective action under any Environmental Law or (ii) claims arising for personal injury, property damage, or damage to natural resources;

(c) Except as would not have or reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, neither the Company nor any of its Subsidiaries has (i) received any notice of noncompliance with, violation of, or liability or potential liability under any Environmental Law, (ii) received any notice regarding any existing, pending or threatened investigation or inquiry related to alleged violations under any Environmental Laws or regarding any claims for remedial obligations or contribution under any Environmental Laws or (iii) entered into any consent decree or order or is subject to any order of any court or governmental authority or tribunal under any Environmental Law or relating to the cleanup of any hazardous materials contamination;

(d) Except as would not have or reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, the Company and its Subsidiaries have in full force and effect all material environmental permits, licenses, approvals and other authorizations required to conduct their operations and are operating in material compliance thereunder; and

(e) Except as would not have or reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, the Company does not know of any reason that would preclude it from renewing or obtaining a reissuance of the material permits, licenses or other authorizations required pursuant to any applicable Environmental Laws to operate and use any of the Company's or its Subsidiaries' assets for their current purposes and uses.

**SECTION 4.14 Intellectual Property.** The Company and its Subsidiaries own or possess all necessary licenses or other valid rights to use all patents, patent rights, trademarks, trademark rights and proprietary information used or held for use in connection with their respective businesses as currently being conducted, free and clear of Liens, except where the failure to own or possess such licenses and other rights would not have or would not be reasonably expected to have, individually or in the aggregate, a Company Material Adverse Effect, and there are no assertions or claims challenging the validity of any of the foregoing which would have or would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Except in the ordinary course of business, neither the Company nor any of its Subsidiaries has granted to any other person any license to use any of the foregoing. The conduct of the Company's and its Subsidiaries' respective businesses as currently conducted does not conflict with any patents, patent rights, licenses, trademarks, trademark rights, trade names, trade name rights or copyrights of others in a way which would have, or would be reasonably expected to have, individually or in the aggregate, a Company Material Adverse Effect. There is no infringement of any proprietary right owned by or licensed by or to the Company or any of its Subsidiaries in a way which would have, or would be reasonably expected to have, individually or in the aggregate, a Company Material Adverse Effect.

**SECTION 4.15 Title to Properties.** Except for goods and other property sold, used or otherwise disposed of since December 31, 2000 in the ordinary course of business for fair value, the Company has defensible title for oil and gas purposes to all its properties, interests in properties and assets, real and personal, reflected in its December 31, 2000 financial statements, free and clear of any Lien, except: (a) Liens reflected in the balance sheet of the Company as of December 31, 2000; (b) Liens for current taxes not yet due and payable; and (c) such imperfections of title, easements and Liens that would not have or be reasonably expected to have, individually or in the aggregate, a Company Material Adverse Effect. All leases and other agreements pursuant to which the Company or any of its Subsidiaries leases or otherwise acquires or obtains operating rights affecting any real or personal property are in good standing, valid, and effective; and there is not, under any such leases, any existing or prospective default or event of default or event which with notice or lapse of time, or both, would constitute a default by the Company or any of its Subsidiaries that would not have or be reasonably expected to have, individually or in the aggregate, a Company Material Adverse Effect. All operating equipment of the Company and its Subsidiaries is in good operating condition, ordinary wear and tear excepted. The Company has not received any material advance, take-or-pay or other similar payments that entitle purchasers of production to receive deliveries of hydrocarbons without paying therefor, and, on a net, company-wide basis, the Company is neither underproduced nor overproduced under gas balancing or similar arrangements.

**SECTION 4.16 Insurance.** The Company and its Subsidiaries maintain insurance coverage adequate and customary in the industry for the operation of their respective businesses.

**SECTION 4.17 No Brokers.** The Company has not entered into any contract, arrangement or understanding with any person or firm which may result in the obligation of Parent, Merger Sub or the Company pay any finder's fees, brokerage or agent's commissions or other like payments in connection with the negotiations leading to this Agreement or the consummation of the transactions contemplated hereby, except that the Company has retained Goldman, Sachs & Co. and J.P. Morgan Securities Inc. to act as its financial advisors in connection with the Merger and render the opinions referred to in Section 4.18, the terms of which have been disclosed in writing to Parent prior to the date hereof.

**SECTION 4.18 Opinions of Financial Advisors.** The Board of Directors of the Company has received the opinion of Goldman, Sachs & Co. and J.P. Morgan Securities Inc. to the effect that, as of the date of this Agreement, the Merger Consideration is fair, from a financial point of view, to the holders of the Company Shares (other than Parent); it being understood and acknowledged by Parent that each such opinion has been rendered for the benefit of the Board of Directors of the Company, and is not intended to, and may not, be relied upon by Parent, its affiliates or their respective Subsidiaries.

#### SECTION 4.19 Contracts; Debt Instruments.

(a) Except as disclosed on Schedule 4.19 of the Company Disclosure Letter, there are no contracts that are material to the business, properties, assets, financial condition or results of operations of the Company and its Subsidiaries taken as a whole ("Material Contracts"). Neither the Company nor any of its Subsidiaries is in violation of or in default under (nor does there exist any condition which with the passage of time or the giving of notice or both would cause such a violation of or default under) any Material Contract to which it is a party or by which it or any of its properties or assets is bound, except for violations or defaults that have not and could not, individually or in the aggregate, reasonably be expected to result in a Company Material Adverse Effect. Each Material Contract is in full force and effect, and is a legal, valid and binding obligation of the Company or a Company Subsidiary and, to the knowledge of the Company, each of the other parties thereto, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium or other similar laws relating to creditors' rights and general principles of equity. No condition exists or event has occurred which (whether with or without notice or lapse of time or both) would constitute a default by the Company or a Company Subsidiary or, to the knowledge of the Company, any other party thereto under any Material Contract or result in a right of termination of any Material Contract.

(b) Set forth in Schedule 4.19(b) of the Company Disclosure Letter is (i) a list of all loan or credit agreements, notes, bonds, mortgages, indentures and other agreements and instruments pursuant to which any indebtedness of the Company or its Subsidiaries in an aggregate principal amount in excess of \$5,000,000 is outstanding or may be incurred, and (ii) the respective principal amounts currently outstanding thereunder.

(c) Neither the Company nor any of its Subsidiaries has entered into any contract and there is no commitment, judgment, injunction, order or decree to which the Company or any of its Subsidiaries is a party or subject to that has or could reasonably be expected to have the effect of prohibiting or impairing the conduct of business by the Company or any of its Subsidiaries or any contract that may be terminable as a result of Parent's status as a competitor of any party to such contract or arrangement.

SECTION 4.20 Vote Required. The affirmative vote of holders of two-thirds of the outstanding Company Shares is the only vote necessary to approve this Agreement and the transactions contemplated hereby (the "Company Requisite Vote").

SECTION 4.21 Certain Approvals. The Company's Board of Directors has taken any and all necessary and appropriate action to render inapplicable to the Merger and the transactions contemplated by this Agreement and the Principal Shareholders Agreement the provisions of Section 13.03 of the TBCA and any other "fair price," "moratorium," control share acquisition, interested shareholder or other similar antitakeover provision or regulation and any restrictive provision of any antitakeover provision in the articles of incorporation or bylaws of the Company.

SECTION 4.22 Certain Contracts. Neither the Company nor any of its Subsidiaries is a party to or bound by (i) any non-competition agreement or any other agreement or obligation which purports to limit the manner in which, or the localities in which, the current business of the Company and its Subsidiaries, taken as a whole, or Parent and its Subsidiaries, taken as a whole, is conducted or (ii) any executory agreement or obligation which pertains to the acquisition or disposition of any asset, or which provides any third party any lien, claim or preferential right with regard thereto, except, in the case of this clause (ii), for such agreements or obligations that would not have or be reasonably expected to have, individually or in the aggregate, a Company Material Adverse Effect.

## ARTICLE 5

### REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Except as set forth in the disclosure letter delivered to the Company concurrently with the execution hereof (the "Parent Disclosure Letter") or as disclosed with reasonable specificity in the Parent Reports

(as defined in Section 5.7), Parent and Merger Sub, jointly and severally, represent and warrant to the Company that:

**SECTION 5.1 Existence; Good Standing; Corporate Authority.** Each of Parent and Merger Sub is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware. Each of Parent and Merger Sub is duly qualified to do business as a foreign corporation and is in good standing under the laws of any jurisdiction in which the character of the properties owned or leased by it therein or in which the transaction of its business makes such qualification necessary, except where the failure to be so qualified would not have or reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect (as defined in Section 9.9). Each of Parent and Merger Sub has all requisite corporate power and authority to own, operate and lease its properties and to carry on its business as now conducted. As of the date hereof, the copies of each of Parent's and Merger Sub's certificate of incorporation and bylaws previously made available to the Company are true and correct and contain all amendments.

**SECTION 5.2 Authorization, Validity and Effect of Agreements.** Each of Parent and Merger Sub has the requisite corporate power and authority to execute and deliver this Agreement and all other agreements and documents contemplated hereby, to which it is a party. The consummation by each of Parent and Merger Sub of the transactions contemplated hereby, including the issuance and delivery by Parent of shares of Parent Common Stock pursuant to the Merger, has been duly authorized by all requisite corporate action, other than, with respect to the Merger, the approval and adoption of this Agreement by Parent's stockholders. This Agreement constitutes the valid and legally binding obligation of each of Parent and Merger Sub to the extent it is a party, enforceable in accordance with their respective terms, subject to applicable bankruptcy, insolvency, moratorium or other similar laws relating to creditors' rights and general principles of equity.

**SECTION 5.3 Capitalization.** The authorized capital stock of Parent consists of 400,000,000 shares of Parent Common Stock, one share of Parent Special Voting Stock, par value \$0.10 per share, and 4,500,000 shares of Parent's preferred stock, par value \$1.00 per share ("Parent Preferred Stock"). As of August 10, 2001, there were (a) 125,983,553 shares of Parent Common Stock issued and outstanding, (b) one share of Parent Special Voting Stock issued and outstanding, (c) 5,842,587 shares of Parent Common Stock reserved for issuance under the stock options plans of Parent described in the Parent Disclosure Letter, (d) 125,444 shares of Parent Common Stock reserved for issuance under the Parent Restricted Stock Award Plan, (e) 40,646 shares of Parent Common Stock reserved for issuance under certain conditional stock awards granted to former employees of PennzEnergy Company, (f) 2,128,248 shares reserved for issuance upon exchange of outstanding exchangeable shares ("Northstar Exchangeable Shares") issued by Northstar Energy Corporation, an Alberta corporation ("Northstar"), (g) 1,500,000 shares of Parent Preferred Stock designated as 6.49% Cumulative Preferred Stock, Series A, issued and outstanding and (h) 1,000,000 unissued shares of Parent Preferred Stock designated as Series A Junior Participating Preferred Stock. All issued and outstanding shares of Parent Common Stock (i) are duly authorized, validly issued, fully paid, nonassessable and, except as set forth in the Parent Disclosure Letter, free of preemptive rights, (ii) were not issued in violation of the terms of any agreement or other understanding binding upon Parent and (iii) were issued in compliance with all applicable charter documents of Parent and all applicable federal and state securities laws, rules and regulations. One right to purchase Series A Junior Participating Preferred Stock of Parent (each, a "Parent Right") issued pursuant to a Rights Agreement, dated as of August 17, 1999 (the "Parent Rights Agreement"), between Parent and BankBoston, N.A., is associated with and attached to each outstanding share of Parent Common Stock. The shares of Parent Common Stock to be issued in connection with the Merger, when issued in accordance with this Agreement, will be validly issued, fully paid and nonassessable. As of the date of this Agreement, except as set forth in this

Section 5.3 and except for any shares of Parent Common Stock issued pursuant to the plans described in the Parent Disclosure Letter, there are no outstanding shares of capital stock and there are no options, warrants, calls, subscriptions, convertible securities, or other rights, agreements or commitments which obligate Parent or any of its Subsidiaries to issue, transfer or sell any shares of capital stock or other voting securities of Parent or any of its Subsidiaries. As of the date of this

Agreement, Parent has no outstanding bonds, debentures, notes or other obligations the holders of which have the right to vote (or which are convertible into or exercisable for securities having the right to vote) with the stockholders of Parent on any matter.

#### SECTION 5.4 Significant Subsidiaries.

(a) Each of Parent's Significant Subsidiaries is a corporation, limited liability company or partnership duly organized, validly existing and in good standing (where applicable) under the laws of its jurisdiction of incorporation or organization, has the corporate, limited liability company or partnership power and authority to own, operate and lease its properties and to carry on its business as it is now being conducted, and is duly qualified to do business and is in good standing (where applicable) in each jurisdiction in which the ownership, operation or lease of its property or the conduct of its business requires such qualification, except for jurisdictions in which such failure to be so qualified or to be in good standing would not have or reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect. All of the outstanding shares of capital stock of, or other ownership interests in, each of Parent's Significant Subsidiaries is duly authorized, validly issued, fully paid and nonassessable, and is owned, directly or indirectly, by Parent free and clear of all Liens. Schedule 5.4 to the Parent Disclosure Letter sets forth for each Significant Subsidiary of Parent its name and jurisdiction of incorporation or organization.

(b) Devon Energy Production Company, L.P. ("Devon Production"), a Significant Subsidiary, is a limited partnership (except for tax purposes) duly organized and validly existing under Oklahoma law, the general partner of which is Devon Energy Management Company, L.L.C., an Oklahoma limited liability company which is wholly owned by Devon Energy Corporation (Oklahoma), an Oklahoma corporation, and has elected to be treated as a sole proprietorship for federal income tax purposes. Devon Production has one limited partner. All of the outstanding partnership interests of Devon Production are owned directly or indirectly by Parent.

(c) All of the outstanding shares of capital stock of Merger Sub are owned directly by Parent. Merger Sub was formed solely for the purpose of engaging in the transactions contemplated hereby and has not engaged in any activities other than in connection with the transactions contemplated by this Agreement.

SECTION 5.5 No Violation. Neither Parent nor any of its Subsidiaries is, or has received notice that it would be with the passage of time, in violation of any term, condition or provision of (a) its charter documents or bylaws, (b) any loan or credit agreement, note, bond, mortgage, indenture, contract, agreement, lease, license or other instrument or (c) any order of any court, governmental authority or arbitration board or tribunal, or any law, ordinance, governmental rule or regulation to which Parent or any of its Subsidiaries or any of their respective properties or assets is subject, or is delinquent with respect to any report required to be filed with any governmental entity, except, in the case of matters described in clause (b) or (c), as would not have or reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect. Except as would not have a Parent Material Adverse Effect, Parent and its Subsidiaries hold all permits, licenses, variances, exemptions, orders, franchises and approvals of all governmental authorities necessary for the lawful conduct of their respective businesses (the "Parent Permits") and Parent and its Subsidiaries are in compliance with the terms of the Parent Permits. No investigation by any governmental authority with respect to Parent or any of its Subsidiaries is pending or, to the knowledge of Parent, threatened, other than those that would not have or reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

#### SECTION 5.6 No Conflict.

(a) Neither the execution and delivery by Parent and Merger Sub of this Agreement nor the consummation by Parent and Merger Sub of the transactions contemplated hereby in accordance with the terms hereof will: (i) conflict with or result in a breach of any provisions of the charter documents or bylaws of Parent or Merger Sub; (ii) violate, or conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default)

under, or result in the termination or in a right of termination or cancellation of, or give rise to a right of purchase under, or accelerate the performance required by, or result in the creation of any Lien upon any of the properties of Parent or its Subsidiaries under, or result in being declared void, voidable, or without further binding effect, or otherwise result in a detriment to Parent or any of its Subsidiaries under any of the terms, conditions or provisions of, any note, bond, mortgage, indenture, deed of trust, license, franchise, permit, lease, contract, agreement, joint venture or other instrument or obligation to which Parent or any of its Subsidiaries is a party, or by which Parent or any of its Subsidiaries or any of their properties is bound or affected; or (iii) contravene or conflict with or constitute a violation of any provision of any law, rule, regulation, judgment, order or decree binding upon or applicable to Parent or any of its Subsidiaries, except, in the case of matters described in clause (ii) or (iii), as would not have or reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

(b) Neither the execution and delivery by Parent or Merger Sub of this Agreement nor the consummation by Parent or Merger Sub of the transactions contemplated hereby in accordance with the terms hereof will require any consent, approval or authorization of, or filing or registration with, any governmental or regulatory authority, other than Regulatory Filings, and listing of the Parent Common Stock to be issued in the Merger on the AMEX, except for any consent, approval or authorization the failure of which to obtain and for any filing or registration the failure of which to make would not prevent the consummation of the Merger or otherwise prevent Parent from performing its obligations under this Agreement and would not have or reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

(c) Other than as contemplated by Section 5.6(b), no consents, assignments, waivers, authorizations or other certificates are necessary in connection with the transactions contemplated hereby to provide for the continuation in full force and effect of all of Parent's material contracts or leases or for Parent to consummate the transactions contemplated hereby, except when the failure to receive such consents or other certificates would not have or reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

SECTION 5.7 SEC Documents. Parent has made available to the Company each registration statement, report, proxy statement or information statement (other than preliminary materials) filed by Parent with the SEC since January 1, 2000, each in the form (including exhibits and any amendments thereto) filed with the SEC prior to the date hereof (collectively, the "Parent Reports"), and Parent has filed all forms, reports and documents required to be filed by it with the SEC pursuant to relevant securities statutes, regulations, policies and rules since such time. As of their respective dates, the Parent Reports (i) were prepared in accordance with the applicable requirements of the Securities Act, the Exchange Act, and the rules and regulations thereunder and complied with the then applicable accounting requirements and (ii) did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading except for such statements, if any, as have been modified by subsequent filings with the SEC prior to the date hereof. Each of the consolidated balance sheets included in or incorporated by reference into the Parent Reports (including the related notes and schedules) fairly presents the consolidated financial position of Parent and its Subsidiaries as of its date and each of the consolidated statements of operations, cash flows and stockholders' equity included in or incorporated by reference into the Parent Reports (including any related notes and schedules) fairly presents the results of operations, cash flows or changes in stockholders' equity, as the case may be, of Parent and its Subsidiaries for the periods set forth therein (subject, in the case of unaudited statements, to such exceptions as may be permitted by Form 10-Q of the SEC), in each case in accordance with generally accepted accounting principles consistently applied during the periods involved, except as may be noted therein.

SECTION 5.8 Absence of Certain Changes. Since December 31, 2000, Parent has conducted its business only in the ordinary and usual course of business, and during such period there have not been (i) events, conditions, actions, occurrences or omissions that would have or would reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect; (ii) any change by Parent or

any of its Subsidiaries in any of its accounting methods, principles or practices or any of its tax methods, practices or elections, except for changes required by generally accepted accounting principles; or (iii) any declaration, setting aside or payment of any dividend or other distribution in respect of the capital stock of Parent (except for, and provided that, Parent may continue to pay or cause to be paid, dividends upon the shares of Parent Common Stock and the Northstar Exchangeable Shares at a rate not greater than \$.05 per share in any quarter and dividends upon its 6.49% cumulative preferred stock).

SECTION 5.9 No Brokers. Other than UBS Warburg LLC, Parent has not entered into any contract, arrangement or understanding with any person or firm which may result in the obligation of Parent, Merger Sub or the Company to pay any finder's fees, brokerage or agent's commissions or other like payments in connection with the negotiations leading to this Agreement or the consummation of the transactions contemplated hereby.

SECTION 5.10 Opinion of Financial Advisor. The Board of Directors of Parent has received the opinion of UBS Warburg LLC to the effect that, as of the date of this Agreement, the Merger Consideration is fair, from a financial point of view, to Parent; it being understood and acknowledged by Parent that such opinion has been rendered for the benefit of the Board of Directors of Parent, and is not intended to, and may not, be relied upon by the Company, its affiliates or their respective Subsidiaries.

SECTION 5.11 Vote Required. The affirmative vote of the holders of a majority of the votes cast in person or by proxy by holders of Parent Common Stock and the outstanding Northstar Exchangeable Shares, voting as a single class with the Parent Special Voting Share voting for the Northstar Exchangeable Shares as provided in Parent's charter, represented in person or by proxy at a meeting at which a quorum is present, approving the issuance of shares of Parent Common Stock required to be issued pursuant to Article 3, is the only vote of the holders of any class or series of Parent capital stock necessary to approve this Agreement and the transactions contemplated hereby (the "Parent Requisite Vote"); provided, however, if a proposal to amend Parent's certificate of incorporation is presented at the meeting for approval pursuant to Section 2.1 hereof, the affirmative vote of the holders of a majority of the outstanding shares of Parent Common Stock and the outstanding Northstar Exchangeable Shares, voting as a single class with the Parent Special Voting Share voting for the Northstar Exchangeable Shares as provided in Parent's charter, will be required for approval.

SECTION 5.12 Financing. Parent has available to it sources of financing sufficient to satisfy its obligation to make the payment of the aggregate cash consideration when such payment is required pursuant to this Agreement.

SECTION 5.13 Litigation and Liabilities. There are no actions, suits or proceedings pending against Parent or any of its Subsidiaries or, to Parent's knowledge, threatened against Parent or any of its Subsidiaries, at law or in equity, or before or by any federal, state or foreign commission, board, bureau, agency or instrumentality, other than those that would not have or be reasonably expected to have, individually or in the aggregate, a Parent Material Adverse Effect. There are no outstanding judgments, decrees, injunctions, awards or orders against Parent or any of its Subsidiaries, other than those that would not have or be reasonably expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

SECTION 5.14 Title to Properties. Except for goods and other property sold, used or otherwise disposed of since December 31, 2000 in the ordinary course of business for fair value, Parent has defensible title for oil and gas purposes to all its properties, interests in properties and assets, real and personal, reflected in its December 31, 2000 financial statements, free and clear of any Lien, except: (a) Liens reflected in the balance sheet of Parent as of December 31, 2000; (b) Liens for current taxes not yet due and payable and (c) such imperfections of title, easements and Liens that would not have or be reasonably expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

## ARTICLE 6

### COVENANTS

SECTION 6.1 Conduct of Business. Prior to the Effective Time, except as set forth in the Company Disclosure Letter or as expressly contemplated by any other provision of this Agreement, including Schedule 6.13, unless Parent has consented in writing thereto, the Company:

- (a) shall, and shall cause each of its Subsidiaries to, conduct its operations according to their usual, regular and ordinary course in substantially the same manner as heretofore conducted;
- (b) shall use its reasonable best efforts, and shall cause each of its Subsidiaries to use its reasonable best efforts, to preserve intact their business organizations and goodwill, keep available the services of their respective officers and employees and maintain satisfactory relationships with those persons having business relationships with them;
- (c) shall not amend its articles of incorporation or bylaws;
- (d) shall promptly notify Parent of any material change in its financial condition or business or any material litigation or material governmental complaints, investigations or hearings (or communications in writing indicating that such litigation, complaints, investigations or hearings may be contemplated), or the breach in any material respect of any representation or warranty contained herein;
- (e) shall promptly deliver or otherwise make available to the other true and correct copies of any report, statement or schedule filed with the SEC subsequent to the date of this Agreement;
- (f) shall not (i) except pursuant to the exercise of options, warrants, conversion rights and other contractual rights existing on the date hereof and disclosed in the Company Disclosure Letter, issue any shares of its capital stock, effect any stock split or otherwise change its capitalization as it existed on the date hereof; (ii) grant, confer or award any option, warrant, conversion right or other right not existing on the date hereof to acquire any shares of its capital stock except the grant of options to new employees consistent with past practice in an amount not to exceed 100,000 Company Shares or pursuant to contractual commitments existing on the date of this Agreement and disclosed in the Company Disclosure Letter; (iii) increase any compensation or benefits, except in the ordinary course of business consistent with past practice, or enter into or amend any employment agreement with any of its present or future officers or directors, except with new employees consistent with past practice, or (iv) adopt any new employee benefit plan (including any stock option, stock benefit or stock purchase plan) or amend (except as required by law) any existing employee benefit plan in any material respect, except for changes which are less favorable to participants in such plans;
- (g) shall not, and, in the case of clause (ii) below, shall not permit any of its Subsidiaries to (i) declare, set aside or pay any dividend or make any other distribution or payment with respect to any shares of its capital stock (other than the Company's ordinary quarterly dividends payable with respect to the Company Common Stock of \$0.1325 per share) or (ii) redeem, purchase or otherwise acquire any shares of its capital stock or capital stock of any of its Subsidiaries or any option, warrant, conversion right or other right to acquire such shares, or make any commitment for any such action;
- (h) shall not, and shall not permit any of its Subsidiaries to, sell, lease or otherwise dispose of any of its assets (including capital stock of Subsidiaries) which are material to the Company, individually or in the aggregate, except in the ordinary course of business;
- (i) shall not, and shall not permit any of its Subsidiaries to, except pursuant to contractual commitments in effect on the date hereof and disclosed in the Company Disclosure Letter and except for amounts that in the aggregate do not exceed \$3,000,000, authorize, propose, agree to, enter into or consummate any merger, consolidation or business combination transaction (other than the Merger) or acquire or agree to acquire by merging or consolidating with, or by purchasing a substantial equity

interest in or a substantial portion of the assets of, or by any other manner, any business or any corporation, partnership, association or other business organization or division thereof;

(j) except as may be required as a result of a change in law or in generally accepted accounting principles, change any of the accounting principles or practices used by it;

(k) shall, and shall cause any of its Subsidiaries to, use reasonable best efforts to maintain with financially responsible insurance companies insurance in such amounts and against such risks and losses as are customary for such party;

(l) shall not, and shall not permit any of its Subsidiaries to, except where it would not have and would not be reasonably expected to have, individually or in the aggregate, a Company Material Adverse Effect, (i) make or rescind any express or deemed election relating to taxes, including elections for any and all joint ventures, partnerships, limited liability companies, working interests or other investments where it has the capacity to make such binding election, (ii) settle or compromise any claim, action, suit, litigation, proceeding, arbitration, investigation, audit or controversy relating to taxes, or (iii) change in any respect any of its methods of reporting any item for federal income tax purposes from those employed in the preparation of its federal income tax return for the most recent taxable year for which a return has been filed, except as may be required by applicable law;

(m) shall not, nor shall it permit any of its Subsidiaries to, (i) incur any indebtedness for borrowed money (except under credit lines in existence as of the date of this Agreement) or guarantee any such indebtedness or issue or sell any debt securities or warrants or rights to acquire any debt securities of such party or any of its Subsidiaries or guarantee any debt securities of others, (ii) except in the ordinary course of business, enter into any material lease (whether such lease is an operating or capital lease) or create any material mortgages, liens, security interests or other encumbrances on the property of Parent or the Company or any of their Subsidiaries in connection with any indebtedness thereof, or (iii) make or commit to make aggregate capital expenditures in excess of \$50 million over the fiscal 2001 capital expenditures budget disclosed in reasonable detail on the Company Disclosure Letter;

(n) subject to Section 6.4, shall not take any action that is likely to delay materially or adversely affect the ability of any of the parties hereto to obtain any consent, authorization, order or approval of any governmental commission, board or other regulatory body or the expiration of any applicable waiting period required to consummate the Merger;

(o) shall not terminate, amend, modify or waive any provision of any confidentiality or standstill agreement to which it or any of its respective Subsidiaries is a party; and during such period shall enforce, to the fullest extent permitted under applicable law, the provisions of such agreement, including by obtaining injunctions to prevent any breaches of such agreements and to enforce specifically the terms and provisions thereof in any court of the United States of America or any state having jurisdiction;

(p) shall not enter into or amend any agreement with any holder of Company Shares with respect to holding, voting or disposing of shares;

(q) shall not by resolution of its Board of Directors cause the acceleration of rights, benefits or payments under any Company Plans;

(r) shall not enter into any additional forward sales contracts, fixed price purchase or sale contracts, fixed price financial swaps, collars, options or other hedging arrangements with respect to its oil production and more than 10% of its budgeted gas production for the year 2001, and, in any event, for a term longer than 12 months; or

(s) shall not, nor shall it permit any of its Subsidiaries to, agree in writing or otherwise to take any of the foregoing actions.

## SECTION 6.2 No Solicitation by the Company.

(a) The Company agrees that it and its Subsidiaries (i) will not (and it will not permit their officers, directors, employees, agents or representatives, including any investment banker, attorney or accountant retained by it or any of its Subsidiaries to) solicit, initiate or encourage (including by way of furnishing material non-public information) any inquiry, proposal or offer (including any proposal or offer to its stockholders) with respect to a third party tender offer, merger, consolidation, business combination or similar transaction involving any assets or class of capital stock of the Company, or any acquisition of 10% or more of the capital stock (other than upon exercise of the Company Options that are outstanding as of the date hereof) or 10% or more of the assets of the Company and its subsidiaries, taken as a whole, in a single transaction or a series of related transactions, or any combination of the foregoing (any such proposal, offer or transaction being hereinafter referred to as a "Company Acquisition Proposal") or participate or engage in any discussions or negotiations concerning a Company Acquisition Proposal; and (ii) will immediately cease and cause to be terminated any existing negotiations with any third parties conducted heretofore with respect to any of the foregoing; provided that, subject to Section 6.3(b), nothing contained in this Agreement shall prevent the Company or its Board of Directors from (A) complying with Rule 14e-2 promulgated under the Exchange Act with regard to a Company Acquisition Proposal or (B) prior to the Cutoff Date (as defined below), providing information (pursuant to a confidentiality agreement containing terms identical in all material respects to the terms of the confidentiality agreement, dated June 21, 2001, entered into between the Company and Parent (the "Company/Parent Confidentiality Agreement")) to or engaging in any negotiations or discussions with any person or entity who has made an unsolicited bona fide Company Acquisition Proposal if (x) in the good faith judgment of the Company's Board of Directors, taking into account the likelihood of consummation and after consultation with its financial advisors, such Company Acquisition Proposal is reasonably likely to result in a transaction more favorable to the holders of the Company Shares from a financial point of view than the Merger and (y) the Board of Directors of the Company, after consultation with its outside legal counsel, determines in good faith that the failure to do so would be inconsistent with its fiduciary obligations under applicable law.

(b) The Company will promptly (but in any event within 24 hours) notify Parent of any requests referred to in Section 6.2(a) for information or the receipt of any Company Acquisition Proposal, including the identity of the person or group engaging in such discussions or negotiations, requesting such information or making such Company Acquisition Proposal, and the material terms and conditions of any Company Acquisition Proposal, and shall keep Parent informed on a timely basis (but in any event within 24 hours) of any material changes with respect thereto. Prior to taking any action referred to in the proviso of Section 6.2(a), if the Company intends to participate in any such discussions or negotiations or provide any such information to any such third party, the Company shall give prompt prior notice to Parent of each such action.

(c) Nothing in this Section 6.2 shall permit the Company to enter into any agreement with respect to a Company Acquisition Proposal during the term of this Agreement, it being agreed that, during the term of this Agreement, the Company shall not enter into any agreement with any person that provides for, or in any way facilitates, a Company Acquisition Proposal, other than a confidentiality agreement containing terms identical in all material respects to the terms of the Company/Parent Confidentiality Agreement.

(d) For purposes hereof, the "Cutoff Date" means the date the Company Requisite Vote has been obtained.

## SECTION 6.3 Meetings of Stockholders.

(a) The Company will take all action necessary in accordance with applicable law and its articles of incorporation and bylaws to convene as promptly as practicable a meeting of its stockholders for purposes of obtaining the Company Requisite Vote. Parent will take all action necessary in accordance with applicable law and its certificate of incorporation and bylaws to convene as promptly as practicable a meeting of its stockholders for purposes of obtaining the Parent Requisite Vote.

(b) The Company and Parent, through their respective Boards of Directors, shall recommend approval of such matters; provided that the Board of Directors of the Company or Parent may at any time prior to the Effective Time withdraw, modify, or change any recommendation regarding this Agreement or the transactions contemplated hereby, or recommend and declare advisable any other offer or proposal, if its Board of Directors determines in good faith after consultation with its outside counsel that the failure to so withdraw, modify, or change its recommendation would be inconsistent with its fiduciary obligations under applicable law. Each of the Company and Parent shall be required to comply with its obligations under Section 6.3(a) whether or not its Board of Directors withdraws, modifies, or changes its recommendation regarding this Agreement or the transactions contemplated hereby or recommends any other offer or proposal.

(c) In the event that stockholders of the Company or Parent fail to approve this Agreement at a meeting (or any adjournment or postponement thereof) at which such stockholders considered and voted on this Agreement, the parties shall negotiate in good faith for at least 20 days to attempt to revise the structure and terms of the Merger to allow the combination of the respective businesses of Parent and the Company on terms they regard as likely to be approved by such stockholders.

#### SECTION 6.4 Filings; Reasonable Best Efforts.

(a) Subject to the terms and conditions herein provided, the Company and Parent shall:

(i) promptly (but in not more than 20 business days from the date hereof) make their respective filings under the HSR Act with respect to the Merger and thereafter shall promptly make any other required submissions under the HSR Act;

(ii) use their reasonable best efforts to satisfy the conditions to closing in Article VII (including, in the case of the Company, obtaining the opinion described in Section 7.2(b) and, in the case of Parent, obtaining the opinion described in Section 7.3(b)) and to cooperate with one another in (a) determining which filings are required to be made prior to the Effective Time with, and which consents, approvals, permits or authorizations are required to be obtained prior to the Effective Time from governmental or regulatory authorities of the United States, the several states, and foreign jurisdictions in connection with the execution and delivery of this Agreement and the consummation of the Merger and the transactions contemplated hereby; and (b) timely making all such filings and timely seeking all such consents, approvals, permits or authorizations;

(iii) promptly notify each other of any communication concerning this Agreement or the Merger to that party from any governmental authority and permit the other party to review in advance any proposed communication concerning this Agreement or the Merger to any governmental entity;

(iv) not agree to participate in any meeting or discussion with any governmental authority in respect of any filings, investigation or other inquiry concerning this Agreement or the Merger unless it consults with the other party in advance and, to the extent permitted by such governmental authority, gives the other party the opportunity to attend and participate thereat;

(v) furnish the other party with copies of all correspondence, filings and communications (and memoranda setting forth the substance thereof) between them and their affiliates and their respective representatives on the one hand, and any government or regulatory authority or members or their respective staffs on the other hand, with respect to this Agreement and the Merger; and

(vi) furnish the other party with such necessary information and reasonable assistance as such other parties and their respective affiliates may reasonably request in connection with their preparation of necessary filings, registrations or submissions of information to any governmental or regulatory authorities, including without limitation, any filings necessary or appropriate under the provisions of the HSR Act.

(b) Without limiting Section 6.4(a), Parent and the Company shall:

(i) each use its reasonable best efforts to avoid the entry of, or to have vacated or terminated, any decree, order or judgment that would restrain, prevent or delay the Closing, including without limitation defending through litigation on the merits any claim asserted in any court by any party; and

(ii) each use reasonable best efforts to avoid or eliminate each and every impediment under any antitrust, competition or trade regulation law that may be asserted by any governmental entity with respect to the Merger so as to enable the Closing to occur as soon as reasonably possible (and in any event no later than 60 days following the termination of all applicable waiting periods under the HSR Act, unless the parties are in litigation with the government, in which case at the conclusion of such litigation).

(c) Notwithstanding anything to the contrary in this Agreement, (i) the Company shall not, without Parent's prior written consent, commit to any divestitures, licenses, hold separate arrangements or similar matters, including covenants affecting business operating practices (or allow its Subsidiaries to commit to any divestitures, licenses, hold separate arrangements or similar matters), and the Company shall commit to, and shall use reasonable best efforts to effect (and shall cause its Subsidiaries to commit to and use reasonable best efforts to effect), any such divestitures, licenses, hold separate arrangements or similar matters as Parent shall request, but solely if such divestitures, licenses, hold separate arrangements or similar matters are contingent on consummation of the Merger and (ii) neither Parent nor any of its Subsidiaries shall be required (pursuant to Section 6.4(a)(ii) or otherwise) to agree (with respect to (x) Parent or its Subsidiaries or (y) the Company or its Subsidiaries) to any divestitures, licenses, hold separate arrangements or similar matters, including covenants affecting business operating practices, if such divestitures, licenses, arrangements or similar matters, individually or in the aggregate, would have or reasonably be expected to have a Parent Material Adverse Effect or a Company Material Adverse Effect.

(d) Except as provided below, nothing in this Section 6.4 or any other part of this Agreement shall require Parent to refrain from entering into any agreement with respect to, or issuing Parent Common Stock or other consideration in connection with, a business combination with, or an acquisition of, a third party after the date of this Agreement and prior to the Effective Time (a "Subsequent Transaction"); provided, however, that Parent has a good faith belief at the time it enters into the definitive agreement calling for any such Subsequent Transaction that such Subsequent Transaction is not reasonably likely to prevent or delay satisfaction of any of the conditions set forth in Article 7. In the event of a Subsequent Transaction which would be permissible under the preceding sentence, Parent shall agree to any divestitures, licenses, hold separate arrangements or similar matters (including covenants affecting business operating practices) necessary in order to obtain prompt approval of the transactions contemplated by this Agreement under applicable competition laws that would not otherwise have been required in order to obtain such approval but for the Subsequent Transaction.

**SECTION 6.5 Inspection.** From the date hereof to the Effective Time, the Company and Parent shall allow all designated officers, attorneys, accountants and other representatives of the other party access at all reasonable times upon reasonable notice to the records and files, correspondence, audits and properties, as well as to all information relating to commitments, contracts, titles and financial position, or otherwise pertaining to the business and affairs of the Company and its Subsidiaries or Parent and its Subsidiaries, including inspection of such properties; provided that no investigation pursuant to this Section 6.5 shall affect any representation or warranty given by any party hereunder, and provided further that notwithstanding the provision of information or investigation by any party, no party shall be deemed to make any representation or warranty except as expressly set forth in this Agreement. Notwithstanding the foregoing, neither party shall be required to provide any information which it reasonably believes it may not provide to the other party by reason of applicable law, rules or regulations, which that party reasonably believes constitutes information protected by attorney/client privilege, or which it is required to keep confidential by reason of contract or agreement with third parties. The parties hereto will make reasonable and appropriate substitute disclosure arrangements under circumstances in which the restrictions of the preceding sentence apply. The Company and Parent agree that they will not, and will cause their

representatives not to, use any information obtained pursuant to this Section 6.5 for any purpose unrelated to the consummation of the transactions contemplated by this Agreement.

**SECTION 6.6 Publicity.** The parties will consult with each other and will mutually agree upon any press releases or public announcements pertaining to this Agreement or the transactions contemplated hereby and shall not issue any such press releases or make any such public announcements prior to such consultation and agreement, except as may be required by applicable law or by obligations pursuant to any listing agreement with any national securities exchange, in which case the party proposing to issue such press release or make such public announcement shall use its reasonable best efforts to consult in good faith with the other party before issuing any such press releases or making any such public announcements.

**SECTION 6.7 Registration Statement.**

(a) Each of Parent and the Company shall cooperate and promptly prepare and Parent shall file with the SEC as soon as practicable a Registration Statement on Form S-4 under the Securities Act (the "Registration Statement"), with respect to the Parent Common Stock issuable in the Merger. A portion of the Registration Statement shall also serve as the joint proxy statement with respect to the meetings of the stockholders of Parent and of the Company in connection with the Merger (the "Proxy Statement/ Prospectus"). The respective parties will cause the Proxy Statement/Prospectus and the Registration Statement to comply as to form in all material respects with the applicable provisions of the Securities Act, the Exchange Act and the rules and regulations thereunder. Parent shall use its reasonable best efforts, and the Company will cooperate with Parent, to have the Registration Statement declared effective by the SEC as promptly as practicable. Parent shall use its reasonable best efforts to obtain, prior to the effective date of the Registration Statement, all necessary state securities law or "Blue Sky" permits or approvals required to carry out the transactions contemplated by this Agreement and will pay all expenses incident thereto. Parent will advise the Company, promptly after it receives notice thereof, of the time when the Registration Statement has become effective or any supplement or amendment has been filed, the issuance of any stop order, the suspension of the qualification of the Parent Common Stock issuable in connection with the Merger for offering or sale in any jurisdiction, or any request by the SEC for amendment of the Proxy Statement/ Prospectus or the Registration Statement or comments thereon and responses thereto or requests by the SEC for additional information.

(b) Each of Parent and the Company will use its reasonable best efforts to cause the Proxy Statement/Prospectus to be mailed to its stockholders as promptly as practicable after the date hereof.

(c) Each of Parent and the Company agrees that the information provided by it for inclusion in the Proxy Statement/Prospectus and each amendment or supplement thereto, at the time of mailing thereof and at the time of the respective meetings of stockholders of Parent and of the Company, or, in the case of information provided by it for inclusion in the Registration Statement or any amendment or supplement thereto, at the time it is filed or becomes effective, will not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

**SECTION 6.8 Listing Application.** Parent shall use its reasonable best efforts to cause the Parent Common Stock to be issued in the Merger to be approved for listing on the AMEX prior to the Effective Time, subject to official notice of issuance. Parent shall promptly prepare and submit to the AMEX a supplemental listing application covering the shares of Parent Common Stock issuable in the Merger and shares issuable pursuant to Assumed Options (as defined below).

**SECTION 6.9 Letters of Accountants.**

(a) If requested to do so by Parent, the Company shall use its reasonable best efforts to cause to be delivered to Parent "comfort" letters of Arthur Andersen LLP, the Company's independent public accountants, dated the effective date of the Registration Statement and the Closing Date, respectively, and addressed to Parent with regard to certain financial information regarding the Company included in the Registration Statement, in form reasonably satisfactory to Parent and customary in scope and substance for

"comfort" letters delivered by independent public accountants in connection with registration statements similar to the Registration Statement.

(b) If requested to do so by the Company, Parent shall use its reasonable best efforts to cause to be delivered to the Company "comfort" letters of KPMG LLP, Parent's independent public accountants, dated the effective date of the Registration Statement and the Closing Date, respectively, and addressed to the Company, with regard to certain financial information regarding Parent included in the Registration Statement, in form reasonably satisfactory to the Company and customary in scope and substance for "comfort" letters delivered by independent public accountants in connection with registration statements similar to the Registration Statement.

#### SECTION 6.10 Agreements of Affiliates.

(a) Prior to the Effective Time, the Company shall cause to be prepared and delivered to Parent a list identifying all persons who, at the time of the meeting or the meeting of the Company's stockholders pursuant to Section 6.3, the Company believes may be deemed to be "affiliates" of the Company, as that term is used in paragraphs (c) and (d) of Rule 145 under the Securities Act (the "Rule 145 Affiliates"). Parent shall be entitled to place restrictive legends on any shares of Parent Common Stock received by such Rule 145 Affiliates. The Company shall use its reasonable best efforts to cause each person who is identified as a Rule 145 Affiliate in such list to deliver to Parent, at or prior to the Effective Time, a written agreement, in the form attached hereto as Exhibit A.

SECTION 6.11 Expenses. Whether or not the Merger is consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such expenses, except as expressly provided in Section 8.5.

#### SECTION 6.12 Indemnification and Insurance.

(a) From and after the Effective Time, Parent shall cause the Surviving Corporation to indemnify, defend and hold harmless to the fullest extent permitted under applicable law each person who is, or has been at any time prior to the Effective Time, an officer or director of the Company (or any Subsidiary or division thereof) and each person who served at the request of the Company as a director, officer, trustee or fiduciary of another corporation, partnership, joint venture, trust, pension or other employee benefit plan or enterprise (individually, an "Indemnified Party" and, collectively, the "Indemnified Parties") against all losses, claims, damages, liabilities, costs or expenses (including attorneys' fees), judgments, fines, penalties and amounts paid in settlement in connection with any claim, action, suit, proceeding or investigation arising out of or pertaining to acts or omissions, or alleged acts or omissions, by them in their capacities as such, whether commenced, asserted or claimed before or after the Effective Time. In the event of any such claim, action, suit, proceeding or investigation (an "Action"), (i) Parent shall cause the Surviving Corporation to pay, as incurred, the fees and expenses of counsel selected by the Indemnified Party, which counsel shall be reasonably acceptable to Parent, in advance of the final disposition of any such Action to the fullest extent permitted by applicable law, and, if required, upon receipt of any undertaking required by applicable law, and (ii) Parent will, and will cause the Surviving Corporation to, cooperate in the defense of any such matter; provided, however, neither Parent nor the Surviving Corporation shall be liable for any settlement effected without its written consent (which consent shall not be unreasonably withheld or delayed), and provided further that neither Parent nor the Surviving Corporation shall be obligated pursuant to this Section 6.12(a) to pay the fees and disbursements of more than one counsel for all Indemnified Parties in any single Action, unless, in the good faith judgment of any of the Indemnified Parties, there is or may be a conflict of interests between two or more of such Indemnified Parties, in which case there may be separate counsel for each similarly situated group.

(b) The parties agree that the rights to indemnification, including provisions relating to advances of expenses incurred in defense of any action or suit, in the articles of incorporation, bylaws and any indemnification agreement of the Company and its Subsidiaries with respect to matters occurring through the Effective Time, shall survive the Merger and shall continue in full force and effect for a period of six years from the Effective Time; provided, however, that all rights to indemnification in respect of any

Action pending or asserted or claim made within such period shall continue until the disposition of such Action or resolution of such claim.

(c) For a period of six years after the Effective Time, the Surviving Corporation shall maintain officers' and directors' liability insurance covering the Indemnified Parties who are or at any time prior to the Effective Time were covered by the Company's existing officers' and directors' liability insurance ("D&O Insurance") policies on terms substantially no less advantageous to the Indemnified Parties than such existing insurance with respect to acts or omissions, or alleged acts or omissions, prior to the Effective Time (whether claims, actions or other proceedings relating thereto are commenced, asserted or claimed before or after the Effective Time); provided, that after the Effective Time, the Surviving Corporation shall not be required to pay annual premiums in excess of 250% of the last annual premium paid by the Company prior to the date hereof (the amount of which premiums are set forth in the Company Disclosure Letter) (the "Maximum Premium"), but in such case shall purchase as much coverage as reasonably practicable for such amount. Parent shall have the right to cause coverage to be extended under the Company's D&O Insurance by obtaining a six-year "tail" policy on terms and conditions no less advantageous than the Company's existing D&O Insurance, and such "tail" policy shall satisfy the provisions of this Section 6.12(c).

(d) The rights of each Indemnified Party hereunder shall be in addition to any other rights such Indemnified Party may have under the articles of incorporation or bylaws of the Company or any of its Subsidiaries, under the TBCA, or otherwise. The provisions of this Section 6.12 shall survive the consummation of the Merger and expressly are intended to benefit each of the Indemnified Parties.

(e) In the event Parent or any of its successors or assigns (i) consolidates with or merges into any other person and shall not be the continuing or surviving corporation or entity in such consolidation or merger or (ii) transfers all or substantially all of its properties and assets to any person, then and in either such case, proper provision shall be made so that the successors and assigns of Parent, as the case may be, shall assume the obligations set forth in this Section 6.12.

### SECTION 6.13 Employee Benefits

(a) Parent hereby agrees to honor, and agrees to cause its Subsidiaries to honor, all employee benefit plans, contracts, agreements and commitments of the Company or any of its Subsidiaries maintained or entered into by the Company or any of its Subsidiaries prior to the date hereof that apply to any current or former employee or current or former director of the Company or any of its Subsidiaries, including, without limitation, the executive change-in-control severance agreements between the Company and certain of its key employees (copies of which executive change-in-control severance agreements have been furnished to Parent); provided, however, that except as provided in Section 6.13 (c), Parent reserves the right to modify any such contract, agreement or commitment in accordance with its terms.

(b) If, within two years after the Effective Time, the benefits applicable to Continuing Employees are materially modified then, for the remainder of the two-year period after the Effective Time, Parent hereby agrees to, and agrees to cause its Subsidiaries to, provide to officers and employees of the Company and its Subsidiaries who become or remain regular (full-time) employees of Parent or any of its Subsidiaries ("Continuing Employees") employee benefits, other than stock options and stock appreciation rights, no less favorable than those provided by Parent and its Subsidiaries to their similarly situated officers and employees. Any employee of the Company or any of its Subsidiaries who becomes a participant in any employee benefit plan, program, policy, or arrangement of Parent or any of its Subsidiaries after the Effective Time shall be given credit under such plan, program, policy, or arrangement for all service with the Company or any of its Subsidiaries, and, if applicable, with Parent or any of its Subsidiaries, prior to becoming such a participant for purposes of eligibility and vesting and benefit determination (other than for determining accrual services under any defined benefit pension plan as defined in Section 3(35) of ERISA).

(c) Parent hereby agrees to, and agrees to cause its Subsidiaries to, provide the following benefits to Continuing Employees or to former employees of the Company and its Subsidiaries, as described below:

(i) Parent shall continue retiree medical benefits for each former employee of the Company and its Subsidiaries who was receiving retiree medical benefits at the Effective Time in accordance with the terms of the retiree medical benefit arrangements applicable to that employee.

(ii) Parent shall provide retiree medical benefits for Continuing Employees who have attained age 55 and have 10 years of service with the Company and its Subsidiaries at the Effective Time, with such retiree medical benefits to be provided when such Continuing Employee terminates employment with Parent or its Subsidiaries and with benefits substantially equivalent to the retiree medical benefits being provided to former employees of the Company and its Subsidiaries at the Effective Time and at the same percentage of contribution rate as in effect at the Effective Time in accordance with the terms of the retiree medical benefit arrangements in effect on the date hereof.

(iii) Parent shall provide coverage for severance benefits for Continuing Employees for a period of at least one year after the Effective Time, and the eligibility and coverage for, and the amount of, such severance benefits shall be at least as favorable as is provided by the Mitchell Energy & Development Corp. Severance Benefit Plan.

(iv) For a period of at least one year after the Effective Time, Parent shall continue defined benefit pension benefits for Continuing Employees by continuing the Mitchell Energy & Development Corp. Retirement Plan (the "Company Retirement Plan") and each of the Company's supplemental retirement plans (the "Company's Supplemental Retirement Plans") for such Continuing Employees or by providing benefits under another defined benefit pension plan sponsored by Parent or its Subsidiaries, and for a period of at least 13 months after the Effective Time, Parent shall not permit the form of payment provisions in the Company's Supplemental Retirement Plans to be amended.

(v) At such time as Parent causes a Continuing Employee to be covered under a group health plan maintained by Parent or one of its Subsidiaries (other than the group health plan maintained by the Company at the Effective Time), Parent shall cause (1) such Continuing Employee and his or her eligible dependents (including, without limitation, all such Continuing Employee's dependents covered immediately prior to such time under the Company's group health plan) to be credited under such Parent group health plan, for the year during which such coverage under such group health plan begins, with any deductibles and copayments already incurred during such year under the Company's group health plan, and (ii) such Parent group health plan to waive any preexisting condition restrictions to the extent necessary to provide immediate coverage. Parent shall cause each other employee welfare benefit plan or program sponsored by Parent or one of its Subsidiaries that is of a similar type to a plan or program Continuing Employees participated in prior to the Effective Time to waive any preexisting condition exclusion with respect to Continuing Employees.

(d) Parent and the Company shall take such actions, including (with respect to the Company) the amendment of the options ("Stock Options") to purchase Company Shares, and the plans pursuant to which such options have been issued, to permit Parent to assume, and Parent shall assume, effective at the Effective Time, each Option Plan and each Stock Option that remains unexercised in whole or in part as of the Effective Time and substitute shares of Parent Common Stock for the Company Shares purchasable under each such assumed option ("Assumed Option"), which assumption and substitution shall be effected as follows:

(i) the number of shares of Parent Common Stock purchasable under the Assumed Option shall be equal to 1.20 times the number of shares of Company Common Stock underlying the Assumed Option (without regard to any vesting schedule and with any fractional amount rounded to the next lowest share);

(ii) the per share exercise price of such Assumed Option shall be an amount (with fractional amounts rounded to the next highest cent) equal to the per share exercise price of the Stock Option being assumed divided by 1.20;

(iii) Parent will provide each holder of each Stock Option being assumed with a statement showing the converted number of shares, the exercise price, and the expiration date for each Assumed Option; and

(iv) any other provisions of each Assumed Option shall remain in effect, and Parent shall not permit the acceleration of the exercisability or require the mandatory surrender of the Assumed Options in connection with the Merger pursuant to applicable provisions of the Option Plans.

(e) Parent shall take all corporate action necessary to reserve for issuance a sufficient number of shares of Parent Common Stock for delivery upon exercise of the Assumed Options, and, as soon as practicable after the Effective Time, Parent shall file a registration statement on Form S-8 (or other appropriate form) with respect to the shares of Parent Common Stock subject to the Assumed Options, and shall use its reasonable best efforts to maintain the effectiveness of such registration statement for so long as any of the Assumed Options remain outstanding.

(f) Parent and the Company shall take such actions to permit Parent to assume, and Parent shall assume, effective at the Effective Time, each bonus unit ("Bonus Unit") issued under the Mitchell Energy & Development Corp. 1997 Bonus Unit Plan ("Bonus Unit Plan") that remains unredeemed in whole or in part as of the Effective Time and substitute the value of shares of Parent Common Stock for the value of the shares of Company Common Stock that is used to determine the amount payable to an employee upon redemption of the Bonus Unit ("Assumed Bonus Unit"), which assumption and substitution shall be effected as follows:

(i) the number of Bonus Units redeemable under the Assumed Bonus Unit shall be equal to 1.20 times the number of Bonus Units being assumed (without regard to any vesting schedule and with any fractional amount rounded to the next lowest share);

(ii) the value of each Assumed Bonus Unit as of the Redemption Date (as defined in the Bonus Unit Plan) shall be equal to the amount, if any, by which (A) the closing price of a share of Parent Common Stock on such date exceeds (B) the "exercise price" of the Assumed Bonus Unit, which shall be the closing price of Company Common Stock on the Designation Date (as defined in the Bonus Unit Plan) divided by 1.20 (with fractional amounts rounded to the next highest cent);

(iii) Parent will provide each holder of Bonus Units being assumed with a statement showing the converted number of units, the exercise price of the Assumed Bonus Units, and the expiration date for each Assumed Bonus Unit; and

(iv) any other provisions of each Assumed Bonus Unit shall remain in effect, and Parent shall not permit the acceleration of the exercisability of the Assumed Bonus Units in connection with the Merger pursuant to Section VII of the Bonus Unit Plan.

(g) Parent agrees that its Board of Directors (or the Compensation Committee thereof) shall, at or prior to the Effective Time, adopt resolutions specifically approving, for purposes of Rule 16b-3 under the Securities Exchange Act of 1934, the receipt, pursuant to this Section 6.13, of Assumed Options and Assumed Bonus Units.

**SECTION 6.14 Reorganization.** From and after the date hereof and until the Effective Time, none of Parent, the Company or any of their respective Subsidiaries shall knowingly (i) take any action, or fail to take any reasonable action, as a result of which the Merger would fail to qualify as a reorganization within the meaning of section 368(a) of the Code or (ii) enter into any contract, agreement, commitment or arrangement to take or fail to take any such action. Following the Effective Time, Parent shall not knowingly take any action or knowingly cause any action to be taken which would cause the Merger to fail to qualify as a reorganization within the meaning of section 368(a) of the Code (and any comparable provisions of applicable state or local law).

**SECTION 6.15 Dividends.** The Company shall coordinate with Parent the declaration, setting of record dates and payment dates of dividends on Company Shares so that holders of Company Shares do not receive dividends on both Company Shares and Parent Common Stock received in the Merger in

respect of any calendar quarter or fail to receive a dividend on Company Shares or Parent Common Stock received in the Merger in respect of any calendar quarter.

## ARTICLE 7

### CONDITIONS

SECTION 7.1 Conditions to Each Party's Obligation to Effect the Merger. The respective obligations of each party to effect the Merger shall be subject to the fulfillment at or prior to the Closing Date of the following conditions:

- (a) (i) The Company Requisite Vote shall have been obtained and (ii) the Parent Requisite Vote shall have been obtained.
- (b) (i) The waiting period applicable to the consummation of the Merger shall have expired or been terminated under the HSR Act and (ii) any mandatory waiting period or required consent under any applicable foreign competition or antitrust law or regulation shall have expired or been obtained except where the failure to observe such waiting period or obtain a consent referred to in this clause (ii) would not reasonably be expected to delay or prevent the consummation of the Merger or have a material adverse effect on the expected benefits of the transactions contemplated by this Agreement to Parent.
- (c) None of the parties hereto shall be subject to any decree, order or injunction of a court of competent jurisdiction, U.S. or foreign, which prohibits the consummation of the Merger; and no statute, rule or regulation shall have been enacted by any governmental authority which prohibits or makes unlawful the consummation of the Merger.
- (d) The Registration Statement shall have become effective and no stop order with respect thereto shall be in effect and no proceedings for that purpose shall have been commenced or threatened by the SEC.
- (e) The shares of Parent Common Stock to be issued pursuant to the Merger and shares issuable pursuant to Assumed Options shall have been authorized for listing on the AMEX, subject to official notice of issuance.

SECTION 7.2 Conditions to Obligation of the Company to Effect the Merger. The obligation of the Company to effect the Merger shall be subject to the fulfillment or waiver by the Company at or prior to the Closing Date of the following conditions:

- (a) Parent shall have performed in all material respects its covenants and agreements contained in this Agreement required to be performed on or prior to the Closing Date and the representations and warranties of Parent and Merger Sub contained in this Agreement and in any document delivered in connection herewith (i) to the extent qualified by Parent Material Adverse Effect or any other materiality qualification shall be true and correct and (ii) to the extent not qualified by Parent Material Adverse Effect or any other materiality qualification shall be true and correct in all material respects, in each case as of the date of this Agreement and as of the Closing Date (except for representations and warranties made as of a specified date, which need be true and correct only as of the specified date), and the Company shall have received a certificate of Parent, executed on its behalf by its President or a Senior Vice President of Parent, dated the Closing Date, certifying to such effect.
- (b) The Company shall have received the opinion of Vinson & Elkins L.L.P., counsel to the Company, in form and substance reasonably satisfactory to the Company, on the basis of certain facts, representations and assumptions set forth in such opinion, dated the Closing Date, a copy of which shall be furnished to Parent, to the effect that (i) the Merger will be treated for federal income tax purposes as a reorganization within the meaning of Section 368(a) of the Code and (ii) no gain or loss will be recognized by the Company or the stockholders of the Company to the extent they

receive Parent Common Stock in exchange for Company Shares pursuant to the Merger. In rendering such opinion, such counsel shall be entitled to receive and rely upon representations of officers of the Company, Merger Sub and Parent as to such matters as such counsel may reasonably request.

**SECTION 7.3 Conditions to Obligation of Parent to Effect the Merger.** The obligations of Parent and Merger Sub to effect the Merger shall be subject to the fulfillment or waiver by Parent at or prior to the Closing Date of the following conditions:

(a) the Company shall have performed in all material respects its covenants and agreements contained in this Agreement required to be performed on or prior to the Closing Date and the representations and warranties of the Company contained in this Agreement and in any document delivered in connection herewith (i) to the extent qualified by Company Material Adverse Effect or any other materiality qualification shall be true and correct and (ii) to the extent not qualified by Company Material Adverse Effect or any other materiality qualification shall be true and correct in all material respects, in each case as of the date of this Agreement and as of the Closing Date (except for representations and warranties made as of a specified date, which need be true and correct only as of the specified date), and Parent shall have received a certificate of the Company, executed on its behalf by its President or a Vice President of the Company, dated the Closing Date, certifying to such effect.

(b) Parent shall have received the opinion of Mayer, Brown & Platt, counsel to Parent, in form and substance reasonably satisfactory to Parent, on the basis of certain facts, representations and assumptions set forth in such opinion, dated the Closing Date, a copy of which will be furnished to the Company, to the effect that (i) the Merger will be treated for federal income tax purposes as a reorganization within the meaning of section 368(a) of the Code and (ii) no gain or loss will be recognized by any corporation which is a party to the reorganization. In rendering such opinion, such counsel shall be entitled to receive and rely upon representations of officers of the Company, Merger Sub and Parent as to such matters as such counsel may reasonably request.

## **ARTICLE 8**

### **TERMINATION**

**SECTION 8.1 Termination by Mutual Consent.** This Agreement may be terminated at any time prior to the Effective Time by the mutual written consent of the Company and Parent.

**SECTION 8.2 Termination by Parent or the Company.** This Agreement may be terminated by action of the Board of Directors of the Company or by action of the Board of Directors of Parent (in either case upon payment of the Termination Amount (as defined below) if payable), if:

(a) the Merger shall not have been consummated by the date that is seven months after the date of this Agreement; provided, however, that the right to terminate this Agreement pursuant to this clause (a) shall not be available to any party whose failure to perform or observe in any material respect any of its obligations under this Agreement in any manner shall have been the cause of, or resulted in, the failure of the Merger to occur on or before such date; or

(b) after the twentieth day following the date of the meeting (including adjournments and postponements) of the Company's stockholders for the purpose of obtaining the Company Requisite Vote, if such Company Requisite Vote shall not have been obtained; or

(c) after the twentieth day following the date of the meeting (including adjournments and postponements) of Parent's stockholders for the purpose of obtaining the Parent Requisite Vote, if such Parent Requisite Vote shall not have been obtained; or

(d) a United States federal or state court of competent jurisdiction or United States federal or state governmental, regulatory or administrative agency or commission shall have issued an order, decree or ruling or taken any other action permanently restraining, enjoining or otherwise prohibiting

the Merger and such order, decree, ruling or other action shall have become final and non-appealable; provided, however, that the party seeking to terminate this Agreement pursuant to this clause (d) shall have complied with Section 6.4 and with respect to other matters not covered by Section 6.4 shall have used its reasonable best efforts to remove such injunction, order or decree.

**SECTION 8.3 Termination by the Company.** This Agreement may be terminated prior to the Effective Time, by action of the Board of Directors of the Company after consultation with its legal advisors, if:

(a) (i) there has been a breach by Parent or Merger Sub of any representation, warranty, covenant or agreement set forth in this Agreement or if any representation or warranty of Parent or Merger Sub shall have become untrue, in either case such that the conditions set forth in Section 7.2 (a) would not be satisfied and (ii) such breach is not curable, or, if curable, is not cured within 30 days after written notice of such breach is given to Parent by the Company; provided, however, that the right to terminate this Agreement pursuant to this Section 8.3(a) shall not be available to the Company if it, at such time, is in material breach of any representation, warranty, covenant or agreement set forth in this Agreement such that the conditions set forth in Section 7.3(a) shall not be satisfied; or

(b) the Board of Directors of Parent shall have withdrawn, modified or changed, in a manner adverse to the Company, the Board's approval or recommendation of the Merger, or resolved to do so.

**SECTION 8.4 Termination by Parent.** This Agreement may be terminated at any time prior to the Effective Time, by action of the Board of Directors of Parent after consultation with its legal advisors, if:

(a) (i) there has been a breach by the Company of any representation, warranty covenant or agreement set forth in this Agreement or if any representation or warranty of the Company shall have become untrue, in either case such that the conditions set forth in Section 7.3(a) would not be satisfied and (ii) such breach is not curable, or, if curable, is not cured within 30 days after written notice of such breach is given by Parent to the Company; provided, however, that the right to terminate this Agreement pursuant to this Section 8.4(a) shall not be available to Parent if it, at such time, is in material breach of any representation, warranty, covenant or agreement set forth in this Agreement such that the conditions set forth in Section 7.2(a) shall not be satisfied; or

(b) the Board of Directors of the Company shall have withdrawn, modified or changed, in a manner adverse to Parent, the Board's approval or recommendation of the Merger or recommended approval of a Company Acquisition Proposal, or resolved to do so.

**SECTION 8.5 Effect of Termination.**

(a) If this Agreement is terminated (i) by the Company or Parent pursuant to Section 8.2(a) or 8.2(b) (and in either such case (x) prior to, or at the time of the meeting for the purpose of obtaining the approval required by Section 7.1(a)(i) (including adjournments or postponements), any person shall have made a Company Acquisition Proposal that has become public or shall have publicly announced an intention (whether or not conditional) to make a Company Acquisition Proposal, (y) the condition set forth in Section 7.1(a)(i) was not satisfied at the time of such termination and (z) the condition set forth in Section 7.1(a)(ii) was satisfied at the time of such termination) or (ii) by Parent pursuant to Section 8.4(b); then, the Company shall immediately pay Parent the Termination Amount (as defined below) and, in addition, reimburse Parent for all expenses incurred by Parent in connection with this Agreement up to the Reimbursement Maximum Amount (as defined below) upon termination of this Agreement. All payments shall be made in cash by wire transfer to an account designated by Parent. The term "Termination Amount" shall mean \$100 million and the term "Reimbursement Maximum Amount" shall mean \$10 million. The Company acknowledges that the agreements contained in this Section 8.5(a) are an integral part of the transactions contemplated by this Agreement, and that, without these agreements, Parent would not enter into this Agreement; accordingly, if the Company fails promptly to pay any amount due pursuant to this Section 8.5(a), and, in order to obtain such payment, Parent commences a suit which results in a judgment against the Company for the payment set forth in this Section 8.5 (a),

the Company shall pay to Parent its costs and expenses (including attorneys' fees) in connection with such suit, together with interest on such amount from the date payment was required to be made until the date such payment is actually made at the annual prime lending rate of The Chase Manhattan Bank in effect on the date such payment was required to be made plus one percent (1%) (the "Adjusted Prime Rate").

(b) If this Agreement is terminated (i) by the Company or Parent pursuant to Section 8.2(a) or 8.2(c) (and in either such case (x) prior to, or at the time of the meeting for the purpose of obtaining the approval required by Section 7.1(a)(ii), (including adjournments or postponements), any person shall have made a Parent Acquisition Proposal (as defined below) that has become public or shall have publicly announced an intention (whether or not conditional) to make a Parent Acquisition Proposal, (y) the condition set forth in Section 7.1(a)(ii) was not satisfied at the time of such termination and (z) the condition set forth in Section 7.1(a)(i) was satisfied at the time of such termination) to make a Parent Acquisition Proposal) or (ii) by the Company pursuant to Section 8.3(b); then Parent shall immediately pay the Company the Termination Amount and, in addition, reimburse the Company for all expenses incurred by the Company in connection with this Agreement up to the Reimbursement Maximum Amount upon termination of this Agreement. All payments shall be made in cash by wire transfer to an account designated by the Company. The term "Parent Acquisition Proposal" shall mean any inquiry, proposal or offer (including any proposal or offer to its stockholders) with respect to a third party tender offer, merger, consolidation, business combination or similar transaction involving any assets or class of capital stock of Parent, or any acquisition of 10% or more of the capital stock (other than upon exercise of Parent employee stock options that are outstanding as of the date hereof) or 10% or more of the assets of the Company and its subsidiaries, taken as a whole, in a single transaction or a series of related transactions, or any combination of the foregoing. Parent acknowledges that the agreements contained in this Section 8.5(b) are an integral part of the transactions contemplated by this Agreement, and that, without these agreements, the Company would not enter into this Agreement; accordingly, if Parent fails promptly to pay any amount due pursuant to this Section 8.5(b) and, in order to obtain such payment, the Company commences a suit which results in a judgment against Parent for the payment set forth in this Section 8.5(b), Parent shall pay to the Company its costs and expenses (including attorneys' fees) in connection with such suit, together with interest on such amount from the date payment was required to be made until the date such payment is actually made at the Adjusted Prime Rate.

(c) In the event of termination of this Agreement and the abandonment of the Merger pursuant to this Article 8, all obligations of the parties hereto shall terminate, except the obligations of the parties pursuant to this Section 8.5 and Section 6.11 and except for the provisions of Sections 9.3, 9.4, 9.6, 9.8, 9.9, 9.12, 9.13 and 9.14, provided that nothing herein shall relieve any party from any liability for any breach by such party of any of its covenants or agreements set forth in this Agreement and all rights and remedies of such nonbreaching party under this Agreement in the case of such a breach, at law or in equity, shall be preserved.

SECTION 8.6 Extension; Waiver. At any time prior to the Effective Time, each party may by action taken by its Board of Directors, to the extent legally allowed, (a) extend the time for the performance of any of the obligations or other acts of the other parties hereto, (b) waive any inaccuracies in the representations and warranties made to such party contained herein or in any document delivered pursuant hereto and (c) waive compliance with any of the agreements or conditions for the benefit of such party contained herein. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party.

## **ARTICLE 9**

### **GENERAL PROVISIONS**

SECTION 9.1 Nonsurvival of Representations, Warranties and Agreements. None of the representations, warranties and agreements in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the Merger; provided, however, that the agreements contained in Article 2,

Article 3 and in Sections 6.10, 6.11, 6.12, 6.13, 6.14 and this Article 9 and the agreements delivered pursuant to this Agreement shall survive the Merger, unless otherwise provided herein.

SECTION 9.2 Notices. Any notice required to be given hereunder shall be sufficient if in writing, and sent by facsimile transmission or by courier service (with proof of service), hand delivery or certified or registered mail (return receipt requested and first-class postage prepaid), addressed as follows:

(a) if to Parent or Merger Sub:

Devon Energy Corporation  
20 N. Broadway, Suite 1500  
Oklahoma City, Oklahoma 73102 Attn: J. Larry Nichols  
Chairman, President and Chief Executive Officer Telecopy No.: (405) 552-8171

and

Devon Energy Corporation  
20 N. Broadway, Suite 1500  
Oklahoma City, Oklahoma 73102 Attn: Duke R. Ligon  
Senior Vice President and General Counsel Telecopy No.: (405) 552-4550

with a copy to:

Mayer, Brown & Platt  
190 South LaSalle Street  
Chicago, Illinois 60603

Facsimile: (312) 701-7711  
Attn: Scott J. Davis  
James T. Lidbury

(b) if to the Company:

2002 Timberloch Place  
P.O. Box 4000  
The Woodlands, Texas 77387-4000 Facsimile: (713) 377-7000  
Attn: General Counsel

with a copy to:

Vinson & Elkins L.L.P.

2300 First City Tower  
1001 Fannin  
Houston, Texas 77002

Facsimile: (713) 615-5306  
Attn: C. Michael Harrington

or to such other address as any party shall specify by written notice so given, and such notice shall be deemed to have been delivered as of the date so telecommunicated, personally delivered or mailed.

SECTION 9.3 Assignment; Binding Effect; Benefit. Except as provided in Section 1.1 hereof, neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto (whether by operation of law or otherwise) without the prior written consent of the other parties. Subject to the preceding sentence, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Except as provided in Section 6.12

and Section 6.13, notwithstanding anything contained in this Agreement to the contrary, nothing in this Agreement, expressed or implied, is intended to confer on any person other than the parties hereto any rights, remedies, obligations or liabilities under or by reason of this Agreement.

**SECTION 9.4 Entire Agreement.** This Agreement, the Parent/Company Confidentiality Agreement (other than the sixth and seventh paragraphs thereof, which are hereby terminated and of no further force or effect), the exhibits to this Agreement, the Company Disclosure Letter, the Parent Disclosure Letter and any documents delivered by the parties in connection herewith constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings among the parties with respect thereto. No addition to or modification of any provision of this Agreement shall be binding upon any party hereto unless made in writing and signed by all parties hereto.

**SECTION 9.5 Amendments.** This Agreement may be amended by the parties hereto, by action taken or authorized by their Boards of Directors, at any time before or after approval of matters presented in connection with the Merger by the stockholders of the Company or Parent, but after any such stockholder approval, no amendment shall be made which by law requires the further approval of stockholders without obtaining such further approval. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto.

**SECTION 9.6 Governing Law; Jurisdiction; Waiver of Jury Trial.** THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. EACH OF THE COMPANY, MERGER SUB AND PARENT HEREBY IRREVOCABLY AND UNCONDITIONALLY CONSENTS TO SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COMPETENT COURTS OF THE STATE OF TEXAS AND OF THE UNITED STATES OF AMERICA, IN EITHER CASE LOCATED IN DALLAS COUNTY, TEXAS (THE "TEXAS COURTS") FOR ANY LITIGATION ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY (AND AGREES NOT TO COMMENCE ANY LITIGATION RELATING THERETO EXCEPT IN SUCH COURTS), WAIVES ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUCH LITIGATION IN THE TEXAS COURTS AND AGREES NOT TO PLEAD OR CLAIM IN ANY TEXAS COURT THAT SUCH LITIGATION BROUGHT THEREIN HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

**SECTION 9.7 Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, but all of which together shall be deemed to be one and the same instrument.

**SECTION 9.8 Headings.** Headings of the Articles and Sections of this Agreement are for the convenience of the parties only, and shall be given no substantive or interpretative effect whatsoever.

**SECTION 9.9 Interpretation.** In this Agreement:

- (a) Unless the context otherwise requires, words describing the singular number shall include the plural and vice versa, and words denoting any gender shall include all genders and words denoting natural persons shall include corporations and partnerships and vice versa.
- (b) The words "include," "includes" and "including" are not limiting.
- (c) The phrase "to the knowledge of" and similar phrases relating to knowledge of the Company or Parent, as the case may be, shall mean the actual knowledge of its executive officers.

(d) "Material Adverse Effect" with respect to the Company or Parent shall mean a material adverse effect on or change in (a) the business, assets and liabilities (taken together) or financial condition of a party and its Subsidiaries on a consolidated basis or (b) the ability of the party to consummate the transactions contemplated by this Agreement or fulfill the conditions to closing set forth in Article 7. "Company Material Adverse Effect" and "Parent Material Adverse Effect" mean a Material Adverse Effect with respect to the Company and Parent, respectively.

(e) "Person" or "person" means an individual, a corporation, a limited liability company, a partnership, an association, a trust or other entity or organization.

(f) "Subsidiary" when used with respect to any party means any corporation or other organization, whether incorporated or unincorporated, of which such party directly or indirectly owns or controls at least a majority of the securities or other interests having by their terms ordinary voting power to elect a majority of the board of directors or others performing similar functions with respect to such corporation or other organization, or any organization of which such party is a general partner.

SECTION 9.10 Waivers. Except as provided in this Agreement, no action taken pursuant to this Agreement, including, without limitation, any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representations, warranties, covenants or agreements contained in this Agreement. The waiver by any party hereto of a breach of any provision hereunder shall not operate or be construed as a waiver of any prior or subsequent breach of the same or any other provision hereunder.

SECTION 9.11 Incorporation of Exhibits. The Company Disclosure Letter, the Parent Disclosure Letter and all exhibits attached hereto and referred to herein are hereby incorporated herein and made a part hereof for all purposes as if fully set forth herein.

SECTION 9.12 Severability. Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only so broad as is enforceable.

SECTION 9.13 Enforcement of Agreement. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with its specific terms or was otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any Texas Court, this being in addition to any other remedy to which they are entitled at law or in equity.

SECTION 9.14 Obligation of Merger Sub. Whenever this Agreement requires Merger Sub (or its successors) to take any action prior to the Effective Time, such requirement shall be deemed to include an undertaking on the part of Parent to cause Merger Sub to take such action and a guarantee of the performance thereof.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused the same to be duly delivered on their behalf on the day and year first written above.

**DEVON ENERGY CORPORATION**

By: /s/ J. LARRY NICHOLS  
-----  
Name: J. Larry Nichols  
Title: Chairman, President and Chief  
Executive Officer

**DEVON NEWCO CORPORATION**

By: /s/ J. LARRY NICHOLS  
-----  
Name: J. Larry Nichols  
Title: President

**MITCHELL ENERGY & DEVELOPMENT CORP.**

By: /s/ GEORGE P. MITCHELL  
-----  
Name: George P. Mitchell  
Title: Chairman of the Board and  
Chief Executive Officer

## EXHIBIT A

### FORM OF COMPANY AFFILIATE'S LETTER

This SHAREHOLDER AGREEMENT, dated as of , 2001 (this "Agreement") is between Devon Energy Corporation, a Delaware corporation ("Parent"), and the undersigned shareholder ("Shareholder") of Mitchell Energy & Development Corp., a Texas corporation (the "Company"). Capitalized terms not otherwise defined in this Agreement have the meanings ascribed to them in the Merger Agreement.

#### RECITALS

A. Parent, Devon Newco Corporation, a Delaware corporation and a wholly owned subsidiary of Parent ("Merger Sub"), and the Company have entered into an Agreement and Plan of Merger, dated as of August 13, 2001 (the "Merger Agreement"), pursuant to which the Company will merge (the "Merger") with and into Merger Sub, with Merger Sub surviving the Merger;

B. Pursuant to the Merger Agreement, at the Effective Time, outstanding Company Shares will be converted into (i) the right to receive cash and (ii) shares of Parent Common Stock;

C. The execution and delivery of this Agreement by Shareholder is a material inducement to Parent to enter into the Merger Agreement; and

D. Shareholder has been advised that Shareholder may be deemed to be an "affiliate" of the Company, as such term is used (i) for purposes of paragraphs (c) and (d) of Rule 145 of the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Act").

NOW, THEREFORE, intending to be legally bound, the parties agree as follows:

2. Acknowledgments by Shareholder. Shareholder acknowledges and understands that the representations, warranties and covenants made by Shareholder set forth in this Agreement will be relied upon by Parent, the Company, and their respective affiliates and counsel, and that substantial losses and damages may be incurred by such persons if Shareholder's representations, warranties or covenants are breached. Shareholder has carefully read this Agreement and the Merger Agreement and has consulted with such legal counsel and financial advisers as Shareholder has deemed appropriate in connection with the execution of this Agreement.

3. Compliance with Rule 145 and the Act.

(a) Shareholder has been advised that (i) the issuance of shares of Parent Common Stock in connection with the Merger is expected to be effected pursuant to a Registration Statement filed by Parent on Form S-4, and the resale of such shares will be subject to the restrictions set forth in Rule 145 under the Act unless such shares are otherwise transferred pursuant to an effective registration statement under the Act or an appropriate exemption from registration, and (ii) Shareholder may be deemed to be an affiliate of the Company. Shareholder accordingly agrees not to sell, pledge, transfer or otherwise dispose of any shares of Parent Common Stock issued to Shareholder in the Merger unless (i) such sale, pledge, transfer or other disposition is made in conformity with the requirements of Rule 145 under the Act, (ii) such sale, pledge, transfer or other disposition is made pursuant to an effective registration statement under the Act, or (iii) Shareholder delivers to Parent a written opinion of counsel, in form and substance reasonably acceptable to Parent, to the effect that such sale, pledge, transfer or other disposition is otherwise exempt from registration under the Act.

(b) Parent will give stop transfer instructions to its transfer agent with respect to any Parent Common Stock received by Shareholder pursuant to the Merger, and there will be placed on the

certificates representing such Parent Common Stock, or any substitutions therefor, legends stating in substance:

"THE SHARES REPRESENTED BY THIS CERTIFICATE WERE ISSUED PURSUANT TO A TRANSACTION TO WHICH RULE 145 PROMULGATED UNDER THE SECURITIES ACT OF 1933 APPLIES, AND MAY ONLY BE TRANSFERRED IN CONFORMITY WITH RULE 145, PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT, OR IN ACCORDANCE WITH A WRITTEN OPINION OF COUNSEL, REASONABLY ACCEPTABLE TO THE ISSUER, IN FORM AND SUBSTANCE TO THE EFFECT THAT SUCH TRANSFER IS EXEMPT FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933."

The legend set forth above shall be removed (by delivery of a substitute certificate without such legend), and Parent shall so instruct its transfer agent, if a registration statement respecting the sale of the shares has been declared effective under the Act or if Shareholder delivers to Parent (i) satisfactory written evidence that the shares have been sold in compliance with Rule 145 (in which case, the substitute certificate will be issued in the name of the transferee), or (ii) an opinion of counsel, in form and substance reasonably acceptable to Parent, to the effect that sale of the shares by the holder thereof is no longer subject to Rule 145.

#### 4. Miscellaneous.

(a) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. Delivery of an executed counterpart of this Agreement by facsimile shall be effective to the fullest extent permitted by applicable law.

(b) This Agreement shall be enforceable by, and shall inure to the benefit of and be binding upon, the parties and their respective successors and assigns. As used in this Agreement, the term "successors and assigns" means, where the context so permits, heirs, executors, administrators, trustees and successor trustees, and personal and other representatives.

(c) This Agreement shall be deemed to be made in and in all respects shall be interpreted, construed and governed by and in accordance with the laws of the State of Texas. The parties irrevocably and unconditionally consent to submit to the exclusive jurisdiction of the courts of the State of Texas and of the United States of America, in either case located in Dallas County, Texas (the "Texas Courts") for any litigation arising out of or relating to this Agreement and the transactions contemplated by this Agreement (and agree not to commence any litigation relating thereto except in such Texas Courts), waive any objection to the laying of venue of any such litigation in the Texas Courts and agree not to plead or claim in any Texas Court that such litigation brought therein has been brought in an inconvenient forum.

(d) If any term, provision, covenant, or restriction contained in this Agreement is held by a court or a federal or state regulatory agency of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the terms, provisions, covenants, and restrictions contained in this Agreement shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

(e) Counsel to the parties to the Merger Agreement shall be entitled to rely upon this Agreement as needed.

(f) This Agreement shall not be modified or amended, or any right waived or any obligations excused, except by a written agreement signed by both parties.

(g) Notwithstanding any other provision contained in this Agreement, this Agreement and all obligations under this Agreement shall terminate upon the termination of the Merger Agreement in accordance with its terms.

(h) From and after the Effective Time of the Merger and as long as is necessary in order to permit Shareholder to sell Parent Common Stock held by Shareholder pursuant to Rule 145 and, to the extent applicable, Rule 144 under the Act, Parent will file on a timely basis all reports required to be filed by it pursuant to the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder, as the same shall be in effect at the time, and shall otherwise make available adequate public information regarding Parent in such manner as may be required to satisfy the requirements of paragraph (c) of Rule 144 under the Act.

IN WITNESS WHEREOF, this Agreement is executed as of the date first stated above.

**DEVON ENERGY CORPORATION,**  
a Delaware corporation

By:

Name:

Title:

**SHAREHOLDER**

---

Name:

Number of Shares Owned:  
Number of Shares Issuable upon  
Exercise of Stock Options:

A-41

**PRINCIPAL SHAREHOLDERS AGREEMENT  
CONTAINING A VOTING AGREEMENT AND  
AN IRREVOCABLE PROXY**

**BY AND AMONG**

**DEVON ENERGY CORPORATION**

**GEORGE P. MITCHELL**

**AND**

**CYNTHIA WOODS MITCHELL**

**DATED AS OF AUGUST 13, 2001**

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## PRINCIPAL SHAREHOLDERS AGREEMENT

This PRINCIPAL SHAREHOLDERS AGREEMENT (this "Agreement") dated as of August 13, 2001, by and among Devon Energy Corporation, a Delaware corporation ("Parent"), George P. Mitchell and Cynthia Woods Mitchell each being shareholders (each, a "Shareholder") of Mitchell Energy & Development Corp., a Texas corporation (the "Company").

### WITNESSETH:

WHEREAS, Parent, Devon Newco Corporation, a Delaware corporation and a wholly owned subsidiary of Parent, and the Company propose to enter into an Agreement and Plan of Merger, dated as of the date hereof (the "Merger Agreement"), pursuant to which the Company will merge with and into Sub with Sub surviving as a wholly owned subsidiary of Parent;

WHEREAS, as of the date hereof, each Shareholder "beneficially owns" (as such term is defined in Rule 13d-3 promulgated under the Exchange Act) and each Shareholder is entitled to dispose of (or to direct the disposition of) and to vote (or to direct the voting of) the number of shares of Class A Common Stock, par value \$0.10 per share of the Company (the "Common Stock") set forth opposite the Shareholder's name on Annex A hereto, as such shares may be adjusted by stock dividend, stock split, recapitalization, combination, merger, consolidation, reorganization or other change in the capital structure of the Company affecting the Common Stock (such shares of Common Stock, together with any other shares of Common Stock the voting power over which is acquired by the Shareholders during the period from and including the date hereof through and including the date on which this Agreement is terminated in accordance with its terms, are collectively referred to herein as the Shareholder's "Subject Shares"); and

WHEREAS, prior to the execution and delivery of this Agreement by any party hereto, Parent has purchased from George P. Mitchell 100 shares of Common Stock (the "Purchased Shares"); and

WHEREAS, as a condition to the willingness of Parent to enter into the Merger Agreement, and as an inducement and in consideration therefor, Parent has required that each Shareholder agrees, and each Shareholder has agreed, to enter into this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual premises, representations, warranties, covenants and agreements contained herein, the parties hereto, intending to be legally bound, hereby agree as follows:

### ARTICLE I

#### DEFINITIONS

SECTION 1.1 Definitions. For purposes of this Agreement, capitalized terms used and not defined herein shall have the respective meanings ascribed to them in the Merger Agreement.

### ARTICLE II

#### VOTING AGREEMENT AND IRREVOCABLE PROXY

SECTION 2.1 Agreement to Vote the Subject Shares. Each Shareholder, in its capacity as such, hereby agrees that during the period commencing on the date hereof and continuing until the termination of this Agreement (such period, the "Voting Period"), at any meeting (or any adjournment or postponement thereof) of the holders of any class or classes of the capital stock of the Company, however called, or in connection with any written consent of the holders of any class or classes of the capital stock of the Company, the Shareholders shall vote (or cause to be voted) their Subject Shares (x) in favor of the approval of the terms of the Merger Agreement and each of the other transactions contemplated by the Merger Agreement (and any actions required in furtherance thereof) at every meeting of the

shareholders of the Company (or in connection with any written consent) at which such matters are considered and at every adjournment thereof, (y) against any action, proposal, transaction or agreement that would result in a breach in any respect of any covenant, representation or warranty or any other obligation or agreement of the Company or any of its subsidiaries under the Merger Agreement or of the Shareholders under this Agreement, and (z) except as otherwise agreed to in writing in advance by Parent, against the following actions or proposals (other than the transactions contemplated by the Merger Agreement): (i) any extraordinary corporate transaction, such as a merger, consolidation or other business combination involving the Company or any of its subsidiaries and any Company Acquisition Proposal; (ii) a sale, lease or transfer of a significant part of the assets of the Company or any of its subsidiaries, or a reorganization, recapitalization, dissolution or liquidation of the Company or any of its subsidiaries (each of the actions in clauses (i) or (ii), a "Business Combination"); and (iii) (A) any change in the persons who constitute the board of directors of the Company that is not approved in advance by at least a majority of the persons who were directors of the Company as of the date of this Agreement (or their successors who were so approved); (B) any change in the present capitalization of the Company or any amendment of the Company's articles of incorporation or bylaws; (C) any other material change in the Company's corporate structure or business; or (D) any other action or proposal involving the Company or any of its subsidiaries that is intended, or could reasonably be expected, to prevent, impede, interfere with, delay, postpone, or adversely affect the transactions contemplated by the Merger Agreement. Any such vote shall be cast or consent shall be given in accordance with such procedures relating thereto as shall ensure that it is duly counted for purposes of determining that a quorum is present and for purposes of recording the results of such vote or consent. Each of the Shareholders agrees not to enter into any agreement, letter of intent, agreement in principle or understanding with any person that violates or conflicts with or could reasonably be expected to violate or conflict with the provisions and agreements contained in this Agreement or the Merger Agreement. For the avoidance of doubt, this Agreement is intended to constitute a voting agreement entered into under Section B, Article 2.30 of the TBCA for the duration of the Voting Period.

**SECTION 2.2 Grant of Irrevocable Proxy.** Each Shareholder hereby appoints Parent and any designee of Parent, and each of them individually, such Shareholder's proxy and attorney-in-fact, with full power of substitution and resubstitution, to vote or act by written consent during the Voting Period with respect to each of the Shareholders' Subject Shares in accordance with Section

2.1. This proxy is given to secure the performance of the duties of each of the Shareholders under this Agreement. The Shareholders shall promptly cause a copy of this Agreement to be deposited with the Company at its principal place of business. Each Shareholder shall take such further action or execute such other instruments as may be necessary to effectuate the intent of this proxy.

**SECTION 2.3 Nature of Irrevocable Proxy.** The proxy and power of attorney granted pursuant to Section 2.2 by each Shareholder shall be irrevocable during the term of this Agreement, shall be deemed to be coupled with an interest sufficient in law to support an irrevocable proxy and shall revoke all prior proxies granted by the Shareholders. The power of attorney granted herein is a durable power of attorney and shall survive the dissolution, bankruptcy, death or incapacity of each Shareholder. For the avoidance of doubt, the proxy and power of attorney is granted pursuant to Section C, Article 2.29 of the TBCA, is coupled with an interest and is granted to Parent as a shareholder of the Company and a party to this voting agreement which is created under Section B, Article 2.30 of the TBCA and is intended to be valid during the Voting Period, which the parties understand and agree may be more than eleven months from the date hereof.

**SECTION 2.4 Legend.** Each Shareholder shall promptly cause the following legend to be conspicuously noted on each certificate representing its Subject Shares:

"THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO A PRINCIPAL SHAREHOLDERS AGREEMENT DATED AS OF AUGUST 13, 2001. THE PRINCIPAL SHAREHOLDERS AGREEMENT RESTRICTS THE TRANSFERABILITY OF THE SHARES REPRESENTED BY THIS CERTIFICATE AND INCLUDES A

**VOTING AGREEMENT AND AN IRREVOCABLE PROXY TO VOTE THE SHARES REPRESENTED  
BY THIS CERTIFICATE."**

**ARTICLE III**

**COVENANTS**

SECTION 3.1 Generally. Except for pledges in existence as of the date hereof, each Shareholder agrees that, except as contemplated by the terms of this Agreement, it shall not (i) sell, transfer, tender, pledge, encumber, assign or otherwise dispose of, or enter into any contract, option or other agreement with respect to, or consent to, the sale, transfer, tender, pledge, encumbrance, assignment or other disposition of, any or all of its Subject Shares; (ii) grant any proxies or powers of attorney in respect of the Subject Shares, deposit any of its Subject Shares into a voting trust or enter into a voting agreement with respect to any of its Subject Shares; and (iii) take any action that would have the effect of preventing, impeding, interfering with or adversely affecting its ability to perform its respective obligations under this Agreement. Notwithstanding the foregoing, nothing herein shall prevent the Shareholders from assigning or transferring any Subject Shares beneficially owned by either of them to any trust, estate, family partnership, foundation or charitable organization (a "Permitted Transferee") if such Permitted Transferee agrees in writing to be bound by all of the provisions of this Agreement as a Shareholder hereunder.

**ARTICLE IV**

**REPRESENTATIONS AND WARRANTIES OF SHAREHOLDERS**

Each of the Shareholders hereby represents and warrants to Parent as follows:

SECTION 4.1 Due Authority. Each Shareholder has the capacity to execute and deliver this Agreement and to consummate the transactions contemplated hereby.

SECTION 4.2 Ownership of Shares. Each Shareholder legally or beneficially owns the number of shares of Common Stock set forth opposite their name on Annex A hereto. The number of shares of Common Stock set forth opposite their name on Annex A hereto are all of the shares of Common Stock legally or beneficially owned by them. Each Shareholder has sole voting power and sole power of disposition, in each case with respect to all of shares of Common Stock set forth opposite his or her name on Annex A hereto, with no limitations, qualifications or restrictions on such rights, subject only to applicable securities laws and the terms of this Agreement and as otherwise noted on Annex A.

SECTION 4.3 No Conflicts. (i) No filing with any governmental authority, and no authorization, consent or approval of any other person is necessary for the execution of this Agreement by the Shareholders and the consummation by the Shareholders of the transactions contemplated hereby and (ii) none of the execution and delivery of this Agreement by the Shareholders, the consummation by the Shareholders of the transactions contemplated hereby or compliance by the Shareholders with any of the provisions hereof shall (A) result in, or give rise to, a violation or breach of or a default under any of the terms of any material contract, understanding, agreement or other instrument or obligation to which either Shareholder is a party or by which either Shareholder or any of his or her Subject Shares or assets may be bound, or (B) violate any applicable order, writ, injunction, decree, judgment, statute, rule or regulation which could reasonably be expected to adversely affect the Shareholder's ability to perform its obligations under this Agreement.

SECTION 4.4 Title to Purchased Shares. The transfer by George P. Mitchell of the Purchased Shares to Parent has passed to and unconditionally vested in Parent good and valid title to all of the Purchased Shares, free and clear of all claims, Liens, restrictions, limitations and encumbrances whatsoever, other than any such encumbrances created by Parent.

SECTION 4.5 Reliance by Parent. Each Shareholder understands and acknowledges that Parent is entering into the Merger Agreement in reliance upon the execution and delivery of this Agreement by such Shareholder.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES OF PARENT

Parent hereby represents and warrants to each Shareholder as follows:

SECTION 5.1 Due Organization, etc. Parent is a company duly organized and validly existing under the laws of the jurisdiction of its incorporation. Parent has all necessary corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby by Parent has been duly authorized by all necessary action on the part of Parent and, assuming its due authorization, execution and delivery by each Shareholder constitutes a valid and binding obligation of Parent, enforceable against Parent in accordance with its terms, except to the extent that its enforceability may be subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting the enforcement of creditors' rights generally and by general equitable principles.

SECTION 5.2 Conflicts. (i) No filing with any governmental authority, and no authorization, consent or approval of any other person is necessary for the execution of this Agreement by Parent and the consummation by Parent of the transactions contemplated hereby and (ii) none of the execution and delivery of this Agreement by Parent, the consummation by Parent of the transactions contemplated hereby shall (A) conflict with or result in any breach of the organizational documents of Parent, (B) result in a violation or breach of or a default under any of the terms of any material contract, understanding, agreement or other instrument or obligation to which Parent is a party or by which Parent or any of its assets may be bound, or (C) violate any applicable order, writ, injunction, decree, judgment, statute, rule or regulation which could reasonably be expected to adversely affect Parent's ability to perform its obligations under this Agreement.

SECTION 5.3 Reliance by Shareholder. Parent understands and acknowledges that each Shareholder is entering into this Agreement in reliance upon the execution and delivery of the Merger Agreement by Parent.

## ARTICLE VI

### MISCELLANEOUS

SECTION 6.1 Shareholder Capacity. No Shareholder executing this Agreement who is or becomes during the term hereof a director or officer of the Company makes any agreement or understanding herein in his or her capacity as such director or officer. Each Shareholder executes this Agreement solely in his or her capacity as the record holder or beneficial owner of his or her Subject Shares and nothing herein shall limit or affect any actions taken by a Shareholder in his or her capacity as an officer or director of the Company.

SECTION 6.2 Publication. Each Shareholder hereby permits Parent to publish and disclose in the Proxy Statement/Prospectus (including all documents and schedules filed with the Securities and Exchange Commission) its identity and ownership of shares of Common Stock and the nature of its commitments, arrangements, and understandings pursuant to this Agreement.

SECTION 6.3 Further Actions. Each of the parties hereto agrees that it will use its best efforts to do all things necessary to effectuate this Agreement.

SECTION 6.4 Entire Agreement. This Agreement contains the entire understanding of the parties hereto with respect to the subject matter contained herein and supersedes all prior agreements and understandings, oral and written, with respect thereto.

SECTION 6.5 Binding Effect; Benefit; Assignment. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their Permitted Transferees, heirs, estates and successors. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto, except by will or by the laws of descent and distribution, without the prior written consent of each of the other parties, except that each of Parent and Sub may assign and transfer its rights and obligations hereunder to any direct or indirect wholly owned subsidiary of Parent. Nothing in this Agreement, expressed or implied, is intended to confer on any person, other than the parties hereto, any rights or remedies.

SECTION 6.6 Amendments, Waivers, etc. This Agreement may not be amended, changed, supplemented, waived or otherwise modified or terminated, except upon the execution and delivery of a written agreement executed by all of the relevant parties hereto.

SECTION 6.7 Notices. All notices, requests, demands, waivers and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered in person or mailed, certified or registered mail with postage prepaid, or sent by facsimile (upon confirmation of receipt), as follows:

(i) If to any Shareholder, to such Shareholder at the address set forth immediately beneath such Shareholder's name on Annex A:

with a copy (which shall not constitute notice) to:

Bracewell & Patterson L.L.P.

711 Louisiana Street, Suite 2900  
Houston, Texas 77002

Attention: Edgar J. Marston III Fax: (713) 221-1188

(ii) If to Parent, to it at:

Devon Energy Corporation  
20 North Broadway, Suite 1500 Oklahoma City, Oklahoma 73102 Attention: J. Larry Nichols Fax: (405) 552-7602  
and  
Duke R. Ligon  
Fax: (405) 552-4648

with a copy (which shall not constitute notice) to:

Mayer, Brown & Platt  
190 South LaSalle Street  
Chicago, Illinois 60603

Attention: Scott J. Davis  
James T. Lidbury Fax: (312) 701-7711

or to such other person or address as any party shall specify by notice in writing to each of the other parties. All such notices, requests, demands, waivers and communications shall be deemed to have been received on the date of delivery, except for a notice of a change of address, which shall be effective only upon receipt thereof.

SECTION 6.8 Specific Enforcement. The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. Accordingly, the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, this being in addition to any other remedy to which they are entitled at law or in equity.

SECTION 6.9 Remedies Cumulative. All rights, powers and remedies provided under this Agreement or otherwise available in respect hereof at law or in equity shall be cumulative and not alternative, and the exercise of any thereof by any party shall not preclude the simultaneous or later exercise of any other such right, power or remedy by such party.

SECTION 6.10 No Waiver. The failure of any party hereto to exercise any right, power or remedy provided under this Agreement or otherwise available in respect hereof at law or in equity, or to insist upon compliance by any other party hereto with its obligations hereunder, and any custom or practice of the parties at variance with the terms hereof shall not constitute a waiver by such party of its right to exercise any such or other right, power or remedy or to demand such compliance.

SECTION 6.11 Governing Law; Jurisdiction; Waiver of Jury Trial. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. EACH OF THE SHAREHOLDERS AND PARENT HEREBY IRREVOCABLY AND UNCONDITIONALLY CONSENTS TO SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COMPETENT COURTS OF THE STATE OF TEXAS AND OF THE UNITED STATES OF AMERICA, IN EITHER CASE LOCATED IN DALLAS COUNTY, TEXAS (THE "TEXAS COURTS") FOR ANY LITIGATION ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY (AND AGREES NOT TO COMMENCE ANY LITIGATION RELATING THERETO EXCEPT IN SUCH COURTS), WAIVES ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUCH LITIGATION IN THE TEXAS COURTS AND AGREES NOT TO PLEAD OR CLAIM IN ANY TEXAS COURT THAT SUCH LITIGATION BROUGHT THEREIN HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

SECTION 6.12 Headings. The descriptive headings of this Agreement are inserted for convenience only, do not constitute a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement.

SECTION 6.13 Counterparts; Facsimiles. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument. A signature transmitted by facsimile shall be treated for all purposes by the parties hereto as an original, shall be binding upon the party transmitting such signature without limitation.

SECTION 6.14 Termination. This Agreement shall terminate, and none of Parent, Sub or any Shareholder shall have any rights or obligations hereunder and this Agreement shall become null and void and have no effect upon the earliest to occur of (a) the mutual consent of Parent, Sub and the Shareholder,

(b) the second anniversary of the date of this Agreement, (c) the Effective Time or (d) the termination of the Merger Agreement (i) by Parent for any reason or

(ii) by the Company because of the failure of the conditions contained in Sections 7.1(a)(ii), 7.1(b), 7.1(c), 7.1(d), 7.1(e) or 7.2 to have been satisfied; provided, further, that termination of this Agreement shall not prevent any party hereunder from seeking any remedies (at law or in equity) against any other party hereto for such party's breach of any of the terms of this Agreement. Notwithstanding the foregoing, Sections 6.4, 6.5, 6.7, 6.9 and 6.11 shall survive the termination of this Agreement.

IN WITNESS WHEREOF, Parent and each Shareholder have caused this Agreement to be duly executed as of the day and year first above written.

**DEVON ENERGY CORPORATION**

By: /s/ J. LARRY NICHOLS

-----  
Name: J. Larry Nichols  
Title: Chairman, President and Chief  
Executive Officer

**THE SHAREHOLDERS**

/s/ GEORGE P. MITCHELL

-----  
George P. Mitchell

/s/ CYNTHIA WOODS MITCHELL

-----  
Cynthia Woods Mitchell

ANNEX A

LIST OF SHAREHOLDERS AND OWNERSHIP  
OF COMMON STOCK

SHAREHOLDER -----	ADDRESS -----	NUMBER OF SHARES OF COMMON STOCK AS OF AUGUST 10, 2001 -----
George P. Mitchell.....	c/o J. Todd Mitchell 600 Travis Street Suite 3600 Houston, Texas 77002	23,380,811(1)(2)(3)(4)
Cynthia Woods Mitchell.....	c/o J. Todd Mitchell 600 Travis Street Suite 3600 Houston, Texas 77002	1,022,506(1)

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(1) Subject to shared power of spouse under applicable Texas marital property laws.

(2) Includes 404,666 shares of Common Stock which George P. Mitchell has the right to acquire within 60 days on the exercise of stock options.

(3) 1,022,506 shares of Common Stock owned of record by Cynthia Woods Mitchell. George P. Mitchell disclaims beneficial ownership of these shares.

(4) Includes 5,888,998 shares of Common Stock which George P. Mitchell has pledged with lenders to secure existing credit facilities. The certificates representing these shares will not be stamped with the legend referred to in Section 2.4.

**INVESTOR RIGHTS AGREEMENT**

**BETWEEN**

**DEVON ENERGY CORPORATION**

**AND**

**GEORGE P. MITCHELL**

**AND**

**CYNTHIA WOODS MITCHELL**

**DATED AS OF AUGUST 13, 2001**

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## INVESTOR RIGHTS AGREEMENT

This Investor Rights Agreement (this "Agreement") is made as of August 13, 2001 by and between Devon Energy Corporation, a Delaware corporation (the "Parent") George P. Mitchell and Cynthia Woods Mitchell ("Investors").

### RECITALS

WHEREAS, pursuant to the merger contemplated by the Agreement and Plan of Merger, dated as of August 13, 2001 (the "Merger Agreement"), by and among Parent, Devon Newco Corporation, and Mitchell Energy & Development Corp. (the "Company") ("Merger Agreement"), Investors may acquire shares (the "Shares") of Parent's common stock, par value \$0.10 per share ("Parent Common Stock") in exchange for their shares of common stock, par value \$0.10 per share, of the Company; and

WHEREAS, Parent is granting Investors certain demand and piggyback registration rights in connection with Investors' receipt of the Shares pursuant to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, the parties hereto agree as follows:

1. Certain Definitions. As used in this Agreement, the following terms shall have the following respective meanings:

"Affiliate" shall mean, with respect to any person, each of such person's officers, directors, employees and agents, and each other person controlling such person within the meaning of the Securities Act.

"Commission" shall mean the Securities and Exchange Commission or any other federal agency at the time administering the Securities Act.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended, or any similar federal statute and the rules and regulations of the Commission thereunder, all as the same shall be in effect at the time.

"Register," "registered" and "registration" refer to a registration effected by preparing and filing a registration statement in compliance with the Securities Act, and the declaration or ordering of the effectiveness of such registration statement.

"Registrable Securities" shall mean the Shares and any shares of Parent Common Stock issued or issuable in respect of the Shares upon any stock split, stock dividend, recapitalization, or similar event and held by Investors until such time as (i) a registration statement covering such securities has been declared effective by the Commission and such securities have been disposed of pursuant to such effective registration statement, or (ii) such securities may be sold pursuant to Rule 145 or Rule 144 (or any successor or similar rule) under the Securities Act without regard to the volume of sale restrictions referred to therein, or (iii) such securities have been transferred and may be sold by the transferee without registration under the Securities Act, after which such securities shall no longer be Registrable Securities.

"Registration Expenses" shall mean all expenses incurred by Parent in complying with Sections 2 and 3 hereof, including all registration, qualification and filing fees, printing expenses, escrow fees, fees and disbursements of counsel and of the accountants for Parent, blue sky fees and expenses and the expense of any special audits incident to or required by any such compliance.

"Securities Act" shall mean the Securities Act of 1933, as amended, or any similar federal statute and the rules and regulations of the Commission thereunder, all as the same shall be in effect at the time.

"Selling Expenses" shall mean all underwriting discounts, selling commissions and stock transfer taxes applicable to the Registrable Securities registered by Investors and all fees and disbursements of counsel for Investors.

Capitalized terms used and not defined herein shall have the respective meanings ascribed to them in the Merger Agreement.

## 2. Requested Registration.

a. Request for Registration. In case Parent shall receive from Investors a written request that Parent effect any registration with respect to any of the Registrable Securities, Parent shall, as soon as practicable, use reasonable best efforts to effect such registration (including appropriate qualification under applicable blue sky or other state securities laws and appropriate compliance with applicable regulations issued under the Securities Act and any other governmental requirements or regulations) on Form S-3 or, if Form S-3 is not available, then on Form S-1 (or any successor forms of registration statements to such Forms S-3 or S-1 or other available registration statements) and as would permit or facilitate the sale and distribution of the Registrable Securities for which registration is requested. The registration statement filed pursuant to the request of Investors under this Section 2(a) may include securities of Parent held by other securityholders of Parent who, by virtue of agreements with Parent, are entitled to include their securities in any such registration, but Parent shall have no absolute right to include securities for its own account in any such registration.

b. Notwithstanding the foregoing, Parent shall not be obligated to file a registration statement to effect any such registration pursuant to this Section 2:

i. unless the amount of Registrable Securities for which registration is requested is at least 5,000,000 shares (as adjusted for any stock split, stock dividend, recapitalization or similar event); provided, however, that if the total number of Registrable Securities held by Investors (but not a transferee of Investors) is less than 5,000,000 shares (as adjusted to give effect to any stock split, reverse stock split, stock dividend, recapitalization or any similar event or transaction), then Investors (but not a transferee of Investors) may request registration under this Section 2 as to all but not less than all of such Registrable Securities as may then be held by Investors; and

ii. after Parent has initiated two such registrations pursuant to this Section 2 (counting for these purposes only registrations that have been declared effective).

c. Underwriting. Any offering of securities made under this Section 2 shall be pursuant to a "firm commitment" underwriting. Parent (together with Investors) shall enter into an underwriting agreement in customary form with the managing underwriter selected for such underwriting by the Investors with the consent of Parent, which consent shall not be unreasonably withheld. Notwithstanding any other provision of this Section 2, if the managing underwriter determines that marketing factors require a limitation of the number of shares to be underwritten, the managing underwriter may limit the number of Registrable Securities to be included in such registration to the extent required by such limitation. If the managing underwriter has not limited the number of Registrable Securities to be included in such registration, Parent may include securities for its own account or for the account of others in such registration if the number of Registrable Securities to be included in such registration will not thereby be limited.

## 3. Parent Registration.

a. Notice of Registration. If Parent shall determine to register any of its securities, either for its own account or the account of a security holder or holders exercising their respective registration rights, other than (i) a registration relating solely to employee benefit plans on

Form S-8 (or similar successor form), or (ii) a registration on Form S-4 (or similar successor form) relating solely to a Commission Rule 145 transaction, Parent will:

i. promptly give Investors written notice thereof; and

ii. use its reasonable best efforts to include in such registration (and any related qualification under blue sky laws or other compliance), and in any underwriting involved therein, all Registrable Securities specified in a written request to Parent made within 15 business days after receipt of such written notice by Investors.

b. Underwriting. If the registration of securities pursuant to this Section 3 is underwritten, Parent shall so advise Investors as a part of the written notice given under Section 3(a). In such event, Investors' right to registration pursuant to this Section 3 shall be conditioned upon Investors' participation in such underwriting and the inclusion of Registrable Securities in the underwriting shall be subject to the limitations provided herein. Parent (together with Investors) shall enter into an underwriting agreement in customary form with the managing underwriter selected for such underwriting by Parent. Notwithstanding any other provision of this Section 3, if the managing underwriter determines that marketing factors require a limitation of the number of shares to be underwritten, Parent shall so advise the holders of securities who have requested to include their securities in such registration, and the number of shares to be included in such registration shall be reduced by such minimum number of shares as is necessary to comply with such limitation, as follows:

i. if the registration was initiated for the account of any security holder or holders other than Investors (the "Initiating Holders"), the number of shares reduced shall be (A) first, any shares sought to be registered by Parent for its own account, (B) second, if further reductions are required, any shares sought to be registered by holders of securities other than the Initiating Holders who have requested to include their securities in such registration, pro rata based on the number of shares requested to be included in such registration, and (C) third, if still further reductions are required, any securities sought to be registered by the Initiating Holders.

ii. if the registration was initiated by Parent for its own account, the number of shares reduced shall be (A) first, any shares sought to be registered by holders of securities who have requested to include their securities in such registration, pro rata based on the number of shares requested to be included in such registration and (B) second, if further reductions are required, shares sought to be registered by Parent for its own account.

4. Black Out. In the event Parent determines, after a request for registration has been received from an Investor and prior to the completion of such registered offering, that it may be in possession of material undisclosed information with respect to Parent or its securities, (i) Parent shall notify Investors and request that Investors refrain from selling any Registrable Securities, and Investors shall refrain from selling any Registrable Securities, and (ii) Parent shall not be obligated to file a registration statement or effect any registration, qualification or compliance of Registrable Securities under Section 2 for a period of not more than 120 days from the date of such notice (the "Black Out Period"). A Black Out Period shall end upon the earlier to occur of (i) the full public disclosure of the material information giving rise to such Black Out Period, (ii) Parent notifying Investors in writing that the Black Out Period is terminated and (iii) the 120th day after the date of Parent's notice of the commencement of the Black Out Period. Notwithstanding the foregoing, Parent shall not be entitled to declare a Black Out Period prior to twelve months from the end of a previous Black Out Period if more than 180 days of the immediately preceding 365 days have been subject to a Black Out Period, and Parent shall only exercise its rights under this Section 4 in good faith and shall not exercise such rights in an effort to frustrate the Investors' ability to offer to sell and sell their Registrable Securities.

5. Expenses of Registration. All Registration Expenses incurred in connection with a registration pursuant to Sections 2 and 3 shall be borne by Parent. All Selling Expenses relating to the Registrable Securities which are registered shall be borne by Investors.

6. Registration Procedures. In the case of each registration effected by Parent pursuant to this Agreement, Parent will keep Investors advised in writing, if Investors are participating in such registration, as to the initiation of each registration and as to the completion thereof. At its expense, Parent will:

a. prepare and file with the Commission a registration statement with respect to such securities and use reasonable best efforts to cause such registration statement to become and remain effective for at least 60 days or until the distribution described in the registration statement has been completed, whichever first occurs;

b. furnish to Investors, if Investors are participating in such registration, such reasonable number of copies of the registration statement, preliminary prospectus, final prospectus and such other documents as Investors may reasonably request, including correspondence with the Commission and any exchanges on which Registrable Securities are listed; and

c. notify Investors, if Investors are participating in such registration, of any updates or amendments to the prospectus and furnish to Investors any such updated and/or amended prospectuses.

7. Indemnification.

a. Parent will indemnify Investors with respect to any registration, qualification or compliance which has been effected pursuant to this Agreement, and each underwriter, if any, and each person who controls any underwriter within the meaning of the Securities Act (the "Underwriters"), against all expenses, claims, losses, damages or liabilities (or actions in respect thereof), including any of the foregoing incurred in settlement of any litigation commenced or threatened arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any registration statement, prospectus, offering circular or other document, or any amendment or supplement thereto, incident to any such registration, or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, or any violation by Parent of the Securities Act or any state securities law, or any rule or regulation promulgated thereunder, applicable to Parent in connection with any such registration, and Parent will reimburse Investors and the Underwriters for any legal and any other expenses reasonably incurred in connection with investigating, preparing or defending any such claim, loss, damage, liability or action; provided, however, that Parent will not be liable in any such case to the extent that any such expense, claim, loss, damage or liability arises out of or is based on any untrue statement or omission, or alleged untrue statement or omission, made in reliance upon and in conformity with written information furnished to Parent by Investors specifically for use therein.

b. Investors will, if Registrable Securities are included in a registration being effected, indemnify Parent and each of its Affiliates and the Underwriters, if any, of Parent's securities covered by such a registration against all expenses, claims, losses, damages and liabilities (or actions in respect thereof), including any of the foregoing incurred in settlement of any litigation commenced or threatened arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any registration statement, prospectus, offering circular or other document, or any amendment or supplement thereto, incident to any such registration, or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, or any violation by Investors of the Securities Act or any state securities law, or any rule or regulation promulgated thereunder, applicable in connection with

any such registration, and Investors will reimburse Parent, such Affiliates and the Underwriters for any legal and any other expenses reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability or action, in each case to the extent that such untrue statement or omission, or alleged untrue statement or omission, is made in such registration statement, prospectus, offering circular or other document incident to any such registration in reliance upon and in conformity with written information furnished to Parent by Investors specifically for use therein. Notwithstanding the foregoing, the liability of Investors under this subsection (b) shall be limited in an amount equal to the public offering price of the Shares sold by Investors, unless such liability arises out of or is based on willful misconduct by Investors.

c. Each party entitled to indemnification under this Section 7 (the "Indemnified Party") shall give notice to the party required to provide indemnification (the "Indemnifying Party") promptly after such Indemnified Party has actual knowledge of any claim as to which indemnity may be sought, and the Indemnifying Party shall have the option to assume the defense of any such claim or any litigation resulting therefrom; provided, however, that counsel for the Indemnifying Party, who shall conduct the defense of such claim or litigation, shall be approved by the Indemnified Party (whose approval shall not unreasonably be withheld); and provided, further, that the Indemnified Party may participate in such defense at such party's own expense. The failure of an Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its obligations under this Agreement unless the failure to give such notice is materially prejudicial to an Indemnifying Party's ability to defend such action. The Indemnifying Party shall not assume such defense for matters as to which there is a conflict of interest or separate and different defenses. In the event of a conflict of interest or separate or different defenses, as determined in the reasonable opinion of counsel to the Indemnified Party, the Indemnifying Party will pay the reasonable legal fees and expenses of one counsel to the Indemnified Party. No claim may be settled without the consent of the Indemnifying Party (which consent shall not be unreasonably withheld). No Indemnifying Party, in the defense of any such claim or litigation, shall, except with the consent of each Indemnified Party, consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect to such claim or litigation.

d. If the indemnification provided for in Section 7.a. or 7.b. is unavailable to or insufficient to hold harmless an indemnified party under Section 7.a. or 7.b. in respect of any expenses, claims, losses, damages or liabilities (or actions in respect thereof), then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of such expenses, claims, losses, damages or liabilities (or actions in respect thereof) in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and the indemnified party on the other hand in connection with the statements or omissions which resulted in such expenses, claims, losses, damages or liabilities (or actions in respect thereof), as well as any other relevant equitable considerations.

8. Information from Investors. Investors shall furnish to Parent such information regarding Registrable Securities being included in any registration and the distribution proposed by Investors as Parent may request in writing and as shall be required in connection with any registration referred to in this Agreement.

9. Rule 144 Reporting. With a view to making available the benefits of certain rules and regulations of the Commission which may at any time permit the sale of Registrable Securities to the public without registration, Parent agrees to use its best efforts to:

a. make and keep public information available, as those terms are understood and defined in Rule 144 (or any successor or similar rule) promulgated by the Securities and Exchange Commission under the Securities Act;

b. file with the Commission in a timely manner all reports and other documents required of Parent under the Securities Act and the Exchange Act; and

c. so long as Investors own any Registrable Securities, promptly furnish to Investors upon request (i) a statement by Parent as to its compliance with the reporting requirements of Rule 144 (or any successor or similar rule), the Securities Act and the Exchange Act, (ii) a copy of the most recent annual or quarterly report of Parent, and such other publicly filed reports and documents of Parent, and (iii) such other information in the possession of Parent as Investors may reasonably request in availing themselves of any rule or regulation of the Commission allowing Investors to sell any Shares without registration.

10. Amendment. Any provision of this Agreement may be amended or the observance thereof may be waived (either generally or in particular instance and either retroactively or prospectively) only with the written consent of each of the parties hereto.

11. Lockup. Investors agree that they will not, prior to the date which is nine months from the Closing Date (as defined in the Merger Agreement) (the "Lockup Date"), directly or indirectly sell, offer to sell, grant any option for the sale of, or otherwise dispose of any Shares other than pursuant to an underwritten registered offering made pursuant hereto or to a Permitted Transferee (as defined in the Principal Shareholders Agreement of even date among the Company and the Investors). From and after the Lockup Date, Investors shall not dispose of Shares in amounts exceeding 1,000,000 Shares per calendar quarter, except pursuant to a registration statement or to a Permitted Transferee.

12. Termination. This Agreement shall terminate at such time as Investors can sell all of their remaining Registrable Securities within a single three-month period pursuant to Rule 144 under the Securities Act (or any successor or similar rule).

13. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. PARENT AND INVESTORS EACH HEREBY IRREVOCABLY AND UNCONDITIONALLY CONSENTS TO SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF TEXAS AND OF THE UNITED STATES OF AMERICA, IN EITHER CASE LOCATED IN DALLAS COUNTY, TEXAS (THE "TEXAS COURTS") FOR ANY LITIGATION ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY (AND AGREES NOT TO COMMENCE ANY LITIGATION RELATING THERETO EXCEPT IN SUCH COURTS), WAIVES ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUCH LITIGATION IN THE TEXAS COURTS AND AGREES NOT TO PLEAD OR CLAIM IN ANY TEXAS COURT THAT SUCH LITIGATION BROUGHT THEREIN HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY.

14. Entire Agreement. This Agreement constitutes the full and entire understanding and agreement between the parties regarding rights to registration. Except as otherwise expressly provided herein, the provisions hereof shall inure to the benefit of, and be binding upon the successors and assigns of the parties hereto.

15. Notices and Dates. Any notice required to be given hereunder shall be sufficient if in writing, and sent by facsimile transmission or by courier service (with proof of service), hand delivery or certified or registered mail (return receipt requested and first-class postage prepaid), addressed as follows:

**if to Parent, to:**

Devon Energy Corporation  
20 North Broadway  
Suite 1500  
Oklahoma City, OK 73102  
Attention: J. Larry Nichols  
Facsimile: (405) 552-8171

and

Duke R. Ligon  
Facsimile: (405) 552-4550

with a copy to:

Mayer, Brown & Platt  
190 South LaSalle Street  
Chicago, IL 60603

Attention: Scott J. Davis

**if to Investors, to:**

George P. Mitchell  
Cynthia Woods Mitchell  
c/o J. Todd Mitchell  
600 Travis Street  
Suite 3600  
Houston, TX 77002  
Facsimile: (713) 221-3406

with a copy to:

Bracewell & Patterson LLP  
711 Louisiana, 27th Floor  
South Tower Pennzoil Place  
Houston, TX 77002  
Attention: Edgar J. Marston III  
Facsimile: (713) 221-1188

Each such notice or other communication shall for all purposes of this Agreement be treated as effective or having been given when delivered, if delivered personally, by messenger or by courier, or upon confirmation of receipt if sent by facsimile.

16. Counterparts; Facsimiles. This Agreement may be executed in several counterparts (by facsimile or original signature), each of which shall be deemed to be an original, but all of which together shall be deemed to be one and the same instrument. A signature transmitted by facsimile shall be treated for all purposes by the parties hereto as an original and shall be binding upon the party transmitting such signature without limitation.

17. Further Assurances. The parties hereto shall do and perform or cause to be done and performed all such further acts and things and shall execute and deliver all such other agreements, certificates, instruments or documents as any other party may reasonably request from time to time in order to carry out the intent and purposes of this Agreement and the consummation of the

transactions contemplated thereby. Neither Parent nor Investors shall voluntarily undertake any course of action inconsistent with satisfaction of the requirements applicable to them set forth in this Agreement, and each shall promptly do all such acts and take all such measures as may be appropriate to enable them to perform as early as practicable the obligations herein and therein required to be performed by them.

18. Severability. Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only so broad as is enforceable.

19. Interpretation. When a reference is made in this Agreement to Sections, such references shall be to a Section to this Agreement unless otherwise indicated. The words "include," "includes" and "including" when used herein shall be deemed in each case to be followed by the words "without limitation." Use of any gender herein to refer to any person shall be deemed to comprehend masculine, feminine, and neuter unless the context clearly requires otherwise.

20. Mutual Drafting. This Agreement is the joint product of Investors and Parent, and each provision hereof has been subject to the mutual consultation, negotiation and agreement of Investors and Parent and their respective legal counsel and advisers and any rule of construction that a document shall be interpreted or construed against the drafting party shall not be applicable.

IN WITNESS WHEREOF, the undersigned have executed this Investor Rights Agreement as of the date set forth above.

**DEVON ENERGY CORPORATION**

By:

*/s/ J. LARRY NICHOLS*

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*J. Larry Nichols*  
*Chairman, President and Chief*  
*Executive Officer*

*/s/ GEORGE P. MITCHELL*

-----  
*George P. Mitchell*

*/s/ CYNTHIA WOODS MITCHELL*

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*Cynthia Woods Mitchell*

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